

EIGHTY-SEVENTH SESSION

In re Roudakov

(Interlocutory order)

Judgment 1883

The Administrative Tribunal,

Considering the motion for an interlocutory order granting interim relief filed on 12 November 1998 by Mr Vladimir Ivanovitch Roudakov together with a complaint brought the same day against the World Health Organization (WHO), and the WHO's comments on the motion of 17 December 1998;

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

Having examined the written submissions and disallowed the complainant's application for oral proceedings;

Considering that the facts of the case and the arguments on the motion may be summed up as follows:

A. The complainant, a Russian born in 1954, was appointed to WHO as head of the Russian language translation subunit of the Office of Language Services on 1 July 1989 at grade P.5. Immediately before this appointment, he had worked at the Ministry of Health of the former Union of Soviet Socialist Republics (USSR). In agreement with the Russian Federation, his initial two-year appointment was extended for another year, up to 30 June 1992, and then again until 30 June 1993.

On 20 April 1993, pursuant to Judgment 1249 (*in re Reznikov*), the Organization sent a memorandum to the complainant requesting him to indicate formally whether or not he wished to be considered as being on secondment to the WHO. On 17 June 1993, the complainant replied in the affirmative and requested clarification on the meaning of the new secondment rules which would, according to the memorandum, become applicable to him.

On 29 July 1993, the Organization sought the agreement of the Ministry of Health of the Russian Federation for another two-year extension of the complainant's secondment to 30 June 1995. In a telex of 2 August 1993, the Russian Ministry of Health agreed to and confirmed the secondment and said that the complainant had "the right to revert to his previous employment in the Russian Federation and retain[ed] all his rights and entitlements". On 20 December 1995, the complainant's contract was again extended for a further two years until 31 December 1997.

On 7 July 1997, the Organization advised the complainant that the Ministry of Health of the Russian Federation did not wish his secondment to continue after the expiry date of 31 December 1997. The complainant wrote to the Director-General on 22 July 1997 asking him to "cancel" the decision not to extend his contract.

By a letter of 19 September 1997 to the complainant the chief of Contract Administration and Information confirmed on behalf of the Director-General that his secondment to the WHO would end on 31 December 1997. On 18 November 1997 the complainant submitted his notice of intention to appeal against this decision to the headquarters Board of Appeal.

In its report of 27 April 1998 the Board recommended *inter alia* that the decision not to extend the complainant's contract beyond 31 December 1997 be quashed, and that he be reinstated with retroactive effect as from 1 January 1998 on a two-year fixed-term contract on a post of indefinite duration. On reinstatement the complainant was to be given the choice of remaining on secondment under a new formal tripartite agreement, or to sever all ties with his previous employer, the Russian Federation. By a letter of 26 June 1998 the Director-General informed the complainant that he did not accept these recommendations. This is the impugned decision.

B. In his motion for an interlocutory order, the complainant states that he "was wrongfully denied a renewal of his fixed-term contract based on the WHO's false and erroneous belief that he was seconded from the Russian Federation's Ministry of Health to the WHO". He is appealing against the decision not to renew his contract because he was not on a true secondment but was a regular staff member entitled to all the procedural guarantees

and rights of any other WHO staff member. In the interim, he seeks an order for injunctive relief pending final resolution of his complaint against the Director-General's decision.

He pleads that his motion is receivable. He argues that although there is no specific article in the Statute and Rules of the Tribunal governing requests for preliminary injunctions and no specific provisions directly prohibiting injunctive relief, general legal principles should be used as guidelines. He submits that under "common law and international law" there are some remedies allowing preliminary injunctions for the purpose of restraining defending parties from committing further acts of infringement and to preserve the status quo. Such injunctions are discretionary and can be granted only where the complainant stands to suffer irreparable harm.

In his view the general three-part test is that: (i) there would be irreparable harm if no provisional relief was granted; (ii) there must be a reasonable likelihood of success on the merits of the case; and (iii) the "balance of hardships" must tip in favour of the complainant.

The complainant states that he fulfills all the requirements of the three-part test. A forced return to the Russian Federation would result in irreparable social and cultural harm to himself and his family; "real dangers" exist there, given the current social and economic upheaval, and accepting a lower post in the Russian Federation would cause him "psychological insult and embarrassment" and would be detrimental to his career as an international civil servant. Such a return would be "full of anguish and uncertainty".

