

The Administrative Tribunal,

Considering the complaints filed by Mr H. M. B., Mrs E. J. N.-P., and Ms K. S. against the International Service for National Agricultural Research (ISNAR) on 5 February 2001 and corrected on 18 April, ISNAR's replies of 15 June, the complainants' rejoinders of 19 September, and ISNAR's surrejoinders of 15 November 2001;

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

Having examined the written submissions and decided not to order hearings, for which none of the parties has applied;

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

A. The complainants are all former staff members of ISNAR. On 29 January 2000 the Director General sent each complainant a letter informing each that his or her contract of employment would terminate on 31 July 2000, upon its expiry. The Director General also met personally with each complainant on 31 January, handing each a copy of the letter of 29 January and explaining that the financial difficulties facing ISNAR meant that he would be unable to offer a contract renewal.

By letters of 6 April 2000 the complainants contested against the contract terminations and claimed remuneration for improper notice of termination; the Director General was asked to take a decision on their claims by 20 April or they would consider appealing to the Subdistrict Court in The Hague. The Director General replied on 17 April that under the terms of the Headquarters Agreement between ISNAR and the Kingdom of the Netherlands, ISNAR enjoys immunity from jurisdiction and execution "within the limits of its official activities". Since the decisions not to renew each complainant's fixed-term contract were taken within the limits of such activities, he saw no justification for further action. In a judgment delivered on 8 August 2000, the Subdistrict Court found that it lacked jurisdiction to hear the complainants' case.

On 15 September 2000 the complainants sent letters to the Director General and to the Chairman of the Board of Trustees, introducing an appeal, under Article 16.2 of the Staff Regulations, against the Director General's decisions of 17 April; in both letters they requested that the appeal be forwarded to the Chairman of the Appeals Committee. ISNAR's lawyer informed the complainants on 3 October 2000 that ISNAR had refused to forward the appeal to the Appeals Committee because an appeal was no longer possible. Although the complainants pressed their appeal, it was denied once again on 11 October 2000.

B. The complainants contend that Section 16 of the Staff Regulations "does not offer any judicial procedure that can be taken seriously" so they have come before the Tribunal in search of legal protection. They argue that the refusal of reviewing their appeal is "fictitious" and that ISNAR has contravened its obligations under the International Labour Organization (ILO) Termination of Employment Convention, 1982 No. 158. In addition, it has breached Article 15 of the Headquarters Agreement which exempts ISNAR from deducting contributions for the Netherlands social security schemes subject to the proviso that "ISNAR establishes its own social security scheme or adheres to a social security scheme"; it has not done so as it offers no insurance for involuntary unemployment. Even the Administration was unaware that such coverage was lacking until it tried to facilitate the complainants' application for unemployment benefits from the appropriate national agency.

They state that ISNAR has failed in its duty of care and has not given them a reason why their contracts were not renewed. Consequently, they should be awarded financial compensation based on Dutch law.

The complainants claim the quashing of the Director General's decisions of 17 April, continuation of salary from

1 August 2000 until their employment contracts have been validly terminated, compensation for the consequences of involuntary unemployment, and interest from 18 September 2000 until payment has been made in full.

C. In its replies ISNAR notes that the complainants do not contest the reason for the non-renewal of their contracts and that they base their complaints on Dutch law. Furthermore, it submits that all contracts of employment are governed by the ISNAR Staff Regulations and not by national law. Also, the ILO Convention invoked by the complainants is not applicable to ISNAR.

In any event, it considers the complaints to be time-barred. The complainants should have lodged an appeal with the Director General by 31 March, but they did not do so until 15 September. ISNAR contends that in this instance the Director General's decision not to convene an Appeals Committee was taken in good faith: the appeal was filed more than 165 days late and was clearly irreceivable. There is no obligation under the Staff Regulations that the Administration must inform individuals of their right to appeal, nor does the Tribunal's case law impose such a requirement.

