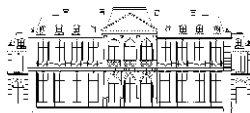


OCDE

ORGANISATION DE COOPÉRATION ET  
DE DÉVELOPPEMENT ÉCONOMIQUES



OECD

ORGANISATION FOR ECONOMIC  
CO-OPERATION AND DEVELOPMENT

**ADMINISTRATIVE TRIBUNAL**

Judgment of the Administrative Tribunal  
handed down on 25 June 1997

**JUDGMENT IN CASE No 24/25**

Mr. P. B./Mr. G. B.  
v/Secretary-General

**Translation**

(The French version constitutes the authentic text)

## JUDGMENT IN CASE No. 24/25 OF THE ADMINISTRATIVE TRIBUNAL

Sitting on Monday 16 June 1997  
at 11 a.m. in the Château de la Muette,  
2 rue André-Pascal, Paris

The Administrative Tribunal consisted of:

Mr. Jean MASSOT, Chairman,  
Mrs. Elisabeth PALM  
and Professor James R. CRAWFORD,

Mr. Colin McINTOSH and Mrs. Christiane GIROUX represented the Registry.

The salary slip for January 1997 of Mr. P. B., a serving official at OECD, showed that the adjustment to the remuneration of the staff of the Organisation, which was to take effect on 1 January 1997, had not been taken into account, pursuant to a decision of the Council of OECD of 20 December 1996.

On 20 February 1997 Mr. P. B. wrote to the Secretary-General requesting that the decision be withdrawn. That request was refused on 12 March 1997. On 4 April 1997 Mr. P. B. filed with the Tribunal an application (No. 24) requesting the Tribunal to annul the contested decision.

Mr. G. B., a former OECD official, receives a retirement pension from the Organisation. His pension slip for January 1997 showed that the adjustment to the remuneration of the staff of the Organisation, which was to take effect on 1 January 1997, had not been taken into account, pursuant to a decision of the Council of OECD of 20 December 1996.

On 24 February 1997 Mr. G. B. wrote to the Secretary-General requesting that the decision be withdrawn. That request was refused on 12 March 1997. On 4 April 1997 Mr. G. B. filed with the Tribunal an application (No. 25) requesting the Tribunal to annul the contested decision. Since his application related to the same decision of the Council and was based on the same arguments, Mr. G. B. requested that it be joined with that filed by Mr. P. B. (No. 24).

On 5 May 1997 the Secretary-General submitted his comments and asked the Tribunal to reject the applications by Mr. P. B. and Mr. G. B.

On 12 May 1997 the applicants submitted a written reply.

On 22 May 1997 the Secretary-General submitted his comments in rejoinder.

On 23 May 1997 the Staff Association filed an intervention document in support of the submissions of Mr. P. B. and Mr. G. B.

The Tribunal heard:

Professor David Ruzié of the Faculty of Law on behalf of the applicants;

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

Mr. Jean-Marie Strub on behalf of the Staff Association.

It handed down the following decision:

The applications by Mr. P. B. and Mr. G. B., which relate essentially to the same issue, are hereby joined so as to be the subject of a single decision.

#### The facts

On being paid their salary or pension for January 1997 the applicants noted that they had not been paid the adjustments recommended by the Co-ordinating Committee on Remuneration (CCR) for 1997. The relevant decision, applicable to all serving and retired staff of the Organisation, had been taken by the Council at its session on 17, 18, 19 and 20 December 1996. Pursuant to that decision the salary adjustment was postponed until 31 December 1997. The decision in turn rested on a recommendation by the CCR dated 2 December 1996 whereby "in order to make it possible to adapt payment of the annual adjustment to availability of resources of each organisation [...]" it was suggested that Councils "decide, in case of exceptional budgetary constraints in their organisation, to postpone, in that organisation in whole or in part, the implementation of the salary scales [...] and the adjustment of allowances [...] to a date later than 1 January 1997, it being understood that the scales and allowances will be wholly implemented not later than 31 December 1997."

#### The legal background

The applicants' case rests entirely on the alleged illegality of the CCR recommendation of 2 December 1996.

In this connection the Tribunal points out that its jurisdiction is limited to the review of the legality of decisions of the Organisation.

