

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

F. H.

v.

Interpol

139th Session

Judgment No. 4920

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr L. F. H. against the International Criminal Police Organization (Interpol) on 23 November 2021 and corrected on 19 January 2022, Interpol's reply of 28 April 2022, the complainant's rejoinder of 3 June 2022 and Interpol's surrejoinder of 30 August 2022;

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 contests the rejection of his internal appeal seeking compensation for Interpol's alleged failure to inform him of the status of his same-sex marriage in prospective duty stations and to assist him in obtaining recognition of his husband as a dependent spouse in duty stations where national law did not recognise same-sex marriage.

The complainant is a former staff member of Interpol. He joined the Organization on 24 February 2017 and separated at the end of May 2020.

In August 2016, the complainant applied for the position of Project Manager, Financial Investigations, Organized and Emerging Crime Directorate, based in Bangkok, Thailand. The vacancy announcement for this position contained the following standard clause:

“Interpol places no restrictions on the eligibility of candidates, without distinction as to race or ethnic origin, religion, opinions, gender, sexual orientation or disabilities. However, the national policy and laws enforced by the national authorities of [Interpol] Host Countries, may result in Staff Members’ spouses or partners, while legally recognized by the Organization, being subject to different treatment when residing in certain duty stations. When it is the case, the Organization will inform the candidates of such treatment in order to assure their awareness and help them make an informed decision.”

On 14 December 2016, as part of the recruitment process, the complainant provided Interpol with a number of documents, including a marriage certificate and a Personal Information Form containing information about his spouse as his dependent. This form, however, did not specifically contain information regarding his spouse’s gender. On 8 February 2017, Interpol’s Human Resources Management (HRM) informed the complainant that he had been selected for the position based in Bangkok and invited him to fill out a number of documents and to provide the requested information.

Soon after, on 12 February 2017, the complainant wrote to Interpol asking whether “[his] husband [would] receive any assistance to get his [v]isa” and whether “[he] would [...] be able to work in Thailand”. Interpol submits that it was at that point that it became aware of the fact that the complainant’s spouse was male and that the complainant was in a same-sex marriage. The complainant, nonetheless, rejects this submission and asserts that he had notified Interpol of his spouse’s gender already during his interview for the position based in Bangkok.

On 13 February 2017, the complainant informed HRM that his husband would not be able to join him in Bangkok until later that year. On 16 February 2017, HRM contacted the Liaison Office in Bangkok to enquire about what could be done to obtain a visa for the complainant’s spouse. At the same time, HRM also extended the deadline for the complainant’s acceptance of the offer of appointment.

On 24 February 2017, the complainant accepted the offer of appointment and, on 15 March 2017, he again informed Interpol that his husband would join him in Bangkok towards the end of 2017, because he was then undergoing medical treatment in Brazil and also had personal matters to attend to.

The complainant officially took up the duties of the position based in Bangkok on 17 April 2017. In September 2017, he informed HRM that his husband was ready to join him in Bangkok. HRM enquired with the Thai authorities with a view to finding a solution but was advised that the law of Thailand did not recognize same-sex marriages and, therefore, the complainant's spouse could not legally reside with him in Thailand as his dependent.

In June 2018, the complainant applied for the position of Coordinator, Counter Terrorism, in Interpol's Global Complex for Innovation (IGCI) in Singapore. Following his selection for this position, he moved to Singapore and officially took up his duties in that country on 1 November 2018. Having made enquiries with the authorities of Singapore regarding the possibility of obtaining a residence permit for his spouse in that country, HRM informed the complainant, on 1 March 2019, that the Ministry of Home Affairs of Singapore had advised that it was unable to facilitate the entry and stay in the country of same-sex partners of Interpol staff, that it could not provide assistance, and that the complainant's husband would need to enter Singapore on his own merits.

Prior to that, on 25 February 2019, the complainant lodged a claim, pursuant to Staff Regulation 13.1(1)(b), against Interpol's failure to offer him a feasible solution regarding his personal situation. Arguing that the dispute resulted from HRM's negligence during his selection process for the position in Bangkok, the complainant made requests for payments on several counts, including for medical insurance claims in respect of his husband, travel and removal expenses, moral and material damages, as well as the cost of an 18-month intensive English course for his husband in Singapore to enable him to reside in that country on a student visa for the duration of the complainant's contract with Interpol.

