

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

*Registry's translation,  
the French text alone  
being authoritative.*

**V. H. (No. 2)**

**v.**

**Interpol**

**136th Session**

**Judgment No. 4671**

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr F. V. H. against the International Criminal Police Organization (Interpol) on 24 November 2020 and corrected on 18 December 2020, and Interpol's reply of 12 April 2021, the complainant having failed to file a rejoinder within the allocated time;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

Considering that the facts of the case may be summed up as follows:

The complainant seeks the restitution of amounts wrongly deducted from his salary in respect of sickness insurance contributions.

Under Staff Regulation 7.1(1) of Interpol, officials are covered by the compulsory social security scheme in force in the State in which they are stationed. From January 1999 French law provided that persons affiliated to the social security scheme who were exempt in France from all or part of direct income tax had to pay an "enhanced sickness insurance contribution" (ESC). The Organization therefore deducted the contribution, set at the rate of 5.5 per cent, from the salaries of the officials concerned on behalf of the *Union de recouvrement des cotisations de sécurité sociale et d'allocations familiales* (URSSAF) of

the Rhône-Alpes region, which later became URSSAF of the Auvergne-Rhône-Alpes region, a non-market, private body with a public service remit that forms part of the “collection” arm of the general social security scheme.

The complainant is a former Interpol official who was employed at the Organization’s headquarters in Lyon, France, between 1 October 2013 and 3 October 2017. Accordingly, he was affiliated to the French social security scheme during that period.

On 13 December 2012, in consideration 15 and Article 3 of Decision No. 2012-659 DC concerning the preventative constitutional review of the social security financing law for 2013, the French Constitutional Council declared that the second sentence of the second paragraph of Article L. 131-9 of the French Social Security Code was contrary to the Constitution. This was the provision providing for payment of the ESC by, *inter alia*, international civil servants who were resident in France but not liable to pay French income tax. The decision was published in the *Journal officiel de la République française* No. 0294 of 18 December 2012, and also on the Constitutional Council’s website and on “Légifrance.gouv.fr”, the official French government website where laws, regulations and court decisions are published.

However, as it was unaware of this decision, the Organization continued to levy the ESC on salaries paid after 13 December 2012.

In a letter of 14 September 2018 the Organization, using the procedure set out in Article L. 243-6-3 of the French Social Security Code, asked URSSAF for clarification of the various personnel codes to be used when declaring the social contributions due on its officials’ salaries according to their individual status. In a letter of 29 January 2019 responding to this request, URSSAF informed the Organization that officials exempt from French tax were no longer liable to the ESC pursuant to the decision of the Constitutional Council of 13 December 2012. As a result, by a letter of 29 May 2019, the Organization asked URSSAF to repay the amounts wrongly levied on officials’ salaries in respect of the ESC since 14 December 2012. In an email of 6 June 2019 the Organization informed officials affiliated to the French social security scheme that the ESC had been abolished and that these

contributions would be retroactively reimbursed as from 1 January 2019. It explained that, during a review of the specific contributions owing to URSSAF and their corresponding rates, URSSAF had brought it to Interpol's attention that the ESC no longer needed to be levied. In the same email, Interpol also stated that it was in close contact with URSSAF to determine whether the latter would reimburse contributions for the years prior to 2019.

In a letter of 3 October 2019 URSSAF accepted the Organization's request for reimbursement for the period from 1 May 2016 to 31 December 2018 but took the view that the request for the period before 1 May 2016 was time-barred under Article L. 243-6 of the French Social Security Code.

On 30 October 2019 the complainant asked the Organization to return the sums wrongly withheld from his salary, together with interest, and sought compensation for the moral injury he considered he had suffered. In a letter dated 25 November 2019 he was informed that URSSAF had agreed to repay the amounts wrongly deducted in 2016, 2017 and 2018 and that negotiations were still in progress for the amounts relating to the years 2013 to 2016. The letter also specified that an individual decision would be taken on the restitution of these amounts once the contributions had actually been reimbursed by URSSAF.

Staff were informed of this situation in communications dated 18 and 28 November 2019.

By email of 19 January 2020 the complainant replied to the Secretary General's communication of 25 November 2019 stating that the reimbursement announced by the Organization did not respond to his email of 30 October 2019 in which he had requested a full reimbursement of his wrongly deducted salary. He added that this reimbursement should not be conditional on decisions taken by the French authorities.

In its letter of 7 April 2020 the Organization in essence repeated what the complainant had been told on 25 November 2019 and also noted that the claims for interest and compensation for moral injury were unfounded.

On 15 May 2020 the complainant received a certificate confirming that amounts deducted by way of the ESC between May 2016 and December 2018 had been refunded. The email to which that certificate was attached informed him that this was an administrative decision that could be challenged and that negotiations were still in progress concerning the period from January 2013 to April 2016.

As the complainant took the view that the repayment of salary arrears accrued since May 2016 only partly granted his request, he submitted an internal appeal to the Secretary General in an email dated 8 June 2020.

