

The Administrative Tribunal,

Considering the complaint filed by Mr D. B. against the International Service for National Agricultural Research (ISNAR) on 10 January 2003, ISNAR's reply of 21 March, the complainant's rejoinder of 28 April, and ISNAR's surrejoinder of 2 June 2003;

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

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

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

A. The complainant, an Israeli national born in 1943, is a former official of ISNAR. He joined ISNAR as a Senior Research Officer under a two-year fixed-term contract on 11 January 1999. A subsequent contract extension brought his service through 31 January 2002. He worked mainly in the area of globalisation.

In April 2001 the complainant was offered a five-year appointment as Honorary Chair in the Department of Social Sciences at Wageningen University in the Netherlands. He was to serve as a Professor of Global Food Security and International Trade. This appointment was to be concurrent with his employment at ISNAR and required the approval of ISNAR's Director General. The latter's formal approval, granted on 11 May 2001, was for the duration of the complainant's period of appointment and was renewable subject to the renewal of his contract with ISNAR. On 24 July 2001 the Director General informed the complainant that his contract would not be renewed beyond its expiration on 31 January 2002. The reason was lack of financial resources requiring ISNAR to reduce its work plan. More specifically the Director General pointed out that despite efforts, ISNAR had not received any additional funding for globalisation projects and that these would be discontinued after the complainant's departure.

The complainant requested review of this decision on 13 September 2001, but by a letter of 19 October the Director General confirmed his decision. The complainant lodged an appeal against it on 15 November 2001. There being no standing Appeals Committee nor any Rules of Procedure at that time, the appeals process did not get under way until March 2002. In its opinion dated 18 October 2002 the Committee found that ISNAR had failed to exercise due care in the non-renewal of the complainant's contract and that a delay was caused by not having a functioning Appeals Committee in place at the time the appeal was filed. Consequently, a majority of the Committee recommended that the complainant receive compensation equal to six months' salary with full benefits, plus the fullest possible extent of repatriation benefits. In a letter of 8 November 2002 to the complainant, the Director General rejected these recommendations and upheld his decision not to renew the complainant's contract. That is the impugned decision.

B. The complainant argues that the reasons given to him by the Director General were not genuine and were not based on a "correct or truthful" representation of the facts, nor was the decision based on objective considerations. He says that nothing in his contract made its renewal contingent upon the continuation of the globalisation project. He notes that ISNAR recruited new staff members after his own contract was not renewed. He gives several examples of why he believes it was not in ISNAR's interest not to renew his contract.

The complainant alleges that the Director General has failed to act in good faith and that by not honouring his commitments he harmed the complainant's professional reputation. When endorsing the complainant's appointment to Wageningen University during his service with ISNAR, the Director General assumed a moral responsibility and made the complainant believe that his contract would be renewed for the duration of his university tenure. The Director General should have warned the complainant explicitly of his impending non-renewal of contract at that time and the former's failure to do so constitutes a breach of the duty of care owed to the complainant.

The complainant believes that the decision not to renew his contract was based on mistakes of fact and involved abuse of authority. He notes that funding for his projects had been approved in February 2002 based on proposals he had submitted on ISNAR's behalf. Consequently, the Director General acted arbitrarily in eliminating his projects.

In addition, there was a delay in hearing his appeal which caused him injury warranting compensation.

He claims the quashing of the decision not to renew his contract and reinstatement under a fixed-term contract of three years' duration, or, in the alternative, compensation equal to three years' salary with full benefits. He also claims one year's salary in moral damages, plus costs.

C. In its reply ISNAR says that the Appeals Committee confirmed that the decision not to renew the complainant's contract complied with the applicable statutory provisions and that there was no mistake of fact or of law. The decision was based on an objective fact, i.e. lack of funding for globalisation projects on which he had been specifically hired to work. Not only did the Director General give him more than sufficient notice, but the reasons for the non-renewal were also given and substantiated. The funding for the complainant's post was special project funding and not core funding. ISNAR faced a severe funding uncertainty for 2002, which caused the elimination of certain topics from its work plan. It wishes to add that the non-renewal of contract was in no way based on either his performance or behaviour.