The complainant expects to succeed on the merits in the complaint currently before the Tribunal because he was successful in his appeal to the Board of Appeal, and his case is factually very similar to that of Judgment 1249.

He stresses the "devastating" consequences of a forced move to the Russian Federation. In comparison, the costs to the WHO of avoiding such irreparable harm are "relatively non-existent".

As injunctive interim relief, he seeks: (i) an order requiring the WHO to place him on special leave without pay as provided under WHO Staff Rules 650 and 655.1 to 655.2.4, pending the Tribunal's final judgment, to allow him and his family to remain lawfully in Switzerland; (ii) an order that the Organization offer him on a priority basis and for the duration of the procedure any Russian language translation work which the WHO might grant to external translators; and (iii) "such other injunctive or interlocutory relief as the Tribunal deems proper, just, and necessary".

C. In its comments the Organization requests the Tribunal to dismiss the motion.

First, the Organization pleads that the motion is irreceivable. No provision of the Statute or Rules attributes competence to the Tribunal to grant the provisional "enforcement" relief sought by the complainant, and the relief he seeks exceeds the remedies that the Tribunal may grant under its Statute.

Any interim decision to reinstate the complainant as a staff member would prejudice the critical issue of whether he was a staff member "on secondment" when his appointment came to an end. If the Tribunal was to order that the complainant become a staff member, as he requests, without the agreement of the Russian Federation, he would in effect be a "staff member not on secondment", thereby prejudging the case.

Second, on the merits, none of the reasons put forward by the complainant justifies the interim relief that he is seeking. In particular, the complainant's argument that a forced return to the Russian Federation would cause irreparable harm to himself and his family does not justify the measure of relief sought by him. No Professional category staff member is assured of "a life-long assignment in Geneva".

With respect to the complainant's arguments that he would suffer irreparable harm and that the "balance of hardships" is in his favour, any interim relief would become without cause if the Tribunal eventually dismissed the complaint. If, on the contrary, the Tribunal determined that the decision not to renew his contract was invalid and awards the appropriate remedy, he would suffer no harm.

The complainant argues that due to the headquarters Board of Appeal's recommendations and the similarities between his case and that of Judgment 1249 there is every likelihood that his claims will succeed on the merits. His argument supports the Organization's view that to grant relief would prejudice the issue before the Tribunal which would fall outside the Tribunal's competence.

CONSIDERATIONS

1. The complainant contests his separation from his employment with the WHO upon the expiry of his contract on 31 December 1997. The principal dispute between the parties is as to whether or not the complainant was on secondment from his government. The headquarters Board of Appeal found in the complainant's favour but the Director-General did not follow its recommendations. The complainant, by a motion for an interlocutory order, seeks preliminary injunctive relief to force the Organization to place him on unpaid leave of absence and to offer him contract work as available. He pleads that otherwise he will suffer irreparable harm.
2. The Organization pleads that the motion is irreceivable and also contests it on the merits.
3. The motion not being granted on the merits there is no need to examine the issue of receivability.
4. First, to allow the motion would of necessity decide the principal issue in the complaint which is before the Tribunal on the merits. The requested injunction would have the effect of altering the *status quo*. The reply raises serious issues which should only be determined on the merits.
5. Second, the allegation of irreparable harm is unconvincing. Such harm, by definition, may not be compensated by financial damages. The Tribunal can and does grant such damages in appropriate cases of wrongful separation and these may include compensation for the mental anxiety that a complainant says he has suffered. However, the fact that the complainant in this case may not be able to continue to live in Switzerland is irrelevant; he is not and does not claim to be a refugee from his country of origin.
6. Finally, the balance of hardships favours the Organization. If the complaint is allowed, the complainant will recover his due; if it is not and he obtained the injunction that he is requesting, there would be no practical way in which the Organization could be made whole.

DECISION

For the above reasons,

The motion is dismissed.

In witness of this judgment, adopted on 14 May 1999, Mr Michel Gentot, President of the Tribunal, Miss Mella Carroll, Vice-President, and Mr James K. Hugessen, Judge, sign below, as do I, Mrs Catherine Comtet, Registrar.

Delivered in public in Geneva on 8 July 1999.

Michel Gentot
Mella Carroll
James K. Hugessen

Catherine Comtet