ISNAR also considers the complaints to be devoid of merit. The financial difficulties it faced left it with no choice than to reduce its activities and let a number of staff contracts run out. It points out that Article 4.1 of the Staff Regulations states that all appointments are "contingent upon the availability of funds". Unlike many international organisations, ISNAR has no regular programme financed by mandatory assessed contributions. Therefore, when it learned in December 1999 that one of its major donors would not be able to fulfil its financial obligations, ISNAR decided to allow contracts to run out and reorganise functions and responsibilities rather than prematurely terminating contracts. It submits that such a policy is supported by the Tribunal's case law. Furthermore, staff were informed of the financial difficulties and possible staff consequences in mid-December 1999; not only were there several general staff meetings held on the subject, but minutes from the meetings were sent electronically to all staff and also made available on the ISNAR intranet.

The defendant adds that it carefully followed the provisions of the Staff Regulations to ensure that the complainants were duly and correctly informed of the decision not to renew their contract. It submits that such decisions are open only to limited review by the Tribunal, and it believes that it cannot be reproached for the manner in which the decisions were taken.

Regarding the complainants' allegations that it breached its Headquarters Agreement by failing to insure the complainants for the Dutch social security package, ISNAR replies that the insurance package provided to the complainants was clearly described in their contracts of employment and the Staff Regulations. They have not based their argument on anything other than an assumption that such an obligation exists.

D. In their rejoinders the complainants dispute the fact that ISNAR's financial difficulties left it with no choice but not to renew their contracts. The alleged breach of financial obligations by a donor was used "purely as an excuse". In their opinion the decisions were "totally arbitrary" and violated the principle of "first in, last out". In any event, there was never any actual financial difficulty as another donor came to ISNAR's aid in time; therefore, it should have withdrawn its decisions.

They do not deny that their employment relationship is governed by ISNAR's Staff Regulations, but they assert that it is also governed by Dutch law.

When the Director General responded, on 17 April 2000, to their requests for review addressed to him on 6 April, he did not raise the issue of the request being time-barred. He cannot, therefore, do so now.

E. In its surrejoinders ISNAR maintains that the complaints are not receivable. The complainants' letters of 6 April did not satisfy the formal requirements of an internal appeal under the Staff Regulations. They challenged ISNAR's right to make decisions about employment contracts in reference to Dutch law and Dutch court proceedings and when the Director General replied on 17 April that ISNAR was immune from jurisdiction in the national courts, the complainants responded with a subpoena for it to appear before the national court. Furthermore, the letters were signed by their legal counsel; the Staff Regulations do not provide for the possibility of outside assistance during the internal appeal procedure. Assistance at that stage can only be provided by another staff member. It committed no error by not convening an Appeals Committee and it was not trying to deny the complainants due process.

ISNAR submits that it has already described in detail its financial difficulties. It explains that the financial

assistance it received was intended to restore ISNAR's financial reserves and was not to be used to subsidise a budget shortfall. It presses its other pleas and submits that the principle of "first in, last out" is not part of ISNAR's Staff Regulations.

CONSIDERATIONS

1. The three complaints before the Tribunal allege facts that differ only in immaterial detail. They raise the same issues of law and seek the same redress. The Tribunal orders that they be joined and be disposed of by a single judgment.
2. Each of the complainants was a staff member of ISNAR. Each had held a number of contracts with varying durations. Their last contracts were for two years and ended on 31 July 2000. Each complainant was sent a letter from the Director General dated 29 January 2000 informing them that their contracts would not be renewed upon expiry. An additional copy of this letter was also handed to each complainant during a personal meeting with the Director General on 31 January, when it was explained that this measure was necessary because of a drastic reduction in the funding received by ISNAR from the European Commission.
3. The complainants consulted a lawyer who, on 6 April 2000, wrote to ISNAR asserting a claim on behalf of each of his clients. The relevant part of each letter, after making a reference to the Director General's letter of 29 January, reads:

"The International Service for National Agricultural Research (ISNAR), established on 31 October 1979 in Washington, has its seat in The Hague by virtue of the Convention of 2 June 1980. According to established case law, my client's position under labour law is governed not only by the Staff Regulations ... but also by the provisions of the Netherlands Civil Code.

As my client has been employed by ISNAR on the basis of repeatedly extended fixed-term contracts of employment, [my client's] contract does not automatically terminate on 31 July 2000. The contract must be terminated in a legally valid manner in order to have effect. The statutory period of notice must be observed, or the contract must be dissolved by the Subdistrict Court. Your notice dated 29 January 2000 does not constitute legally correct notice of termination.

