

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

B. H. (No. 2)

v.

Interpol

141st Session

Judgment No. 5140

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr M. B. H. against the International Criminal Police Organization (Interpol) on 20 February 2023, Interpol's reply of 5 June 2023, the complainant's rejoinder of 3 July 2023, Interpol's surrejoinder of 1 September 2023, the additional documents provided by Interpol on 11 January 2024, the complainant's comments of 22 January 2024, Interpol's observations of 19 March 2024, the complainant's further submissions of 13 June 2024 and Interpol's final observations of 22 July 2024;

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 challenges the refusal to transfer his pension entitlements retroactively from Interpol's interim plan to the French national scheme.

The complainant joined Interpol at the Organization's Headquarters in Lyon (France) on 7 January 2008, under a short-term contract which was subsequently converted to a fixed-term contract on 1 October 2010 and to an appointment of indefinite duration on 1 July 2011.

In 2005 the Executive Committee of Interpol established, by its approval of document No. 12 (CE-2005-3-DOC-12) submitted to it by the General Secretariat, an interim retirement plan independent of France, the host State of the Organization, the provisions of which were contained in Appendix 5 to the Staff Manual and which aimed in particular to strengthen social protection for certain officials. The interim plan, which was a defined contribution scheme (in which contributions are fixed), was expected to evolve into a permanent retirement scheme applicable to all that would allow pension entitlements to be transferred between the national scheme and the Organization's scheme. Further studies and discussions were conducted with the French authorities until 2015 to determine the terms of such a transfer. By Resolution No. 13 (AG-2016-RES-13) of 2016, the General Assembly of the Organization created the Interpol Pension Fund and adopted the provisions of the permanent retirement scheme, which was to be a defined contribution scheme (in which the level of pensions is guaranteed), providing that the new scheme would enter into force "at the earliest on 1 January 2017 or, at the latest, on the date of entry into force of the Agreement between the Government of the French Republic and the Organization concerning the disaffiliation of the Organization's officials performing their duties in Lyon". However, the envisaged agreement was never signed due to the failure to reach agreement with the French authorities concerning arrangements for the transfer of pension entitlements. Consequently, the defined benefits scheme never came into effect.

When he was recruited by the Organization, the complainant was invited to make a choice concerning his retirement pension entitlements: he could either participate in the French pension system, to which Interpol was affiliated, or in the interim retirement plan established in 2005. He chose the second option. Although the interim plan was designed more specifically for certain categories of staff, membership was offered to all staff on a voluntary basis. It was indicated that staff who joined would automatically be integrated into the permanent scheme, once it was established.

In view of the fact that the permanent scheme initially envisaged was not actually implemented, the complainant asked the Human Resources Management Directorate (HRM), on 9 November 2020, to transfer him from the Organization's interim retirement plan to the French national scheme. This request was rejected on 10 November, HRM recalling that his initial choice was irrevocable. The complainant unsuccessfully renewed his request and also sought clarification, which was not provided.

The complainant filed an internal appeal, on 5 January 2021, against the decision of 10 November 2020, arguing that the Organization was unjustified in obliging him to remain in its interim retirement plan, particularly as, in his view, his consent was vitiated when he chose it and as the Organization had failed to fulfil its promises concerning the independent pension scheme. The complainant contacted the Office of Legal Affairs and the Joint Appeals Committee regularly to enquire about the processing time of his internal appeal. On 2 June 2021 the Chairperson of the Joint Appeals Committee asked him to supplement his appeal with a written memorandum, which the complainant refused to do, considering that the file was already complete. On 8 July 2021 the Committee informed the complainant that two additional extensions had been granted to the Organization for the submission of its reply, which the complainant deemed excessive, while deferring to the Committee's decisions on this point. On 14 September 2021, the complainant expressed his objection to a third request for an extension, which the Committee nevertheless accepted, as well as a final extension granted on 30 September. The Organization's reply was eventually sent on 18 November 2021, and the complainant contacted the Committee on several occasions to enquire about the progress of his appeal.

On 29 July 2022 the Joint Appeals Committee issued its unanimous opinion regarding the complainant's appeal, recommending, in essence, that he be reinstated in the French pension scheme or, failing that, that the losses he had incurred be compensated by payment of the difference between the benefits provided by the two schemes. The Committee recommended Interpol, more generally, to define the terms under which staff wishing to join the French pension scheme could do so, taking into

particular account the provisional nature of the Organization's internal scheme and the need for a "fallback solution"* should the plan to create a permanent scheme fail. It also criticized Interpol for a lack of communication, for not having been sufficiently "proactive"* in this regard and for not having taken into account the opinions expressed by staff. Lastly, it recommended that the Organization should ensure that the complainant did not suffer any financial or moral injury as a result of the cumbersome nature of the proceedings that he had initiated, the slow pace of Interpol's efforts to establish a permanent pension scheme or the uncertainty as to his future situation.