In an email of 17 June 2020 the Administration acknowledged receipt of the appeal and asked the complainant to specify which decision he was challenging. On 22 June the complainant replied that he was challenging the rejection of claims that he had “clearly” made and that the Organization had ignored by subsequently granting part of his request on 15 May 2020 but remaining silent on the remainder. In reply, the Organization again asked the complainant to forward within five working days the administrative decision that he considered to adversely affect his interests or the request for a decision to which no response had been received. By email of 26 June 2020 the complainant forwarded a copy of his communications of 30 October 2019 and 19 January 2020 and a copy of the Organization’s letter of 7 April 2020.

In a decision taken on 25 August 2020 the Secretary General declared the appeal irreceivable pursuant to Staff Rule 13.1.3(1)(a) on the ground that the complainant had refused to specify what decision he intended to challenge in his internal appeal.

As the amounts of ESC relating to the period from January 2013 to April 2016 were reimbursed by URSSAF after the complaint was filed, the Organization in turn repaid these amounts to the complainant in April 2021.

The complainant asks the Tribunal to set aside the Secretary General’s decision of 25 August 2020. He seeks an order for payment of the balance of the amounts wrongly deducted from his salary in respect of the ESC, with interest at the rate of 5 per cent per annum from the date of each monthly payment, and claims, in any event,

compensation for all the material and moral injury suffered. He also seeks an award of 7,000 euros in costs.

Interpol asks the Tribunal to dismiss the complaint as irreceivable.

### CONSIDERATIONS

1. In his complaint, the complainant:

- seeks reimbursement of the balance of the amounts wrongly deducted from his salary in respect of the enhanced sickness insurance contribution (ESC);
- requests, in any event, compensation for all the material and moral injury suffered;
- also requests that these amounts bear interest at the rate of 5 per cent per annum from the due date of each monthly payment.

2. The evidence in the file shows that, once URSSAF had made the corresponding reimbursements, the Organization refunded to the complainant the sums wrongly deducted from his salary in respect of the ESC for the period after 1 January 2013. Thus, apart from the question of interest, the complaint is now moot insofar as it relates to the amounts wrongly deducted during that period.

3. First of all, the Organization submits that the complaint is irreceivable on two grounds. In the first place, the internal appeal did not satisfy the formal requirements laid down in Staff Rule 13.1.2(1) inasmuch as the complainant not only failed to attach to his appeal a copy of the challenged decision but also failed to act on the Organization's request that he do so with a view to completing his appeal. He thereby also failed to effectively exhaust the internal remedies available to him. In the second place, both the complaint to the Tribunal and the internal appeal were premature because, at the time they were filed, discussions were still in progress with the French authorities with a view to obtaining, in particular, interest for late payment.

4. In respect of the first objection to receivability, it should be recalled that Staff Rule 13.1.2(1) and (2) states as follows:

“Rule 13.1.2: Content of the request for review and of the internal appeal

- (1) The request for review and the internal appeal shall be addressed in writing to the Secretary General. They shall be signed and dated by the official and shall include the following documents:
  - (a) [a] copy of the challenged decision or of the request for a decision by the official;
  - (b) [a] written summary of the reasons.
- (2) If the request mentioned in (1) above is incomplete, the Secretary General shall inform the official of that fact immediately, and shall ask him to provide the missing elements within 5 working days of the notification of this information.

[...]”

In light of that provision, the Tribunal notes that although the complainant had clearly stated his requests in emails sent to the Organization on 30 October 2019 and 19 January 2020, those requests were only partially met by the first refund of wrongly deducted contributions, effected in May 2020. Furthermore, in each of its replies of 25 November 2019 and 7 April 2020, the Organization stated that discussions were still in progress and that decisions open to appeal had yet to be taken. In those circumstances, the complainant was entitled to take the view in the internal appeal which he lodged on 8 June 2020 that he did not know exactly how to understand the Organization’s replies of 25 November 2019 and 7 April 2020 and that, at the time he submitted his internal appeal, there must have been a decision, albeit implicit, not to repay him all the amounts he requested. This is how the passage in his appeal, in which he requested, in May 2020, “the withdrawal of the refusal to grant [his] request for compensation, whether implicit or explicit and therefore, if applicable, [of] the decisions of 25 November 2019 and 7 April 2020, if they are to be regarded as rejections, as well as [of] the alleged decision of 15 May 2020 in the event and to the extent that it is to be understood as refusing the compensation sought beyond the sum paid” should be understood. In these circumstances, by attaching to his internal appeal the Organization’s communication of 7 April 2020 and by stating that his

request for a decision within the meaning of Staff Rule 13.1.2(1) was a request for the restitution of all the wrongly deducted amounts of ESC, the complainant met the requirements set out in that provision.

The first objection to receivability therefore fails.

5. As to the second objection to receivability alleging that the internal appeal lodged by the complainant was premature, the Tribunal observes that the Organization is not in any event entitled to raise that objection before it because this ground of irreceivability was not mentioned in the Secretary General's decision of 25 August 2020.

This last objection to receivability must therefore also be dismissed.