... ISNAR can be ordered to continue paying my client's salary until [the] employment has been validly terminated."

4. The Director General replied on 17 April 2000 that ISNAR enjoys immunity from jurisdiction and asserts that it is not subject to national law.
5. The complainants then initiated proceedings in the Court in The Hague which, however, declined jurisdiction, on 8 August 2000. Thereafter, on 15 September 2000, the complainants purported to lodge internal appeals pursuant to Section 16 of the Staff Regulations, the relevant provisions of which read:

"Article 16.1 Review of administrative decisions/actions

1. Staff members may request the Director General to review any decision arising out of an administrative action or decision that the staff member alleges to be in conflict, either in substance or form, with his/her contract of employment or with the staff regulations or the Administrative Policies and Procedures.
2. The staff member shall state his/her case in a letter to the Director General within 60 days from the date of the staff member's learning of the decision/action in question.
3. If, at the end of 60 days, a reply has not been received from the Director General, the staff member may lodge a formal letter of appeal to the Chairperson, ISNAR Appeals Committee.

Article 16.2 Appeal

1. Staff members may lodge an appeal directly with the Chairperson, ISNAR Appeals Committee, if

- (a) a review by the Director General under Article 16.1.1 requested in accordance with Article 16.1.2 has not resulted in an acceptable decision,
 - (b) a decision is not received from the Director General within the 60-day time limit specified under Article 16.1.3,
 - (c) termination action is initiated by the Director General under Article 14.1.3, except for Article 14.1.3c.
- ... "

6. Both the internal appeals and the complaints to the Tribunal are manifestly irreceivable. The obligatory first step in the internal appeal process is a letter from the aggrieved employee to the Director General sent within sixty days of the offending administrative decision. No later than 31 January 2000 each complainant received a letter saying that the contract would not be renewed upon expiry. The time for lodging an internal appeal therefore ran out on 31 March 2000. Even if the letters from the complainants' lawyer dated 6 April 2000 could be viewed as requests for review, rather than a threat to launch a civil suit in the Dutch courts (it clearly was the latter), the move was out of time. The Director General's replies of 17 April 2000 cannot be read, as the complainants attempt to argue, as a waiver or renunciation of the time limits specified in the Staff Regulations; they are nothing more than a well-founded claim to immunity from civil suit. Nor was ISNAR obliged to give any effect to the complainants' attempt to lodge a further appeal in September; the Appeals Committee could not, without error, have made any recommendation to the Director General other than to dismiss the appeal as irreceivable and the complainants have suffered no injury from the refusal of ISNAR to convene a meeting of the Appeals Committee.

7. No timely appeal having been brought pursuant to the Staff Regulations, the present complaints to the Tribunal are also irreceivable since the complainants have failed to exhaust their internal means of redress.

8. It must be said, however, that even if the complaints had been receivable, they would, in any event, have been doomed to failure. The complainants were on fixed-term contracts and the notices of non-renewal that they received were in strict accordance with the requirements of the Staff Regulations. Moreover, the complainants were fully informed, in a timely manner, of the reasons underlying ISNAR's decision; beyond simple denial, they have not shown that such reasons were not genuine and they were in fact matters entirely beyond ISNAR's control. Most of the arguments advanced by the complainants are based on provisions of Dutch national law, which is not applicable. They have shown no breach by ISNAR of any of the Staff Regulations nor of any principle of international civil service law. Their attempt to invoke the ILO's Termination of Employment Convention, 1982, (No. 158) can be of no help to them. That Convention, quite apart from not being applicable to ISNAR which, not being a State, has not and could not have adhered to it, makes specific provision for member States to legislate so as to exclude fixed-term contracts from the application of the Convention. Sections 4 and 14 of ISNAR's Staff Regulations effectively constitute such legislation and there is nothing abusive about such provisions. Lastly, their invocation of the so-called "first in, last out" principle, in effect a sort of non-contractual seniority clause, is unsupported by any authority and is inimical to the merit principle which underlies the law of the international civil service.

DECISION

For the above reasons,

The complaints are dismissed.

In witness of this judgment, adopted on 3 May 2002, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Judge, and Mrs Florida Ruth P. Romero, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 15 July 2002.

Michel Gentot

James K. Hugessen

Flerida Ruth P. Romero

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 22 July 2002.