The Secretary General responded to the complainant's claim on 7 May 2019, proposing (i) to transfer the complainant, subject to his consent, to Lyon, France, or Buenos Aires, Argentina, on a date to be agreed with his manager; and (ii) to pay the travel and removal expenses for both himself and his spouse. The Secretary General noted that a number of the requests the complainant had made in his claim had already been resolved, specifically, his husband was now covered by Interpol's medical insurance and some of his claims from 2018 had been paid retroactively by the insurance provider in April 2019. Therefore, the claims for reimbursement of medical expenses regarding his spouse's medical insurance and coverage were no longer relevant. The Secretary General added that Interpol remained committed to trying to assist the complainant, but there were limitations on its ability to have his husband be recognised as his dependent due to the laws in force in Singapore. Referring to Article 21(2) of the Agreement between Interpol and the Government of the Republic of Singapore regarding the Establishment of the Interpol Global Complex in Singapore (Headquarters Agreement with Singapore), stipulating that "all persons enjoying the privileges and immunities accorded by the present Agreement shall be under a duty to respect the laws and regulations of Singapore", the Secretary General indicated that same-sex sexual activity (even if consensual and committed in private) was considered a criminal offence in Singapore and, therefore, the mere fact of a staff member having a same-sex spouse would be in violation of the laws of Singapore. The Secretary General added that staff members enjoyed a "functional immunity", i.e. the privileges and immunities they enjoyed were strictly limited to their official capacity and the exercise of their official duties.

That same day, on 7 May 2019, prior to receiving the Secretary General's response to his claim, the complainant had lodged an internal appeal against what he considered to be the Secretary General's implicit decision to reject his claim of 25 February 2019. On 21 May 2019, the Secretary General declared the internal appeal admissible and referred it to the Joint Appeals Committee. In its unanimous opinion, communicated to the Secretary General in a memorandum dated 11 February 2021, the Committee recommended that the complainant's appeal be rejected on

the basis that Interpol had provided the complainant with the necessary support, within the limits of national laws, and had also proposed alternative solutions, such as a transfer to other duty stations. At the same time, the Committee noted that Interpol had failed to demonstrate due diligence in the manner in which HRM had processed the complainant's personal file and it made recommendations of a general nature intended to improve administrative processes during recruitment and the dissemination of information regarding the status of spouses in different duty stations.

By a letter of 23 August 2021, the Secretary General informed the complainant that he had decided to follow the recommendation of the Joint Appeals Committee to reject his internal appeal. This is the impugned decision.

The complainant asks the Tribunal to order Interpol to grant him the same rights and benefits as it grants to all heterosexual staff members serving in the Organization. He claims 500 euros per month for the period during which his husband was not covered by Interpol's medical insurance (January 2018 to May 2019); removal and travel expenses from Brazil to Bangkok which should have been borne by Interpol to cover his "reunification" with his husband; removal and travel expenses for personal effects of his husband, from Bangkok to Singapore, which should have been borne by Interpol to cover his husband's travel with him; 40,000 euros in moral damages for the period of his "enforced separation" from his husband; an amount equal to six round-trip airfares from Brasilia, Brazil, to Bangkok for "expenses due to not being able to have [his] husband residing with [him] in Thailand for 18 months". He also claims interest at the rate of 10 per cent per annum on the total amount awarded and costs.

Interpol asks the Tribunal to dismiss the complaint along with all of the complainant's requests for relief.

CONSIDERATIONS

1. The complainant was a member of staff of Interpol between February 2017 and May 2020. He believed his rights as a member of the LGBTQI+ community had been infringed during this period and, accordingly, lodged a claim with the Organization on 25 February 2019. Having not heard from Interpol about his grievance, the complainant lodged an internal appeal on 7 May 2019. On 11 February 2021, the Joint Appeals Committee issued its opinion, recommending that the appeal be rejected. By a decision of 23 August 2021, the Secretary General rejected the appeal in its entirety. This is the impugned decision in these proceedings. The complainant filed a complaint with the Tribunal on 23 November 2021.

2. Much of the general background is set out earlier in this judgment and need not be repeated. However, it is convenient to address the scope of the complaint at the outset. Broadly described, the complainant seeks relief in two respects. As noted earlier, the complainant is in a same-sex relationship and married to his partner.

3. The first order he seeks is general in character. It is that he be “granted the same rights and benefits as all heterosexual couples serving in [Interpol], although rendered infructuous at this stage, for the [c]omplainant it remains an ask with respect to existing and future LGBTQI+ staff members”. Simply put, he seeks, in essence, that Interpol confer the same rights and benefits on staff in same-sex relationships as conferred on staff in heterosexual relationships. He does so while recognising that in relation to him, an order of this type would be pointless or unnecessary, given he left the Organization before the proceedings were commenced in the Tribunal.

4. Apart from orders concerning costs and interest, the remainder of the relief he seeks are five orders personal to him. They are the payment of medical insurance for his husband, removal and travel expenses for his husband had he travelled from Brazil to Bangkok, Thailand, removal and travel expenses for personal effects of

his husband had he travelled from Bangkok to Singapore, moral damages in the sum of 40,000 euros for the “period of time of enforced separation of [himself] and his husband” and, lastly, the payment of an amount equal to six round-trip airfares from Brasilia, Brazil, to Bangkok for “expenses due to not being able to have [his] husband residing with [him] in Thailand for 18 months”. Before the Joint Appeals Committee, the complainant acknowledged that the claimed amounts were, in the main, punitive and not compensatory.