6. It is evident from considerations 4 and 5 above that the complainant's internal appeal was wrongly declared irreceivable on the grounds set out in the Secretary General's decision of 25 August 2020.

At this stage of its findings, the Tribunal should ordinarily remit the case to Interpol for the complainant's internal appeal to be considered by the Joint Appeals Committee.

However, in view of the length of time that has passed and the fact that the parties have put their cases at length in their submissions, the Tribunal will not do so here and will directly rule on the merits of the dispute.

7. With regard to the period after 1 January 2013, concerning which it is not in dispute that Interpol reimbursed the amounts wrongly withheld from the complainant's salary by way of the ESC in the course of the proceedings, the complainant claims interest for late payment on the amounts that have been repaid to him.

The complainant argues that Interpol could not lawfully make its own obligation to pay interest for late payment on the amounts wrongfully deducted from his salary conditional on URSSAF's prior payment of such interest. Nor could the Organization evade its obligations on the grounds that it had been misled by URSSAF in respect of the amounts of ESC to be deducted. Its failure in this matter is aggravated

by the fact that it did not discover its mistake until May 2019, almost seven years after the aforementioned decision of the Constitutional Council of 13 December 2012. He also criticises the Organization for not having deemed it necessary to refer the dispute to the arbitration tribunal mentioned in Article 24 of the Headquarters Agreement with France.

8. The Organization puts forward three arguments against this claim: firstly, it does not consider itself guilty of negligence; secondly, URSSAF has not paid it any such interest; and lastly, there are no provisions in the Staff Regulations or Rules placing it under a general obligation to pay interest for late payment on principal amounts which it may owe its officials.

9. Firstly, it should be recalled that interest for late payment simply represents an objective form of compensation for the time that has elapsed since the date on which an amount was due, and the mere fact that there was a delay in the payment of that amount is sufficient to justify the payment of interest, whether or not the debtor was at fault (see Judgments 4093, consideration 8, and 1403, consideration 8). Interpol's argument that it was not negligent is therefore, in any event, irrelevant.

10. Secondly, the fact that the sums refunded by URSSAF to Interpol in respect of the period after 1 January 2013 did not include interest has no bearing on the Organization's obligation towards its officials to pay interest on the amounts of ESC that it wrongly deducted from their salaries during that period.

11. Lastly, as regards the absence of any provision in Interpol's Staff Regulations or Rules providing for the payment of interest on sums due to the Organization's officials, the Tribunal recalls that the requirement to pay such interest arises even without such a provision pursuant to the general principles governing the liability of international organisations.

12. It is appropriate, in line with the Tribunal's case law, to apply the principle that interest is due *ipso jure* whenever a principal amount is payable, which is in particular the case where amounts have been wrongly deducted from remuneration that was due to be paid on a fixed date. In this scenario, the starting point for the interest to be paid is the due date for each payment from which an amount was wrongly deducted, that due date being equivalent by itself to service of notice (see, in particular, Judgments 3180, consideration 12, 2782, consideration 6, and 2076, consideration 10).

13. The Tribunal will therefore order the Organization to pay the complainant interest for late payment on the sums paid to him by way of refunds of contributions for the period after 1 January 2013 at the rate of 5 per cent per annum from the monthly due date for each of the salary arrears in question until the date of their payment.

14. The complainant seeks compensation for the moral injury he considers he has suffered. He bases the existence of that moral injury, firstly, on the fact that it is highly frustrating for him to have been wrongly deprived of part of his salary and, secondly, on the "feeling of frustration and injustice" caused to him by the Organization's conduct in the discussions concerning the actual reimbursement of the wrongly deducted amounts and in the handling of his internal appeal, which demonstrated bad faith.

The Tribunal considers that, having regard to the subject of the complaint, the award of interest in this judgment is sufficient in itself to compensate for all the moral injury caused by the undue payment of the ESC. With regard to the injury caused by Interpol's purported bad faith when dealing with the internal appeal, the Tribunal considers that, although the appeal was wrongly rejected, as stated above, it does not appear from the submissions that the Organization acted in bad faith when handling it.

The claim for moral damages will therefore be dismissed.

15. Lastly, the Tribunal considers that the complainant's claim for the award of 7,000 euros in costs should be granted.

#### DECISION

For the above reasons,

1. There is no need to rule on the complaint insofar as it seeks repayment of the sums wrongly deducted from the complainant's salary for the period from 1 October 2013 to 3 October 2017.
2. The decision of the Secretary General of Interpol of 25 August 2020 is set aside.
3. Interpol shall pay the complainant interest for late payment calculated as indicated in consideration 13, above.
4. The Organization shall also pay him 7,000 euros in costs.
5. All other claims are dismissed.

In witness of this judgment, adopted on 10 May 2023, Mr Patrick Frydman, Vice-President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 7 July 2023 by video recording posted on the Tribunal's Internet page.

*(Signed)*

PATRICK FRYDMAN    JACQUES JAUMOTTE    CLÉMENT GASCON

DRAŽEN PETROVIĆ