

EIGHTY-NINTH SESSION

Judgment No. 1953

The Administrative Tribunal,

Considering the complaint filed by Mrs E. B. against the Food and Agriculture Organization of the United Nations (FAO) on 20 November 1998 and corrected on 1 March 1999, the FAO's reply of 13 May, the complainant's rejoinder of 23 September and the Organization's surrejoinder of 30 November 1999;

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

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

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

A. The complainant was born in 1951 in Italy of Italian parents. When she was one year old her family emigrated to Australia. In 1958 her father acquired Australian citizenship, which was thereby conferred on his dependent children under the age of majority. According to the complainant, she then lost her Italian citizenship, dual nationality not being allowed under Australian law. In 1967 she married an Italian thereby acquiring again Italian nationality. In February 1971 she applied for and obtained Australian nationality which she says she had lost when she married.

She joined the FAO in Rome on 8 June 1971 as a clerk at grade G.2 with local status and under a short-term appointment. The Organization submits that, at that time, she declared herself only as an Italian national, whereas the complainant asserts that she gave the FAO a copy of her Australian passport.

By Bulletin No. 71/15 of 19 March 1971, the Director-General had announced his decision to revoke, as of 1 April, a provision of the Staff Rules under which staff members lost their non-local status upon marrying an Italian. Accordingly, by an addendum to that Bulletin dated 10 September he revoked Staff Rule 302.40611(ii), under which a woman married to a national of the country of the duty station was automatically recruited as local staff. The addendum stated that staff members who, at the time of recruitment, had been given local status under the Rule in question would have their status converted to non-local as from 1 October 1971.

On 1 October 1972 the FAO gave the complainant a fixed-term appointment for two years and, on 1 August 1974, a permanent appointment and a promotion to grade G.3. By a memorandum dated 16 September 1974, the complainant applied for non-local status citing the addendum to Bulletin No. 71/15 and cases similar to her own, explaining that she had not done so before because she had only been on monthly contracts. On 21 January 1975, a personnel officer asked her to provide evidence that she had lost her Italian nationality upon acquiring Australian citizenship. According to the Organization this request went unanswered whereas the complainant alleges that she submitted a letter from the Australian Embassy certifying that she had Australian nationality.

She applied again in a memorandum of 3 October 1977, to which she attached a certificate of Australian citizenship, a photocopy of her passport dated 16 February 1971 and an attestation from the Australian Embassy in Rome certifying that "when a person acquires Australian citizenship he renounces any allegiance to former countries". By a memorandum of 24 October 1977 a personnel officer acknowledged receipt of the documents but said that she had still produced no evidence that she had lost her Italian nationality prior to the date of her marriage.

By a memorandum of 1 April 1996 the complainant again applied for non-local status. On 6 May a personnel officer referred to the memorandum of 24 October 1977 and again asked the complainant for evidence that she had lost her Italian nationality prior to her marriage. In a memorandum dated 24 September 1996, the complainant replied that even though she had twice acquired Australian citizenship - in 1958 and in February 1971 - the Italian

authorities had considered the renunciation of her Italian nationality to be of no legal value in Italy because a law of 1912 stipulated that a woman could not have a different nationality from that of her husband. On 3 October 1996 a personnel officer sent a confidential memorandum to the Director of the Personnel Division explaining the background of the complainant's case, noting that she had been given erroneous information in 1975 and 1977. She should have been asked to prove that she had acquired Italian nationality involuntarily rather than that she had lost it before her marriage. She had now produced the relevant evidence. However, in a memorandum dated 20 May 1997, the same personnel officer informed the complainant that her local status was confirmed since she had been recruited on the understanding that she was Italian - had she not been, the FAO would not have recruited her at all - and that under the Italian law she had remained an Italian.

On 12 August she filed an appeal with the Director-General against that decision. The Deputy Director-General rejected it on the latter's behalf in a letter of 22 September, on the grounds that it was irreceivable because she had failed to observe the prescribed time limits, having waited twenty years before re-applying. On 20 October 1997 the complainant appealed against that decision to the Appeals Committee. In its report of 30 June 1998 the Committee recommended rejecting the appeal as time-barred. The Director-General endorsed the recommendation in a letter of 24 August 1998. That is the impugned decision.

B. First, the complainant denies that her internal appeal was time-barred: neither in 1975 nor in 1977 had the FAO taken a decision, but had merely asked her to supply evidence. Furthermore, the FAO has never mentioned the possibility of a time-bar and, in any event, had taken the matter up again in 1996.