5. The terms of the first order sought by the complainant have already been set out in consideration 3 above. In his pleas, the complainant cites Judgment 2979, in which the Tribunal referred to the need for an organization to have impartial reasonable and objective rules to ensure non-discrimination. The complainant argues, in his pleas, that Interpol failed to conduct a review of its Staff Regulations and Staff Rules to consider whether they are fit for purpose when dealing with issues of staff from minoritized statuses in terms of sexuality and sexual orientation. The import of the first order sought by the complainant is that Interpol should adopt rules granting the rights and benefits to LGBTQI+ staff members who are married or in a partnership, as are presently granted to heterosexual couples. The difficulty with this claim is that the Tribunal has said, on earlier occasions, that the question of whether the rules of an organization should make provisions in specified respects, and in a case such as the present, recognize same-sex marriages, is not justiciable before the Tribunal (see, in particular, Judgment 3203, considerations 6 to 8).

6. The next order sought is for removal and travel expenses for his husband had he travelled from Brazil to Bangkok. As noted earlier, the complainant’s husband never travelled from Brazil to Bangkok. It is extremely difficult to see why the complainant should be compensated for an event which never occurred. Certainly, the complainant does not provide any persuasive explanation as to why he should be so compensated and does not found his case on the basis this amount was payable in advance. Moreover, the claim for the payment of travel which did not occur, is not founded on any provisions of the

Staff Regulations and Staff Rules (or his contract) pointed to by the complainant which confer an entitlement to such a payment. Plainly different considerations would arise if the travel had taken place. The preceding observations are equally true in relation to his claims for removal and travel expenses for personal effects of his husband had he travelled from Bangkok to Singapore, and the payment of an amount equal to six round-trip airfares from Brasilia to Bangkok. These claims are unfounded and should be dismissed.

7. However, the complainant alleges Interpol was negligent in appointing him to a position, without due diligence, in a country in which he could not be joined by his husband other than, possibly, by legal mechanisms which he found repugnant and which, he effectively argues, singularly failed to accommodate, on any reasonable or appropriate basis, his husband's status as his partner in a same-sex marriage residing with him in Thailand. The alleged negligence may also comprehend, though this is not clear, the failure of Interpol to facilitate the subsequent entry into Thailand of the complainant's husband on terms acceptable to the complainant.

8. What constitutes negligence was recently discussed by the Tribunal in Judgment 4239, considerations 14 and 15:

"14. [...] The Tribunal's case law is settled on what constitutes a cause of action based on negligence. The cause of action contains several elements (see, for example, Judgment 3733, consideration 12). The first is that the organisation has failed to take reasonable steps to prevent a foreseeable risk of injury. The second is that liability in negligence is occasioned when the failure to take such steps causes an injury that was foreseeable. As noted in Judgment 3215, consideration 12, the word 'injury' in this context is not used in any technical, legal or medical sense. Equally apt and often used is the word 'damage', which may be physical (including psychological), financial or, as is often the case, both. In the context of employment with an international organisation, physical damage or injury is more likely to be foundational to the claim though the damage could well be, as is alleged in this case, consequential financial damage occasioned by loss of earning capacity flowing from the physical injury.

15. However, another essential element of the cause of action is that the negligent act or omission caused the damage. That is to say, there must be a causal link between the conduct complained of and the damage suffered.

Moreover, the person seeking damages for negligence bears the burden of establishing the factual foundation on which the claim is based (see, for example, Judgment 3215, consideration 12). [...]"

9. One factual issue is when Interpol became aware, in the process of appointing the complainant, that he had a same-sex partner, indeed a dependent spouse. The complainant's version of the facts was that when he undertook an online interview, he "clearly and openly stated that he was married to a man, i.e., a person of the same sex". The interview took place on 6 October 2016. However, the complainant was not, in fact, married until 16 November 2016. The Joint Appeals Committee found that Interpol only became aware the complainant's spouse was of the same sex on 12 February 2017, after the complainant was offered the Bangkok position on 8 February 2017. The finding of the Committee is more plausible, and certainly the complainant has not established otherwise. Thus, the complainant was offered the position by Interpol before it was aware of the complainant's same-sex marital status. The complainant accepted the offer on 24 February 2017.