It asserts that the complainant has failed to prove that either ISNAR or its Director General acted purposefully to his detriment. It denies that the Director General failed in his duty of care towards the complainant, nor did he abuse his authority. It submits that the Director General had tried to find an alternative post for the complainant but was unable to do so within its available financial resources. Answering his allegations that staff were appointed after he was told that his contract could not be renewed because of lack of funds, ISNAR points out that these appointments were made to individuals coming to ISNAR with their own sources of funding.

ISNAR states that many of the complainant's allegations of bad faith are based on events occurring after he no longer worked at ISNAR. He has suggested that the Director General acted in bad faith by failing to secure funding for the complainant's project; however, ISNAR says this is simply the complainant refusing to take responsibility for the fact that he himself failed to secure funding as required under his terms of reference.

ISNAR denies that the complainant suffered moral or professional damages. Regarding his assertions that the appeals procedure was delayed, ISNAR admits that it took some time for the procedure to be completed, but the delay was not undue and it did not harm the complainant. ISNAR is a small organisation and it therefore makes more sense to set up an appeals committee on an *ad hoc* basis than to have one "permanently installed". It considers the duration of the process, less than one year, to be reasonable. There is no basis in the Staff Regulations or in the Tribunal's case law for granting a staff member compensation as suggested by the Appeals Committee in this case.

D. In his rejoinder the complainant maintains that his contract did not specify that renewal would be contingent upon the continuation of ISNAR's globalisation project. Any assertions to this extent are false and misleading. He had worked on a number of projects and subjects that were not related to globalisation and some of these have remained in ISNAR's work programme. Furthermore, there is no proof that the globalisation project has been truly eliminated. ISNAR cited severe funding uncertainty as a reason for not renewing his contract but he alleges that an improved financial environment was projected. He questions some of the comments ISNAR has made regarding his role in fundraising, saying that these comments are inconsistent and contradictory. He expands on his comments regarding his dissatisfaction with the internal appeals procedure.

E. In its surrejoinder ISNAR reiterates that the complainant has failed to prove that the decision not to renew his contract was in breach of either the Staff Regulations or any general principle of law. Concerning the appeals procedure, it says that before the complainant filed his complaint it was unaware that he was dissatisfied with any perceived delays. The decision not to renew his contract was taken based on the actual funding situation at that time; it would not have been appropriate to consider funding "possibilities" being pursued. It denies that it has made any contradictory statements regarding the complainant's role in fundraising.

## CONSIDERATIONS

1. The complainant began working for ISNAR on 11 January 1999 on a two-year fixed-term contract which was subsequently renewed for a little over one year, until 31 January 2002. He contests the decision not to renew it beyond that date.
2. The Terms of Reference, annexed to the complainant's contracts, stipulate that the complainant was to work primarily in the field of globalisation and conduct research on issues related to globalisation and on the effects of globalisation on agricultural technology markets and its implications for national agricultural research systems in developing countries. There would appear to be no doubt that he has acknowledged experience and expertise in this area.
3. On 7 May 2001 the complainant asked the Director General for permission to accept an invitation to serve as a professor at Wageningen University. The position involved a modest honorarium and was intended to supplement his full-time position with ISNAR. By a letter dated 11 May 2001 the Director General gave his approval and stipulated as follows:  
  