Secondly, the complainant alleges a mistake of law. She had fulfilled the requirements for obtaining non-local status since 1974: she had not acquired Italian nationality voluntarily and had never renounced her Australian nationality. She claims to have met the criteria established by the Tribunal for the grant of non-local status. She accuses the FAO of breach of good faith. The matter of the loss of her Italian nationality before her marriage was immaterial, and the Administration had concluded in an internal note of 14 October 1977 and in a confidential memorandum of 3 October 1996 that her application was well-founded, but had nonetheless rejected it. Furthermore, the FAO was in breach of equal treatment as other staff in a similar position had had their local status converted to non-local.

She asks the Tribunal to quash the impugned decision and order the Organization to grant her non-local status with retroactive effect as from 1 August 1974. She also claims costs.

C. In its reply the FAO objects to the receivability of the complaint on the grounds that someone who neglects to assert his rights or accepts a given situation over a long period is automatically deprived of the possibility of asserting them. The complainant failed to observe the time limit for internal appeals: not until September 1974 did she challenge the decision taken at the time of her recruitment on 8 June 1971. Moreover, the impugned decision merely confirms the decision taken in 1971 and so cannot set off a new time limit.

In subsidiary pleas, the FAO submits that the complaint is devoid of merit because the complainant clearly claimed Italian citizenship as her only nationality when she was recruited and for several years kept the Organization in ignorance of her other nationality. Neither the addendum to Bulletin No. 71/15 and Staff Rule 302.40611(ii) to which it refers, nor the judgments cited by the complainant are material since they concern non-Italian women staff members who married Italians. The complainant's local status was determined on the basis of Staff Rule 302.40611(i) because she was a national of the country of the duty station. The confidential memorandum, which was favourable to her, was written by the personnel officer for whom she worked directly, and did not reflect the Organization's position. Lastly, the FAO observes that, according to the Staff Rules, it is the Director of the Personnel Division who determines, for the purpose of the application of Staff Rules and Regulations the nationality of a staff member with more than one nationality.

D. The complainant rejoins that she did not neglect to assert her rights and never accepted the situation. On the contrary, as soon as she obtained a fixed-term appointment and hence benefited from the Staff Rules, she requested non-local status and thereafter reiterated her request. Furthermore, the internal note of 14 October 1977 which found her request to be warranted, constituted a "new fact" and the memorandum of 20 May 1997, which she says contained "new grounds", notified the result of a "new inquiry".

She submits that in 1971 the FAO's practice was to award local status systematically to staff members married to Italians and recruited on short-term appointments, regardless of their nationality. She cannot, as the FAO asserts,

have been granted local status on the basis of any provision of the Staff Rules, since they did not apply to staff on short-term appointments. She denies hiding the fact that she was Australian: she supplied a copy of her Australian passport at the time of her recruitment. Moreover, the FAO's arguments suggesting that the author of the confidential memorandum lacked objectivity are quite gratuitous. She presses her pleas concerning staff members whose position she considers to be similar to her own and who obtained non-local status.

E. In its surrejoinder the Organization repeats that the complainant was recruited as an Italian and considers that her case has "no *raison d'être* in terms of the law". To allow the complaint would be to undermine the stability that must exist in legal relations. Here, the references to the Organization's past practice are immaterial and in the only case similar to hers, the FAO had misapplied the Staff Rules.