By a decision of 25 November 2022, the Secretary-General, departing from the Committee's conclusions, rejected the complainant's appeal. He emphasized that the choice of affiliation to the Interpol pension scheme was voluntary and final, and rejected the view that a promise had been made in 2005 to introduce a more favourable pension scheme. In his view, document CE-2005-3-DOC-12 was a mere proposal that did not imply a commitment, and the possible establishment of a defined benefit scheme was conditional upon agreements with France, which were never concluded. He asserted, contrary to the Committee's assessment, that this condition was not introduced in 2016 but had existed from the outset. He also challenged the complainant's right to any compensation, since, in his view, neither the existence of substantial material loss nor of moral injury had been established. He also disputed the feasibility of making a numerical comparison between the Interpol pension scheme and the French scheme, due to their differing legal nature and the lack of actuarial expertise in this area. Nevertheless, he advised the complainant of a French mechanism (namely section 85 of Act No. 2008-1330 of 17 December 2008) whereby, subject to conditions, certain years of contributions to the pension schemes of international organizations could be counted as years of contributions to the French scheme. He concluded by stating that the Organization would continue to assess its pension scheme in order to improve its sustainability, and

* Registry's translation.

that it would provide staff with more information on these issues. That is the impugned decision.

The complainant asks the Tribunal to set aside the Secretary-General's decision of 25 November 2022 and to accede to his request to be retroactively reinstated in the French pension scheme as from the date of his first contract of employment with Interpol, 7 December 2007, or, subsidiarily, as from his second contract. He also claims that the Organization should bear the cost of restoring his pension entitlements lost due to his failure to contribute to the French scheme or, failing that, that it should grant him a pension equivalent to that which he would have received had he contributed to that scheme. He seeks compensation of 10,000 euros for the moral injury he considers he has suffered, supplemented by compensation of 5,000 euros for the excessive length of the procedure, and 6,000 euros in costs.

Interpol asks the Tribunal to dismiss the complaint as irreceivable and unfounded.

Following the introduction of the Organization's "enhanced retirement plan" with effect from 1 December 2023 (which, like the former interim retirement plan, is a defined contribution scheme), the complainant ceased to be affiliated to the Organization's scheme and joined the French scheme, with effect from 1 June 2024 and without retroactive effect, in accordance with Rule 7.1.A.1(1)(b)(i) of the Staff Manual and with Staff Instruction 2023.22, which came into force on 1 January 2024.

CONSIDERATIONS

1. The complainant impugns before the Tribunal the decision of 25 November 2022 whereby the Secretary-General of Interpol rejected his appeal against the decision of 10 November 2020 rejecting his request for authorization to leave the Organization's interim retirement plan to contribute instead to the French pension scheme.

The reason for the complainant's request was that, contrary to what Interpol had envisaged at the time when he was recruited, in 2008, the Organization had been unable to establish a permanent pension scheme, failing in particular to conclude an agreement with France regarding the terms for the transfer of pension entitlements from the French scheme to its own scheme.

The rejection of the request in question, confirmed – despite the Joint Appeals Committee's recommendation to the contrary – by the impugned decision, was based on the fact that the option to be affiliated to Interpol's interim retirement plan which the complainant had chosen when he joined the Organization was irrevocable.

2. It is apparent from the complainant's further submissions and from Interpol's final observations that, during the implementation of the "enhanced retirement plan" introduced from 1 December 2023 – the features of which do not correspond to those of the permanent scheme as originally envisaged – new factors have had a substantial impact in the course of proceedings on the complainant's situation with regard to the present dispute. Rule 7.1.A.1 of the Staff Manual, adopted by the Executive Committee in November 2023, indeed provided, in paragraph (1)(b)(i), the implementing provisions of which were specified in Staff Instruction 2023.22, which entered into force on 1 January 2024, that officials affiliated to Interpol's retirement plan who had previously acquired pension entitlements under the French retirement scheme – as was the complainant's situation – may request to be affiliated to the latter scheme for the periods following the entry into force of the new Rule.

