

## TIP OF THE MONTH

### January 2008

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#### LEGAL RECOURSE FOR BREACH OF SPECIAL SERVICE AGREEMENTS

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The internal justice system of the United Nations and international organizations in general is increasingly coming under attack. Staff members, who do not obtain redress for grievances or who are denied any process for review of grievances, are turning to domestic courts and human rights tribunals for relief. (See the discussion in the UN Special December 2007 (“*The Truth From Within*”). Immunity from suit has thus far shielded international organizations from such claims. However, a recent decision from the ILOAT involving UNIDO and other instances where a right to appeal process is denied may indicate that immunity may eventually be pierced.

In Judgment No. 2665 (103<sup>rd</sup> session), the staff member had signed a special service agreement providing that any disputes would be settled by arbitration. After a dispute arose, the staff member invoked the arbitration procedures and also filed a claim in the domestic court system of Rwanda. UNIDO asserted its immunity before the Rwandan court. UNIDO also failed three (3) times to answer the summons to appear before the arbitral tribunal, which decided therefore to terminate the proceedings with the proviso that the parties could refer the matter to the competent judicial authority – there was the catch. The staff member then turned to the ILO Administrative Tribunal hoping to get some relief. The Tribunal summarily dismissed the complaint on the grounds that the staff member was not an official of UNIDO subject to its staff regulations and rules, and he therefore had no access to the Tribunal. The Tribunal did not say whether the Rwandan court had decided to take jurisdiction, but it is more likely than not the case was also dismissed – allowing UNIDO to have its cake and eat it too.

UNIDO’s decision to snub this consultant – despite having agreed to arbitrate any disputes – obviously adds fuel to the fire for the argument that international organizations are unaccountable and the appropriate course is to strip them of immunity. That would upset the heretofore sacred and cornerstone principle that the international civil service should be independent and free from influence by member states. The reality is that owing to immunity, international organizations enjoy little or in substance no significant financial exposure to staff member’s claims, and many legitimate claimants are left without any satisfactory remedy. If the alternative is the prospect of paying judgments of domestic courts (including punitive damages in some judicial systems), the failure to reform the internal justice system would appear not to be an option.

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\* I specialize in the representation of international civil servants, and serve as legal advisor to several staff unions/associations of international organizations, some of which are based in Vienna, Austria. For further information, please send me an e-mail or visit my website.

The ILOAT has acknowledged this problem in a recent case involving a disappointed disabled outside applicant for a post at the European Patent Organization. In Judgment No. 2657 (103<sup>rd</sup> session), the Tribunal opined that it had “no authority to order the EPO to waive its immunity . . . It notes, however, that the present judgment creates a legal vacuum and considers it highly desirable that the Organisation should seek a solution affording the complainant access to a court, either by waiving its immunity or by submitting the dispute to arbitration.” The EPO is not obligated to follow this polite advice from the ILOAT, and the staff member may seek to file a claim in domestic court. To be sure, the movement to take UNIDO and other international organizations to domestic court will proceed apace, and it may not be so far off or far-fetched to find a domestic court who rejects the immunity argument since any other course would infringe a fundamental human right – access to an impartial tribunal for redress of grievances.

In order for consultants deciding to work for international organizations to protect their right to legal recourse, a request should be made that the dispute resolution clause in the agreement (in which the person is not a staff member) stipulate that either party may file a complaint directly with the ILOAT in the event of a dispute arising under the agreement, with the administrative costs to be borne by the organization. Since management will balk at individual demands from individuals outside the organization, this issue should be taken up by staff unions/associations, so that in the future UNIDO and other international organizations will not be able to simply walk away with impunity from a contractual obligation to arbitrate disputes.