"My approval is for the current period of your ISNAR contract and, if a renewal is mutually agreed, for a further ISNAR contract period, but not beyond 30 April 2006."
4. On 24 July the Director General informed the complainant that his fixed-term contract would not be renewed primarily because of financial constraints, more particularly the lack of outside funding for projects in the complainant's field of expertise.
5. On 13 September the complainant requested the Director General to review that decision. On 19 October the Director General replied confirming his decision. On 15 November the complainant lodged an internal appeal pursuant to the Staff Regulations.
6. On 28 November ISNAR designated a Registrar to select an Appeals Committee. On 20 December 2001 the Registrar informed the parties of the composition of the Appeals Committee; however, due to internal delays, the appeal was not given to the Committee until 28 January 2002 and the Committee did not establish its internal Rules of Procedure until 18 March; it then gave the complainant the opportunity to amend his statement of appeal. On 22 April the complainant filed additional submissions. On 10 May the Director General submitted his reply. The Appeals Committee heard the matter on 4 July and reported on 18 October 2002.
7. The Appeals Committee found that there was no evidence that the contested decision violated the complainant's contract, nor did it violate the Staff Regulations and Administrative Policies and Procedures. However, a majority of the Committee found that the Director General had displayed a "certain degree of lack of due care" with regard to the complainant. It also held that a bulk of the delay in the appeal process was attributable to the organisation because it did not have its internal appellate mechanisms in place. It found that, had the proper mechanisms been in place, the matter could have been resolved before the end of the complainant's contract or shortly thereafter. The Committee therefore recommended that ISNAR pay the complainant compensation equal to six months' salary with full benefits.
8. By a letter dated 8 November 2002 the Director General informed the complainant that he was maintaining his earlier decision with regard to the non-renewal of his contract, and that he would not award any financial compensation in connection with said non-renewal. That is the impugned decision.
9. The complainant submits that the reasons the Director General gave for the non-renewal are not genuine or are not based on an accurate representation of the facts. The type of work undertaken by the organisation is squarely within the complainant's expertise. He points out that his work was the foundation of one of the organisation's current projects. With regard to the Director General's reliance on financial constraints, the complainant argues that ISNAR has publicly stated that it envisaged an improved financial environment for 2002-04.
10. The complainant alleges that the Director General failed to exercise the appropriate duty of care, that he abused his authority, made a mistake of fact and did not act in the interest of the organisation.
11. Specifically, he argues that the Director General put insufficient effort into raising funds for the complainant's project and failed to submit requested materials to the Asian Development Bank (ADB) after it had expressed interest in the complainant's project, which also demonstrates negligence and bad faith. The complainant also

argues that the Director General exacerbated the effects of the non-renewal and endangered his professional reputation by alleging that the complainant acted inappropriately during a meeting with ADB officials. Lastly, the complainant submits that the Director General should have explained that there was a distinct possibility that his contract might not be renewed before he accepted the position with Wageningen University, especially in the light of the fact that at the time the project restructuring was known to the Director General. He asserts that, because the Director General approved his academic appointment for the whole five-year period, he had an expectation of renewal of his contract.

12. Furthermore, since the decision not to renew his contract for funding reasons was made before the funding proposal deadline, the Director General prematurely eliminated the opportunity for the complainant's project to receive funding which, in the complainant's view, amounts to an abuse of power.

13. He asserts that the decision not to renew his contract was not in the interest of ISNAR. He points out that the non-renewal put him and Wageningen University in an awkward position, which reflected poorly on ISNAR, and severed the organisation's connection with the University. He adds that it was not in the interest of the organisation to eliminate the globalisation project at a time when donors were expressing interest in it. Lastly, the complainant argues that failing to renew the contract of such an esteemed and prolific staff member was detrimental to ISNAR.

14. As was found by the Appeals Committee, the Director General's decision not to renew the complainant's fixed-term contract did not violate any Staff Regulations or terms of employment. The complainant has not demonstrated any legal basis upon which the Director General's discretionary decision ought to be reviewed. He was given timely notice of the decision and was not owed more than that, pursuant to consistent Tribunal precedents. It is simply wrong for him to attempt to rely on developments subsequent to the initial administrative decision not to renew his contract in order to demonstrate that that decision was not made in good faith or with due care: ISNAR rightly points out that it is the situation at the time which had to be assessed in the light of what was then known.

