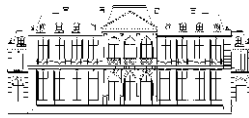


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ADMINISTRATIVE TRIBUNAL

Judgment of the Administrative Tribunal
handed down on 5 February 1996

JUDGMENT IN CASE No 16

Miss T.
v/Secretary-General

Translation

(The French version constitutes the authentic text)

JUDGMENT IN CASE No. 16 OF THE ADMINISTRATIVE TRIBUNAL

Sitting on Wednesday 31 January 1996
at 2 p.m. in the Château de la Muette
2 rue André Pascal, Paris

The Administrative Tribunal was composed of:

Mr. Jean MASSOT, Chairman,
Professor James R. CRAWFORD,
and Mr. Justice Dermot P. KINLEN, S.C.

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

On 3 January 1995, Miss T., a former OECD consultant, asked to be granted the residence allowance provided for under Article 8 of the Regulations, Rules and Instructions for Council Experts and Consultants. By decision dated 24 January 1995, the Secretary-General refused this request.

Miss T. filed a summary application (No. 16), dated 22 May 1995, asking the Chairman of the Tribunal to grant her a period of 45 days in which to produce an expanded statement. By letter of 26 May 1995, the Chairman replied that given that the very vague wording of the application, it did not appear to satisfy the requirement under Article 4 of the Resolution of the Council on the Statute and Operation of the Administrative Tribunal of 12, 13, 17 and 19 December 1991 that applications should set out "all grounds of complaint invoked" by the applicant. He added that since the application did not mention any exceptional circumstance justifying an extension of the time limit of one month provided for in the same Article, he could not agree to any such extension. Lastly, he asked the applicant to submit the grounds of complaint which were lacking as soon as possible.

On 1 June 1995, Miss T. submitted a second summary application, followed by an expanded statement dated 22 June 1995. The applicant asked the Tribunal to declare the application admissible and to annul the Secretary-General's decision of 24 January 1995.

On 23 October 1995, the Secretary-General submitted comments asking the Tribunal to declare the application inadmissible, which failing, to reject all the applicant's submissions as being unfounded.

On 3 November 1995, the Staff Association lodged a submission in intervention supporting the applicant's submissions.

On 20 November 1995, the applicant submitted a reply.

On 20 December 1995, the Secretary-General submitted comments in rejoinder, again asking the Tribunal to reject all the applicant's submissions.

The Tribunal heard

Professor Philippe Cocatre, 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. François Monteil, representing the Staff Association.

The Tribunal handed down the following judgment:

The facts

On 11 May 1992, Miss T. was recruited by the Organisation as an auxiliary, until 30 June 1992. Her contract was then extended until 31 December 1993. During the first 18 months of her employment as an auxiliary, i.e. until 11 November 1993, Miss T. received the residence allowance for the maximum period allowed under Regulation 12 and Rule 12/1 to an auxiliary "who had been living in France for less than three months on the effective date of his first appointment".

Under a contract of 3 January 1994 which entered into effect on 1 January 1994, Miss T. was recruited as a consultant for a period of one year. By memoranda of 19 September and 27 October 1994, Miss T. asked to be granted the residence allowance payable, under Regulation 8 of the Regulations applying to consultants, to "a consultant appointed for a period of at least three months, who for the performance of his tasks is required to establish himself at a place other than that where he normally resides...". By memorandum of 3 November, she was informed that she was not in the position of having to establish herself at a place other than that of her normal residence.

On 3 January 1995, Miss T.'s first Counsel, Maître Sicault, submitted a written request to the Secretary-General, appealing against this decision. On 24 January 1995, the Director of General Administration and Personnel informed Me Sicault, on behalf of the Secretary-General, that he could not withdraw this decision which seemed to him well-founded.

The procedure

It was only on 22 May 1995 that Miss T., who had decided to engage another Counsel, submitted a document entitled Summary Application to the Tribunal. This document said only that "in an expanded statement, the applicant would show that the contested decision had been taken in breach not only of the Regulations, Rules and Instruction for Council Experts and Consultants of the Organisation but also of general principles of law." When filing this "application", Me Cocatre, Miss T.'s new Counsel, asked for a period of 45 days in which to produce an expanded statement.

On 26 May 1995, the Chairman of the Tribunal pointed out to Me Cocatre that the application did not appear to be explicit enough to satisfy the requirement under Article 4 of the Council Resolution on the Statute and Operation of the Tribunal, that in the absence of any exceptional circumstances, he did not feel it was possible to extend the normal time limit of one month for production of the expanded statement and lastly, that he could not prejudge the decision that the Tribunal would take as to the admissibility of the application.

On 1 June, Me Cocatre submitted a new version of the summary application which did not, any more than did the first one, contain an exact statement of the grounds of complaint invoked or any documentary evidence. Finally, on 22 June 1995, Me Cocatre produced an expanded statement with a detailed description of the facts and of the grounds of complaint invoked, accompanied by documentary evidence.

Admissibility of the application

Miss T. does not deny that her reasoned application was not submitted within the three-month time limit allowed her under Article 4 of the Council Resolution. She does, however, ask the Tribunal to make use of the its powers under Article 4 a) -- which provides that "in exceptional cases, the Administrative Tribunal may admit applications filed after such time limit has expired" -- because of the difficulty she claims to have had in finding legal Counsel to file her application, given that she was living in London.

The Tribunal is of the opinion that neither the written nor the oral submissions of Miss T. or her Counsel show the existence of any exceptional circumstances. Miss T. was perfectly capable, in her memoranda of 19 September and 27 October 1994, of quoting the relevant provisions and referring to the facts which seemed to her to establish her case. In his prior written request to the Secretary-General of 3 January 1995, her first Counsel had also set out in great detail the relevant facts and submissions in law. It would therefore have been very easy for Miss T. or her new Counsel to use these same arguments in a summary application filed within the time limit of three months.

The fact that the Chairman did not make use of the power given to him under Article 6 d) to instruct the Registrar to take no further action on an application which is clearly inadmissible, thus allowing the applicant to explain further the exceptional circumstances she thought to invoke, in no way prevents the Tribunal from dismissing the application today as inadmissible.

The intervention by the Staff Association

The Tribunal takes note of the intervention of the Staff Association.

The claim for expenses

The Tribunal finds that in the circumstances, Miss T.'s claim for expenses should be refused.