



ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

Greffe du Tribunal Administratif

Registry of the Administrative Tribunal

ADMINISTRATIVE TRIBUNAL

Judgment of the Administrative Tribunal

handed down on 8 March 2001

JUDGMENT IN CASE No. 50

Mr. D.

v/ Secretary-General

Translation

(The French version constitutes the authentic text)

JUDGMENT IN CASE No. 50 OF THE ADMINISTRATIVE TRIBUNAL

Sitting on Wednesday 28 February 2001
at 2 p.m. at the Château de la Muette,
2 rue André-Pascal, Paris

The Administrative Tribunal consisted of:

Mr. Jean MASSOT, Chairman,
Professor James R. CRAWFORD
and Professor Arghyrios A. FATOUROS,

with Mr. Colin McINTOSH and Mrs. Christiane GIROUX providing Registry services.

On 12 July 2000, Mr. D. and Mr. A. filed an application (« expanded statement »), registered as case No. 50, asking the Tribunal to annul the implicit decision of the Secretary-General rejecting the administrative appeal they had lodged against their pension and salary slips for January and February 2000, with all the legal consequences resulting therefrom.

On 15 November 2000, the Secretary-General submitted his comments alleging that the expanded statement filed by Mr. D. and Mr. A. was inadmissible and, in the alternative, asking for all their claims to be dismissed.

On 14 December 2000, the applicants submitted a reply.

On 1 February 2001, the Secretary-General submitted his comments in rejoinder.

By fax of 22 February 2001 addressed to the Registrar, Mr. A.'s Counsel announced his client's decision to withdraw his application, which withdrawal was accepted by the Chairman of the Tribunal pursuant to Rule 6 b) of its Rules of Procedure. The hearing therefore concerned the application filed by Mr. D. only.

The Tribunal heard:

Maître Jean-Pierre Cuny, Barrister, Counsel for the applicant;

and Mr. David Small, Head of the Organisation's Directorate for Legal Affairs, on behalf of the Secretary-General.

It handed down the following decision:

The facts

On 21 April 2000, Mr. D., a retired official of the Organisation, and Mr. A., a serving official, asked the Secretary-General to withdraw the decision of the Council of 27 January 2000 under which the salary adjustment for the year 2000 was postponed until 1 July 2000, a decision which was extended to pension adjustments by a decision of the Council of 9 March 2000.

Not having obtained a reply, they referred the matter to the Administrative Tribunal on 12 July 2000.

Scope of the dispute and admissibility of the application

In their application, entitled expanded statement, Mr. D. and Mr. A. stated they were challenging the decisions born of the Secretary-General's silence with regard to the administrative appeals they had lodged against their salary and pension slips for January and February 2000.

Although their appeals to the Secretary-General were aimed directly against the decisions of the Council, the Tribunal accepts this restatement of the situation, expressly confirmed during the oral procedure. It is indeed only the decisions affecting them personally that Messrs. D. and A. referred to the Tribunal, alleging that the Council's decisions on which they were based were illegal, even if all the arguments they invoke are directed exclusively against the decisions of the Council.

The fact that the applicants entitled their application « expanded statement » and that it had, initially, the characteristics of a class action, is not, in the circumstances, considered by the Tribunal to be a reason for holding it to be inadmissible. On the one hand, the mistake in the title used is not a substantive error, and on the other, Mr. A. having withdrawn before the Tribunal gave its ruling, the application no longer has anything of a class action about it.

The substance

Regulation 19 of the Staff Regulations provides that « the level of the remuneration of the officials of the Organisation shall be periodically reviewed. » Rule 19/1 of the Regulations provides that « the procedures for the adjustment of the emoluments specified in these rules shall be determined by the Secretary-General, subject to approval by the Council, and published in an annex to these rules. » As drafted at the date of the present dispute, this Annex I, entitled « Rules on the Remuneration Adjustment Procedure of the Co-ordinated Organisations », defines the procedure applicable from 1 January 1998 to 31 December 2001. Article 2.1 of the Annex specifies that salary scales shall be adjusted annually at 1 January subject to the provisions of Article 8. At the relevant date, Article 8 read as follows :

« Article 8 : *Affordability*

8.1 In case of social, economic and financial difficulties of Member States or -- on the proposal of the Secretary-General of such Organisation -- of specific budgetary difficulties of one or more Organisations the CCR may recommend an adjustment by consensus to Councils concerned, notwithstanding Articles 2.1 and 5, and taking into account information foreseen in Article 3, in the following manner :
[.....]

8.3 *For the years 1999 and 2000*

8.3.1 The CCR may recommend that the application of the increase in scales be implemented in whole or in part from the normal implementation date or a later date, but the full implementation of the scales will be applied within the 12-month period following the normal date (1 January) of the corresponding annual adjustment.

8.3.2 Councils maintain the right to phase in or postpone the adjustment until later in the calendar year. »

It is very clear from these provisions that there are two possible cases in which adjustments may be postponed beyond 1 January. The first corresponds to a recommendation by the Co-ordinating Committee on Remuneration on the basis of difficulties of which it is aware either in Member countries or

in one or more organisations. This is the context in which the judgment of this Tribunal in case no. 24/25 was handed down on 16 June 1997 as was the decision of 29 January 1998 of the Administrative Tribunal of the Council of Europe in cases 231/238/1997, the CCR report of that year having left it to the Councils to decide, in light of the budgetary constraints of each organisation, whether or not to apply the safeguard clause relating to budget affordability.

The second postponement possibility arises under Article 8.3.2, which leaves individual Councils free to phase in or postpone the adjustment when budgetary difficulties appear after the CCR report, without the need for any prior CCR recommendation. The fact that Article 8 is entitled « Affordability » signifies simply that it is when budget decisions are being made that Council decisions on postponing the adjustment are taken. It is this second procedure which was followed in this case. It follows that the argument that the Council decisions were in breach of Article 8.1, quoted above, cannot be accepted.

Secondly, it appears to the Tribunal that it is not for it to judge whether the decisions of the Council agreeing on the budget of the Organisation amounted to a misuse of powers. It is for the delegations represented in this Council to assess the general interest which may lead to the budget being set at a given level, with all the ensuing consequences for the timing of staff remuneration adjustments.

Thirdly, the Tribunal considers that since it is not the interpretation of the CCR recommendations that is in question, as in the above-mentioned judgment and decision, but the application of Article 8.3.2, the Council was not obliged to give reasons other than the constraints which weighed on the adoption of the 2000 budget. These constraints appear clearly in the report of the Chairman of the Budget Committee of the Organisation dated 8 December 1999. Lastly, like the Council decisions of 27 January and 9 March 2000, the report of the Chairman of the Budget Committee of 8 December 1999 was communicated to the staff, as witnessed by the objections raised immediately by the Staff Association. The Tribunal considers that, in these circumstances, the fact that the salary and pension slips did not mention these decisions does not in any way constitute a breach of the obligation to inform staff, these slips not being the usual way of communicating this type of information and the Organisation having no obligation to provide for channels of communication for pensioners different from those used for serving staff.

Costs

The Tribunal considers that in the circumstances of the case, the applicant is entitled to reimbursement of his costs up to an amount of 10.000 francs.

The Tribunal decides

- 1) Mr. D.'s application is dismissed
- 2) The Organisation will pay Mr. D. the sum of 10.000 francs towards reimbursement of his costs.