CONSIDERATIONS

1. The complainant appeals a decision of her employer, the FAO, rendered on 24 August 1998, by which her claim to be granted non-local status with retroactive effect as from 1 August 1974 was dismissed as irreceivable.
2. The complainant was born of Italian parents in Italy in 1951. While she was still an infant, her parents emigrated to Australia where her father acquired citizenship in 1958. The complainant asserts that under Australian law, her father's naturalization also had the effect of conferring Australian citizenship upon her. Furthermore, she asserts that under Australian law, it was not possible to have dual citizenship and that she was therefore deemed to have lost her Italian citizenship upon her father's naturalization. There is evidence to the effect that, under Italian law, she was not considered to have lost her Italian citizenship by the mere fact of having acquired Australian nationality.
3. On 1 March 1967 when she turned 16, the complainant reasserted her right to be an Australian citizen pursuant to Australian law. A few days later, on 4 March 1967, she married an Italian national. Under an Italian law in effect at that time, a woman marrying an Italian national automatically and obligatorily acquired her husband's nationality. In consequence, if she had ever ceased to be one, the complainant again became an Italian citizen. She again purported to obtain Australian citizenship in February 1971.
4. In 1971, the complainant returned to Italy travelling on an Australian passport. Notwithstanding this, she was viewed by the Italian authorities as being an Italian national.
5. The complainant joined the staff of the FAO in June 1971 on a short term contract at grade G.2 as a local staff member. Although a copy of her Australian passport was in her personnel file, the complainant signed a number of documents and other declarations in which she indicated that she was an Italian citizen and that her domicile was in Rome. Since it appears that the Organization would not have hired her had she not been an Italian citizen, the complainant seems to have taken advantage of her situation to claim the benefits of both Australian and Italian citizenship.
6. After a series of short-term appointments the complainant, on 1 October 1972 obtained a two-year appointment at grade G.2 expiring on 30 September 1974. On 1 August 1974, she was promoted to grade G.3 and given an indefinite appointment. In this latter, as in all previous appointments, her status was that of a local staff member.
7. On 16 September 1974, the complainant wrote to the Personnel Division requesting that she be given non-local status in virtue of current FAO policies under which female foreign nationals who were regarded by Italian law as having acquired Italian citizenship, albeit involuntarily on their part, were nonetheless treated as retaining their original nationality. These policies had been inaugurated in April 1971, just prior to her first engagement, and finalised in September 1971 just after that time. She cited the cases of a number of co-workers which she said were similar to hers. She explained that she had not sought non-local status at the time of her original engagement since she had only been on short-term contracts at grade G.2. In its reply dated 21 January 1975, the Personnel Division advised her that "to enable us to review the matter you should provide us with appropriate evidence that you actually lost your Italian nationality upon acquisition of Australian citizenship".
8. The record reveals that the complainant did not reply to this last communication until 3 October 1977 when she wrote again to the Personnel Division stating that she had produced further evidence "that I did not lose my Australian nationality after my marriage". She referred again to her Australian passport and to a statement from the Australian Embassy to the effect that, under Australian law, acquisition of Australian citizenship automatically involves renunciation of any foreign allegiance.

9. This latter communication was acknowledged by the Organization on 24 October 1977 in a memorandum addressed to the complainant, the last two sentences of which read as follows: "However, you have so far not produced evidence that you lost your Italian nationality prior to the date of your marriage. Therefore, before we can review the matter further, I would ask you to let me have the relevant document".

10. The complainant did not raise the matter again until 1 April 1996 when she wrote once more to the Organization seeking to convert her status to non-local. In a reply dated 6 May 1996 she was referred to the earlier memorandum of 24 October 1977 and asked once again to produce the evidence requested therein. The complainant responded on 24 September 1996 by citing cases of other persons whom she considered to be in a situation similar to hers and who had been granted non-local status. On 20 May 1997, the Organization informed her that "your status is to remain unchanged". After indicating that she had been recruited as local staff and would not have been recruited had she not claimed to have Italian nationality, the document continues: "Although you may have renounced Italian citizenship under Australian law, you are by your own admission considered to be an Italian national pursuant to Italian law". Finally, the memorandum refers to Staff Rule 302.4082 which allows the Organization, in cases of dual nationality, to designate the State with which, in its opinion, the staff member is most closely associated.

11. The complainant appealed the foregoing decision to the Director-General who, on 22 September 1997, dismissed the appeal as being both irreceivable and unfounded on the merits. On a further appeal to the Appeals Committee, the latter recommended by a majority that it be dismissed as irreceivable, a recommendation accepted by the Director-General in the decision dated 24 August 1998 which is now under challenge.

12. The responses given by the Administration to the complainant's requests for non-local status in both 1975 and 1977 were clear and unambiguous. They were also well founded in law. The evidence of her Australian citizenship was not enough: she must also show that she had lost her Italian citizenship prior to her marriage to an Italian citizen.

13. The Administration's decisions of 1975 and 1977 do not differ in any material respect from the decision of May 1997 which confirmed them and which forms the basis of the present complaint. In each case, the Administration refused to grant the complainant non-local status unless and until she provided evidence that Italian law had ceased to regard her as an Italian citizen prior to her marriage. However, each of the Administration's requests remained unanswered: the complainant did not and still has not furnished the evidence requested. That state of affairs has continued before the Tribunal. In the absence of new evidence from the complainant, the Organization was under no obligation to re-examine the status she has held since 1971.

14. The complaint must accordingly be dismissed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 12 May 2000, Mr Michel Gentot, President of the Tribunal, Mr Jean-François Egli, Judge, and Mr James K. Hugessen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 12 July 2000.

Michel Gentot

Jean-François Egli

James K. Hugessen

Catherine Comtet