15. It is the same with regard to the complainant's argument that the decision was not in the organisation's interest. That argument is based on a single phrase taken out of context from Judgment 1317 where, in the course of its consideration, the Tribunal said:

"24. Another point firmly rooted in precedent is that the Tribunal must in substance respect the exercise of discretion in any decision to terminate employment on expiry of the contract, but may review the lawfulness of any such decision and in doing so will, again by virtue of clear precedent, determine from the circumstances of each case:

- whether the rules on competence, form and procedure were observed;
- whether the official was given reasonable notice, even if the contract did not require it;
- whether the decision was duly substantiated and the reasons for it were conveyed to the official in such a way that he might properly defend his interests;
- whether some material fact was overlooked or there was some obvious mistake of fact or of law; and
- whether the decision was taken in the organisation's interests or shows some abuse of authority." (emphasis added)

16. The underlined words must not be read as creating a ground of review based solely on the fact that a subsequent examination reveals an impugned decision to have produced unanticipated results which were not to the organisation's advantage. Rather those words describe the nature of the discretion to be exercised or the value judgement to be made. Persons charged with the administration of international organisations are not held to a standard of perfection. Hindsight is always 20/20 and it is easy to say that a decision was mistaken after it has been made and all its consequences are known. Clearly, the cited passage is not an assertion by the Tribunal that it will set aside every decision which turns out not to have been as much to the organisation's advantage as it might have been. Of course, it is the case that where a decision is tainted by some flaw such as negligence, want of care or improper motive, it will be set aside for that reason whether or not its results may have proved to be in the organisation's interest. In fact, it would be rare indeed to find any case in which a decision will be set aside solely on the ground that it was not in the best interest of the organisation and was not also subject to review on some other ground. Certainly, Judgment 1317 was not such a case.

17. With regard to the complainant's assertion, and the Appeals Committee's conclusion, that ISNAR failed to fulfil its duty of care to the complainant, the file makes it clear that when the complainant was applying for the professorship position there was a distinct possibility his contract might not be renewed and the Director General's letter of approval specifically refers to the fact that the complainant's position was precarious and contingent upon a mutually agreed renewal. With regard to the funding issues, the evidence does not permit the conclusion that ISNAR's allegations of inappropriate behaviour during the ADB negotiations are unfounded. Similarly, the evidence does not demonstrate that the Director General failed in his fundraising efforts, despite the fact that ISNAR missed a deadline in providing a donor with further information. While the complainant alleges that there was significant interest in his project from funding sources, he does not provide persuasive evidence that this is the case.

18. The complainant alleges that the Director General's decision not to renew the complainant's contract before a funding deadline constitutes an abuse of authority. He is wrong. This is precisely the kind of judgement which the Director General's position requires him to make and on which the Tribunal will be extremely reluctant to second guess after the fact. The Director General was of the opinion, based on the facts then known to him, that insufficient funding in general was available in the complainant's research area and there is no persuasive evidence that this opinion was not honestly and reasonably held.

19. The complainant does not suggest that anyone at ISNAR deliberately led him to believe that his contract would be renewed. Similarly, while the complainant argues at length that the Director General's reason for refusing to renew his contract is disingenuous, he does not suggest any reason motivating the allegedly bad faith decision. The Tribunal is unable to conclude, based on the evidence, that the Director General failed in his duty of care, or that his decision constitutes an abuse of authority.

20. With regard to any issue surrounding the internal appeals process, the evidence shows that the process worked relatively effectively, that all procedural rights to present evidence and to be heard were observed, and that the delays were not significant enough to warrant review by the Tribunal.

21. The result is that the complainant has failed to establish any grounds for the Tribunal to interfere and the complaint must be dismissed.

## DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 7 November 2003, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Vice-President, and Ms Mary G. Gaudron, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 4 February 2004.

Michel Gentot

James K. Hugessen

Mary G. Gaudron

Catherine Comtet