It is true, firstly, that by its Decision of 23 September 1988, the Council of OECD stated that it "remains desirable that the remuneration of the staff of the Co-ordinated Organisations... since 1958 should be the subject of harmonization" and that it approved the regulations on the co-ordination system. But it is also apparent from this document that the Co-ordinating Committee on Remuneration makes recommendations only and that it is for the governing body of each Co-ordinated Organisation to decide on recommendations submitted to it by the CCR. Even though, as the Tribunal held in its judgment No. 4, it may be illegal for the Organisation to interpret incorrectly a recommendation by co-ordination bodies, the Organisation could not be challenged for applying correctly a recommendation which was itself alleged to be illegal.

It is true, secondly, that the adjustment procedure defined in the 22nd Report of the CCR in 1993 has been embodied in the Staff Regulations applicable to officials of the Organisation of which it constitutes Annex I. The case therefore turns exclusively on whether the OECD Council Decision of December 1996 does or does not comply with the provisions of that Annex.

On the argument that the safeguard clause in the event of exceptional budgetary constraints could apply only in all the Co-ordinated Organisations at once and with the same timetable:

Article 13 of Annex I to the Staff Regulations provides in the French version that "afin de tenir compte de contraintes budgétaires exceptionnelles dans les Organisations Coordonnées (faisant suite, par exemple, à une réduction significative de l'évolution tendancielle du PIB dans n'importe lequel des pays de référence), le CCR peut proposer aux Conseils, par dérogation à l'article 2 (whereby salary scales are adjusted annually at 1 January) que la mise en vigueur totale ou partielle de cette hausse des barèmes soit reportée à une date postérieure à la date normale d'ajustement." The English version states that "in order to take account of exceptional budgetary constraints within Co-ordinated Organisations (e.g. arising from a significant reduction in the underlying trend of growth of the GDP in any of the reference countries) the CCR may propose to Councils ... etc." Comparison of the two versions, and examination of the preparatory documents, which show the wording to have been a compromise, does not confirm the applicants' argument that the safeguard clause could only be applied if exceptional budgetary constraints arose, at one and the same time, in all the Co-ordinated Organisations. Neither is it of decisive importance that, for the future, a new wording is being proposed to make clear that the budgetary difficulties to be taken into account are specific to one or more organisations.

The Tribunal noted that, when discussing the recommendation of 2 December 1996, the CCR considered the situation of not one but of several organisations.

To conclude, the Tribunal finds, firstly, that the existence of budgetary difficulties specific to OECD is not contested; secondly, it finds, looking as it must solely at the legality of the decision of the Council of the Organisation, that there was nothing to prevent application of a measure to postpone the adjustment to take account of budgetary difficulties specific to OECD, irrespective of the positions adopted by other Co-ordinated Organisations having regard to their own constraints.

On the argument regarding violation of principles of good faith, legitimate trust and respect for acquired rights:

The Tribunal notes, firstly, that arguments regarding absence of good faith or interference with legitimate trust are based on the assumption that Article 13 was interpreted in a way that conflicts with declarations made on its adoption in 1993. In view of the contradictory nature of those declarations, which led to adoption of an ambiguous wording, such arguments must fail.

The Tribunal finds, secondly, that the acquired rights of staff of the Organisation were not violated by the mere fact that the Organisation made use of a possibility available to it under Article 13, and that the fact that the budgetary situations of other organisations led to a different outcome, for 1997 alone moreover, does not violate the acquired rights of OECD staff.

On the argument by Mr. G. B. based on Article 51 of the Pension Scheme Rules:

Under Article 51 of Annex X to the Staff Regulations which defines the Pension Scheme of staff of the Organisation, the pension scheme rules must be applied in a uniform manner by the different Co-ordinated Organisations, and the Secretaries-General of those Organisations must consult among themselves in order to carry out the appropriate co-ordination. The Tribunal does not consider that application of identical rules to salaries which, for their part, evolve differently under their own rules, constitutes a violation of these provisions.

The Tribunal therefore finds that none of the arguments are founded and that the applications must be rejected.

On the intervention by the Staff Association:

The Tribunal notes the intervention by the Staff Association which pointed out that the Committee of Staff Representatives had opposed any differentiated and varied application of the safeguard clause.

On costs:

The Tribunal decides that the Organisation shall pay a total of FF 15 000 to Mr. P. B. and Mr. G. B. to cover the legal costs of their applications.