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

EIGHTY-SIXTH SESSION

In re Najjar and Voetsch

(Application for execution)

Judgment 1792

The Administrative Tribunal,

Considering the applications filed by Mr. Ziad Hussni Mussa Najjar and by Mr. Robert James Voetsch on 6 February 1998 for the execution of Judgments 1625 (*in re* Gray) and 1629 (*in re* Schopper), the replies from the World Health Organization (WHO) of 8 April to Mr. Voetsch's application and of 20 April to Mr. Najjar's, the complainants' rejoinders of 9 July and the WHO's surrejoinders of 12 October 1998;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Considering that the applications raise the same issues and should therefore be joined to form the subject of a single ruling;

Having examined the written submissions;

CONSIDERATIONS

1. By Judgments 1625 (*in re* Gray) and 1629 (*in re* Schopper) of 10 July 1997 the Tribunal allowed complaints by two staff members whom the WHO had employed on its Global Programme on AIDS (GPA) and whose appointments it had ended on 31 December 1995. The Tribunal held that their posts had been of unlimited duration and that the Organization had been wrong to abolish them without following the reduction-in-force procedure provided for in Staff Rule 1050.2. Fifteen other staff members had applied to intervene in the two complaints on the grounds that they were in like case. The Tribunal allowed their applications on the grounds that they had "the same rights as the [complainants], save as to costs, insofar as they are in the same position in law and in fact". The Organization thereupon reconsidered the cases of the interveners. It granted redress to eleven of them but came to the view that the other four were not in like case in law and in fact. Two of those four, who had held posts in the Sudan, are now challenging letters of 11 November 1997 rejecting their claims and are asking the Tribunal to order the WHO to grant them the same redress as Judgments 1625 and 1629 awarded.

2. Someone who intervenes in a complaint, and who thereby claims the benefit of the judgment without ordinarily bothering to exhaust the internal remedies and appeal to the Tribunal within the set time limits, may not put forward any pleas but the complainant's. The intervener must have the same claims as the complainant and seek the same redress on the strength of the same pleas. As was said in Judgments 365 (*in re* Lamadie No. 2 and Kraanen) and 366 (*in re* Biggio No. 3 and others), interveners -

"are entitled to join [proceedings] in so far as their factual and legal position is identical or at least similar to that of the complainants. Since they themselves failed to file a complaint in time, however, they may neither put forward pleas nor lodge claims which differ from those of the complainants."

The defendant is citing such precedent in support of its contention that the complainants, who intervened in the earlier cases, may not now put forward claims and arguments other than those of the complainants whose cases the Tribunal allowed in Judgments 1625 and 1629.

3. In fact the interveners in those cases did put forward the same claims as the complainants. Complainants and interveners alike were arguing that the WHO had wrongfully abolished their posts and that they were entitled to reinstatement, to the reduction-in-force procedure and to awards of damages. The pleas which those complainants put forward, and which the Tribunal allowed, were that, contrary to what the WHO was maintaining, their posts had been of unlimited duration and Staff Rule 1050.2 had therefore required the Organization to follow the

reduction-in-force procedure before ending their appointments. As the Tribunal reads the present pleadings, the complainants, who were then interveners, are not offering radically different arguments since they too are contending that their posts were of unlimited duration and the Organization should have treated them accordingly. But the defendant is right in answering that they are not in quite the same position as the complainants who got redress; so the reasoning of Judgments 1625 and 1629 may not apply to them without qualification.

4. The material issue, then, is whether the differences preclude allowing the present complainants the same relief.

5. Those who won their case had held posts which the WHO created and abolished in keeping with Manual Section III.3. In compliance with the material rules the Organization had filled up form 172, which described the posts either as "indefinite, subject to continued need and availability of funds" or as "time-limited ... for a period of two years from the date of recruitment, extension of post subject to continued need and availability of funds". Judgment 1629 held in 14 and 16 that when the form called the post one of indefinite duration Staff Rule 1050.2, which prescribed the reduction-in-force procedure in the event of abolition, ought to apply. Judgment 1625 said in 15 that that was so even when at the outset form 172 said that the post was created for two years but on the expiry of that period it was extended without any limit of duration. That was the consequence of Rule 1050.6:

"Posts of indefinite duration comprise those that continue in existence unless and until an express decision is taken to abolish them. Posts of limited duration automatically lapse at the end of the period for which they were established unless an express decision is taken to continue them. The Director-General shall determine the categories of posts falling within each of the above two definitions."

6. But the present two complainants are in not at all the same position as were the staff members whose complaints Judgments 1625 and 1629 allowed. For one thing, they were recruited on posts created by the Regional Office for the Eastern Mediterrean (EMRO) under procedures different from those that governed posts at headquarters. They were posts under country projects, which, unlike the posts of the successful complainants, were not governed by Manual Section III.3 and for which the Organization did not fill up form 172. But even more telling is the fact that the posts of the present complainants were linked to country projects in the Sudan under programmes that the Organization renewed each year for a limited period, the final date of expiry being 31 December 1995. As was said in Judgment 515 (*in re* Vargas) -

"Where a post is attached to a project and the length is not specifically prescribed, its length will be the length of the project; if the project is of limited duration, the post likewise will be of limited duration."

WHO Manual paragraph II.9.260 treats posts under country projects as of limited duration, and that is why the Tribunal will not apply the reduction-in-force procedure to staff on such posts: see Judgments 1727 (*in re* Curina) and 1775 (*in re* Rwegellera No. 2). It is clear on the evidence that the complainants' posts - 7.3450 and 7.3451 - came under a country project (Sudan GPA 200) and that the last extension of that project ran to 31 December 1995. It may be a pity that the WHO did not tell the complainants in plainer terms that their posts were of limited duration, but many administrative documents do explicitly refer to the project in the Sudan. At all events the complainants were not in the same position in fact and in law as those whose complaints they intervened in, and the WHO was therefore right to refuse them the redress granted to holders of posts of indefinite duration.

7. There being no need to allow the complainants' application for leave to enter further submissions, the Tribunal dismisses their claims in their entirety.

DECISION

For the above reasons,

The applications are dismissed.

In witness of this judgment, adopted on 18 November 1998, Mr. Michel Gentot, President of the Tribunal, Mr. Julio Barberis, Judge, and Mr. Seydou Ba, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 28 January 1999.

(Signed)

Michel Gentot

Julio Barberis

Seydou Ba

A.B. Gardner

Updated by PFR. Approved by CC. Last update: 7 July 2000.