The evidence shows that the complainant was able, under this provision, to join the French retirement scheme from 1 June 2024. Consequently, as Interpol rightly observes, the present complaint no longer shows a cause of action in that it sought authorization for the complainant to contribute to the French scheme, rather than to the Interpol scheme, for periods after that date. However, since the affiliation thus made possible applies only to the future, the complaint still shows a cause of action insofar as it seeks the retroactive

reinstatement of the complainant in the French scheme and claims various forms of compensation.

3. With regard to consideration of the complainant's arguments, the Tribunal notes at the outset that, in Judgment 5021, delivered on 3 July 2025, in which it ruled on the complaint of a former Interpol official challenging the settlement of her pension entitlements, it has already ruled on the essential issues raised in the present case. Admittedly, that judgment related to a case of a different kind, concerning the payment of sums received under Interpol's interim retirement plan upon termination of an appointment, and in which the official concerned was not seeking to be affiliated to the French scheme, but to benefit from the Organization's initially envisaged permanent scheme. However, the Tribunal was led to consider, on that occasion, identical or closely similar pleas to those put forward in the present complaint. These pleas were then rejected in their entirety.

In Judgment 5021, the Tribunal noted that the complainant who had brought the case before it had irrevocably opted, when she joined Interpol, to join the Organization's interim retirement plan, rather than the French scheme, and that, in view of the documents provided to her in connection with the offer of appointment made to her, it was reasonable to consider that she had made that choice in full knowledge of the facts. The Tribunal further considered that, while Interpol had undoubtedly envisaged, when the interim retirement plan was established, in 2005, the introduction of a permanent scheme based on other foundations that would guarantee officials more extensive protection, this did not constitute a formal promise by the Organization in the meaning of the relevant case law, as established in particular in Judgments 4940, consideration 6, 4253, consideration 6, 3619, considerations 14 and 15, and 3148, consideration 7. Emphasizing that the introduction of this permanent scheme was subject to the outcome of financial negotiations with the Government of the French Republic, the Tribunal noted on this score that "the evidence in the file does not allow it to be considered that a promise was made that created a legal obligation for the Organization to honour it, in circumstances in which Interpol was unaware of the extent of the financial commitments regarding those

future pension entitlements before the discussions with the French authorities took place and were concluded”.

The Tribunal finds no reason to depart, in the present case, from the main conclusions that it reached in Judgment 5021.

4. The evidence indicates that the complainant, in the same manner as the official concerned in Judgment 5021, had expressly and irrevocably opted to join Interpol’s interim retirement plan when he joined the Organization.

5. In support of his argument that he was not bound by this option, the complainant first contends that the option, which he selected when he signed his first contract of employment, was valid only for the duration of that contract and ceased to be valid when he was subsequently employed under other contracts.

However, contrary to the Joint Appeals Committee’s opinion of 29 July 2022, this argument cannot be upheld. It is in fact clear that the choice made by the complainant, which the initial contract offer made to him indicated was “definitive”*, was valid – barring subsequent changes to the law – throughout his career with the Organization. In Judgment 5021, concerning an official who had also been granted a series of contracts, the Tribunal held that she was bound by the option that she had entered “when she was recruited”, thereby implicitly settling this issue in this regard. Furthermore, the Tribunal notes that the various individual decisions in the file altering the complainant’s position since the expiration of his first contract constituted in legal terms mere “amendments” to his former employment agreement, which confirms that the initially stipulated contractual clauses – such as the pension scheme option chosen – that were not affected by these amendments remained in force.

* Registry’s translation.

6. The complainant further submits, in effect, that his choice to be affiliated to the Interpol interim retirement plan was flawed by lack of consent in that the information provided to him when he was recruited was insufficient to enable him to make an informed choice.

However, the evidence shows that the complainant had received, in connection with the offer of appointment relating to his first contract, notification of Appendix 5 to the Staff Manual, entitled “Rules of the Interim Retirement Plan”, which included a description of the plan. As the Tribunal has already had occasion to state in Judgment 5021 – given that the official involved in that judgment had been called upon to specify the required option in view of the same elements – the information provided was sufficient to enable an informed decision to be made in this regard. Although Rule A.5.2 of Appendix 5 provided that participants in the interim plan would automatically be affiliated to the envisaged permanent scheme once it was established, it appeared that no guarantee was nevertheless provided to participants as to the timing and arrangements for the establishment of the future permanent scheme. Furthermore, if he considered himself insufficiently informed to take a position on the option in question, the complainant should have sought the additional information that he deemed necessary for that purpose (see, for examples of comparable situations, Judgments 4196, consideration 4, or 3878, consideration 17).