10. In an email exchange between 12 February 2017 (when questions were asked by the complainant) and 16 February 2017 (when the questions mainly were answered), the complainant was provided with some information about his entitlements and, relevantly, those concerning his spouse. Interpol made it clear it would cover the future travel costs of the complainant's husband and, in context, this meant the cost of travel from Brazil to Thailand. One question asked by the complainant was whether his husband would receive any assistance to get a visa and would he be able to work in Thailand. The response was that the official answering the question, a Recruitment Specialist from the Career Development, Mobility and Recruitment Branch of the Human Resources Sub-Directorate, had requested information from the Liaison Office in Bangkok what would or could be done to help the complainant's husband. This correspondence concluded with the email of 16 February 2017 from the Recruitment Specialist in which the complainant was told that, if the missing information was critical to the complainant to decide whether to accept the offer of appointment (and

this would have included the information about his husband), the deadline for acceptance would be extended until 20 February to provide for more time.

11. As far as the material before the Tribunal discloses, this issue about the complainant's husband's position was not resolved before the complainant accepted the offer of appointment nor did the complainant raise any further issues about his husband at this time, in particular, in response to the email of 16 February 2017. That is probably because the complainant's husband was then not proposing to travel to Bangkok but to do so later on in the year, and it was not, for the complainant, an issue of immediate concern. Interpol also says it did not then pursue the question of the complainant's husband's rights in Thailand, because it had been informed by the complainant by email on 13 February 2017, and then later on 15 March 2017, that the complainant was planning for his husband to join him at the end of 2017. This is a credible explanation, insofar as it goes, and is accepted. However, Interpol nonetheless should have persisted in ascertaining the complainant's husband's rights to enter and reside in Thailand as the complainant's spouse even after the complainant accepted the position.

12. Having regard to the legal elements of the cause of action based on negligence (discussed above), one question which presently arises is whether Interpol failed to take reasonable steps to avoid injury to the complainant at the time he was offered and accepted the appointment in February 2017. Injury can presently be assumed. Interpol did not fail to do so. The complainant was prepared to, and did, accept the appointment and take up the position in Bangkok in April 2017 with the position of his husband unresolved, indeed unclear. That is not a matter for which Interpol should be held legally accountable, and the steps it took were reasonable. Accordingly, Interpol was not negligent offering the complainant the position and acting on his acceptance.

13. However, Interpol did fail to continue to investigate the position of the complainant's husband and should have. But the complainant then confronts the difficulty of causation. That is to say, he must demonstrate that any financial or other loss, including moral damage, he suffered as a result of this failure (assuming it be negligence) was caused by Interpol. The short answer is that it was not. Any loss the complainant suffered, including loss of consortium, which would be a moral injury of sorts, flowed from his decision to accept the position without knowing his husband's rights of entry and residence.

14. As noted earlier, the alleged negligence of Interpol may also comprehend, though this is not clear, its failure to facilitate the subsequent entry into Thailand of the complainant's husband on terms acceptable to the complainant. How this could have been achieved by Interpol is far from obvious having regard to Thai law at the relevant time and Interpol's obligations, including of its officials, under the Agreement between Interpol and the Government of the Kingdom of Thailand regarding the Privileges and Immunities of the Interpol Office for South-East Asia in Bangkok (the Headquarters Agreement with Thailand). This relevantly provides that "the laws and regulations of the Kingdom of Thailand [...] shall apply within the Office and to its activities" (Article 2), that Interpol international officials appointed by the Secretary General to carry out the functions of the Office "shall be permitted together with members of their families, in accordance with the laws and regulations of Thailand, to enter and stay in Thailand during the term of their assignment" (Article 11(5)), that the privileges and immunities provided for in the Headquarters Agreement with Thailand "are granted to those concerned [Interpol international officials serving in Thailand] not for their personal benefit but in the interest of the smooth functioning of the Organization" (Article 13(1)), and that "[n]othing in the [Headquarters Agreement with Thailand] shall affect the right of the Government [of Thailand] to take measures it considers necessary to safeguard national security or maintain law and order" (Article 13(3)). Importantly, the complainant does not establish what could have been, but was not, done to this end.

15. It is unnecessary to repeat the above analysis in detail in relation to the offer to the complainant of the position in Singapore, which he applied for and accepted with full knowledge of the overwhelming impediments to him being joined by his husband in that country. In terms of legal principles, their application and outcome, the same result obtains.

16. The issue of the retroactive medical insurance coverage for the complainant's husband and the reimbursement of his medical expenses has been resolved and is now a moot issue.

17. In the result, the complainant has failed to establish any liability on the part of Interpol sounding in compensation or otherwise justifying the relief he seeks. Accordingly, the complaint should be dismissed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 25 October 2024, Mr Michael F. Moore, Vice-President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Rosanna De Nictolis, Judge, sign below, as do I, Mirka Dreger, Registrar.

Delivered on 6 February 2025 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

HUGH A. RAWLINS

ROSANNA DE NICTOLIS

MIRKA DREGER