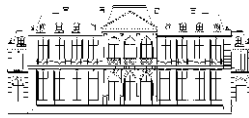


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ORGANISATION DE COOPÉRATION ET  
DE DÉVELOPPEMENT ÉCONOMIQUES



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ORGANISATION FOR ECONOMIC  
CO-OPERATION AND DEVELOPMENT

**ADMINISTRATIVE TRIBUNAL**

Judgment of the Administrative Tribunal  
handed down on 7 July 1992

**JUDGMENT IN CASE No 1**

Mr. H.  
v/Secretary-General

**Translation**

(The French version constitutes the authentic text)

JUDGMENT IN CASE N° 1 OF THE ADMINISTRATIVE TRIBUNAL

Sitting on 6 July 1992,  
at the Château de la Muette,  
2 rue André Pascal, Paris

The Administrative Tribunal was composed of:

Professor Blaise KNAPP, Chairman,  
Mr. Jean MASSOT,  
and Mr. Dermot P. KINLEN, S.C.,

With Mr. Thierry MONNIER and Mr. Colin McINTOSH providing Secretariat services.

Having regard to the application dated 28 February 1992 filed by Mr. H., Head of the Marketing Division in the Publications Service of the Organisation;

Having regard to the fact that in their most recent version, as formulated at the hearing of 6 July 1992, the submissions of the application were for a) payment of compensation corresponding to the amount of the expatriation allowance the applicant would have received for the period remaining until expiry of his contract, together with compensation for the periods corresponding to the likely renewal of his contract, the form of payment of the compensation to be determined by the Tribunal; b) reimbursement of the applicant's legal costs, estimated by him at FF 30 000;

Having regard to the comments of the Secretary-General dated 4 May 1992, rejecting this application;

Having regard to the reply dated 4 June 1992, submitted on behalf of the applicant;

Having regard to the comments in rejoinder of the Secretary-General, dated 11 June 1992;

Having heard:

Maître Roland Rappaport, Barrister at the Court of Appeal of Paris, Counsel for the applicant;

Mr. Christian Schricke, Legal Counsel, Head of the Legal Directorate of the Organisation, on behalf of the Secretary-General;

and Mr. Malcolm S. Gain, Chairman of the Staff Association;

After due deliberation;

Whereas:

The offer of appointment made in the letter of 22 May 1991 signed by the Head of Personnel was accompanied by a table of Mr. H.'s emoluments; this table included an expatriation allowance equal to approximately 16 per cent of the applicant's total remuneration; this offer was accepted by the applicant in

the usual way; on 12 November 1991, the Head of Personnel informed the applicant that as from 1 December 1991, the expatriation allowance would no longer be paid to him on the ground that the applicant had never satisfied the provisions of Rule 16/3.2 of the Staff Regulations regulating the conditions for payment of this allowance; this decision was confirmed on behalf of the Secretary-General on 9 January 1992;

As to the request for compensation:

The expatriation allowance was awarded to the applicant on the basis of an express agreement between the parties and not simply by reference to the Staff Regulations, Rules and Instructions;

The Organisation cannot, even to comply with the provisions of the Staff Regulations, unilaterally change its express contractual obligations towards an official without paying compensation, unless it can prove that the official acted in bad faith;

In this case, the Organisation did not allege that this was so, and compensation is therefore due;

At the hearing of 6 July, the Representative of the Secretary-General stated that if the Tribunal found that compensation was due, such compensation could take the form of monthly payments corresponding to a percentage of the expatriation allowance, and payable throughout the whole of the applicant's career with the Organisation; the applicant's Counsel stated that his client could accept such a solution;

Such an arrangement for paying compensation is not contrary to any general principle or specific rule of international civil service law applicable to the Organisation; the Tribunal can therefore agree to it;

By setting the amount due at 60 per cent of the expatriation allowance payable in respect of each period of employment, proper account is taken of the circumstances of the present case and in particular of the uncertainty as to the obligation to maintain payment of the expatriation allowance upon any future renewal of the applicant's appointment;

As to the intervention of the Staff Association:

The Tribunal notes the statement made by the Chairman of the Staff Association at the hearing of 6 July 1992;

As to the claim for reimbursement of legal costs:

Referring, in particular, to the statement made by Counsel for the applicant, an award to the applicant of FF 21 000 for costs and expenses would be appropriate in the circumstances of the present case;

Hereby decides:

1. The Organisation shall, as from the date on which payment of the expatriation allowance was stopped, make monthly payments to the applicant equal to 60 per cent of the allowance at the rate payable for the relevant month, and continue such payments until the date on which the applicant's service with the Organisation terminates.
2. The Organisation shall pay the applicant the sum of FF 21 000 for costs and expenses.