7. The complainant also alleges a further flaw precluding consent, which he develops more fully, that would invalidate the option that he had initially selected. He contends that his choice was based on a promise made by Interpol to establish the future permanent retirement scheme within two years, which, by his account, was made in 2005 and had not been kept.

In this regard, the complainant relies mainly on document No. 12 (CE-2005-3-DOC-12), issued by the General Secretariat of the Organization on 24 August 2005, the purpose of which was to propose to the Executive Committee that it approve the interim retirement plan established at that time and in which clear reference was made to the permanent scheme that would subsequently replace it. However, while

it is clear from the document that it was envisaged at the time that such a scheme would be developed over the following two years, this cannot be regarded as a formal promise by the Organization in the meaning of the case law referred to under consideration 3, above. The Tribunal has already settled this issue in Judgment 5021, as document No. 12 (CE-2005-3-DOC-12) appeared in the case file giving rise to this judgment. It is therefore with this in mind that the Tribunal found, as indicated in the excerpt from the judgment concerned quoted above, that “the evidence in the file does not allow it to be considered that a promise was made that created a legal obligation for the Organization to honour it”.

Furthermore, although the complainant also maintains that the aforementioned Rule A.5.2 of Appendix 5 to the Staff Manual contained such a promise, it is plain from what has been said above in relation to this rule that it does not imply all that the complainant claims it does.

8. It follows from considerations 4 to 7, above, that the complainant was bound by the irrevocable option in favour of Interpol’s interim retirement plan that he had specified at the time of his recruitment, and that the Organization was therefore justified in refusing to authorize him to join the French scheme. There was no requirement for Interpol, under the law in force on the date of the impugned decision, to reverse the irrevocable nature of the option specified by the complainant, given that, as it rightly points out in its written submissions, the retention of officials who had undertaken to participate in the interim plan was justified by the need to ensure the stability of its resources.

It follows from this conclusion that the other pleas raised in the complaint, which have no bearing on the lawfulness of the impugned decision, must be rejected as irrelevant.

9. This is particularly applicable to the plea that Interpol, by failing to establish the permanent retirement scheme initially envisaged, failed in its obligation to provide adequate social protection to its officials. While this failure would indeed be likely to have an adverse impact on the complainant’s interests with regard to pension entitlements, it is not however – particularly since, as indicated above, it does not

constitute a breach of promise – such as to call into question the irrevocable nature of the option specified by the complainant at the time of his recruitment and therefore has no bearing on the lawfulness of the impugned decision.

In addition, the plea in question is unfounded. As the Tribunal has already observed in Judgment 5021, where it excluded an argument raising this very issue, the transformation of the interim retirement plan, which was a defined contribution scheme intended primarily to meet the specific needs of certain officials, into a permanent scheme such as that originally envisaged, which was to be a defined benefits scheme for all officials, was a particularly complex operation. On the one hand, Interpol made serious efforts to establish the permanent scheme, as the General Assembly, by its Resolution No. 13 (AG-2016-RES-13), approved amendments to the Staff Manual to this effect in 2016 and the Organization entered into negotiations with the French Government with a view, in particular, to concluding an agreement, necessary for the effective implementation of this new scheme, on the terms of the transfer of pension entitlements acquired under the national scheme. On the other hand, while these negotiations proved unsuccessful, it appears that this was due to Interpol's inability to cover the cost of the compensation required by the French authorities for these rights to be transferred to the Organization's scheme. In the circumstances, the Tribunal confirms the conclusion, which it reached in Judgment 5021, that this situation does not constitute a wrongful failure to act on the part of Interpol.

10. The complainant's contention that the Organization failed in its duties of transparency and care, based on its alleged failure to communicate properly, is also irrelevant.

It is conceivable, as the Joint Appeals Committee observes in its opinion, that Interpol did not do enough to ensure, given the complexity and sensitivity of the subject, that staff members were kept informed of developments in the establishment of the permanent retirement scheme. Furthermore, the Secretary-General himself tacitly acknowledged this communication gap when he indicated, in the final paragraph of the

impugned decision, that he undertook to ensure that from then on, “officials would be regularly kept directly informed of these matters”*. However, even had the complainant been better informed in advance about the difficulties encountered by Interpol in establishing the permanent pension scheme, this would not have enabled him to obtain exemption from the irrevocable option he had selected to join the interim plan.

The Tribunal further notes, in the light of the evidence, that the complainant is justified in complaining that various emails that he had sent to the Administration in the context of the present case had improperly been left unanswered. However, regrettable though that circumstance may be, once again, it has no bearing on the lawfulness of the impugned decision.

11. Lastly, while the complainant maintains, in his further submissions, that the fact that he was eventually authorized, in 2024, to join the French retirement scheme demonstrates the unlawfulness of the decision whereby he was previously denied the opportunity to enjoy the benefits of membership of that scheme, this plea fails. Firm precedent has it that the lawfulness of a measure must be appraised as at the date of its adoption (see, for example, Judgments 4173, consideration 9, 4162, consideration 24, or 3037, consideration 11). Subsequent developments in the applicable legal framework, set out in consideration 2, above, allowing certain officials who had initially opted for the Interpol retirement scheme to be reinstated – albeit only with respect to the future – in the French scheme thus have no bearing on the lawfulness of the decision of 25 November 2022.

12. Since all of the pleas raised by the complainant to challenge the lawfulness of the impugned decision fail, the claims for the decision to be set aside – insofar as they show a cause of action – must be dismissed.

* Registry’s translation.

The same applies, consequently and in any event, to the complainant's requests to the Tribunal to order Interpol to authorize his retroactive reinstatement in the French retirement scheme and to bear the costs of restoring his pension entitlements under that scheme or to grant him a pension equivalent to that which he would have received had he contributed to it.

The complainant's claims for moral damages, insofar as they are based on the alleged illegality of the impugned decision, must also be dismissed.

The rejection on the merits of all claims concerned makes it unnecessary for the Tribunal to rule on the objections to receivability raised by the Organization against some of them.

13. The complainant further seeks an award of moral damages for the length, which he submits was excessive, of the internal appeal procedure.

According to the Tribunal's settled case law, officials are entitled to have their appeals examined with the necessary speed, in particular in view of the nature of the decision which they wish to contest (see, for example, Judgments 4922, consideration 22, 4660, consideration 24, 4457, consideration 29, or 4063, consideration 14). According to the same case law, the unreasonableness of a delay in examining an internal appeal must be assessed in the light of the circumstances of each case, and the amount of compensation liable to be awarded under this head depends on two essential considerations, namely the length of the delay and the effect of the delay on the official concerned (see, for example, Judgments 4844, consideration 11, 4727, consideration 14, 4684, consideration 12, or 4635, consideration 8).

In this case, between the filing of the complainant's internal appeal on 5 January 2021 and the decision taken by the Secretary-General ruling on the appeal on 25 November 2022, a period of approximately 23 months elapsed. Such a delay is excessive, bearing in mind that the challenged decision, which concerned the determination of the pension benefits that the complainant would receive upon his retirement, was, by its nature, of vital importance to him.

Interpol, in its written submissions, provides no justification for the length of the delay affecting the internal appeal procedure. Although Interpol argues, in this regard, that the development of its staff pension scheme was a complex and evolving matter, the Tribunal considers that this argument, although accurate in itself, cannot properly justify the slow pace of its examination of the appeal in question, which did not have to wait until the matter was resolved.

The Tribunal notes that, since the option selected by the complainant in favour of the interim retirement plan was in any case irrevocable until the entry into force, on 1 January 2024, of the new provisions referred to above which partially reversed this irrevocability when the enhanced retirement plan was introduced, the delay in the internal appeal procedure did not, from this point of view, have any specific adverse consequences for the complainant. However, the fact remains that the unduly prolonged uncertainty to which he was subjected concerning the outcome of his appeal itself caused the complainant moral injury which, in the circumstances, the Tribunal considers will be fairly compensated by an award of 1,500 euros in damages.

14. Having succeeded to this last extent, the complainant is also entitled to costs, set – in view of the fact that he was not represented by counsel before the Tribunal – at 1,000 euros.

DECISION

For the above reasons,

1. Interpol shall pay the complainant moral damages in the amount of 1,500 euros.
2. The Organization shall pay the complainant 1,000 euros in costs.
3. All other claims, insofar as they show a cause of action, are dismissed.

In witness of this judgment, adopted on 4 November 2025, Mr Patrick Frydman, Vice-President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, René M. Vargas M., Registrar.

Delivered on 10 February 2026 by video recording posted on the Tribunal's Internet page.

(Signed)

PATRICK FRYDMAN JACQUES JAUMOTTE CLEMENT GASCON

RENÉ M. VARGAS M.