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ORGANISATION FOR ECONOMIC
CO-OPERATION AND DEVELOPMENT

ADMINISTRATIVE TRIBUNAL

Judgment of the Administrative Tribunal
handed down on 15 December 1997

JUDGMENT IN CASE No 27

Mrs. P.-G.
v/Secretary-General

Translation

(The French version constitutes the authentic text)

JUDGMENT IN CASE No. 27 OF THE ADMINISTRATIVE TRIBUNAL

Sitting on Wednesday 10 December 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,

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

On 5 December 1996, Mrs. P.-G., a grade A2 official of the Organisation, lodged an administrative appeal against the decision not to award her the expatriation allowance. This appeal was rejected by decision of the Secretary-General of 14 March 1997.

On 15 April 1997, Mrs. P.-G. filed an application (No. 27) requesting the Tribunal a) to annul the decision of 14 March 1997 rejecting her appeal, and b) to rule that she was entitled to the expatriation allowance, and to award the sum of FF 11 000 by way of costs.

On 2 July 1997, the Secretary-General submitted his comments rejecting all the submissions in Mrs. P.-G.'s application.

On 9 July 1997, the applicant submitted a reply in which she indicated that she saw no reason, *a priori*, why the Tribunal should not take its decision solely on the basis of the documents submitted during the course of the written procedure.

The Staff Association filed an intervention document in support of the submissions of the applicant.

On 26 September 1997, the applicant's counsel transmitted a personal note by the applicant in support of her submissions.

On 1 October 1997, the Secretary-General submitted his comments in rejoinder, in which he agreed that there need not be any oral debate.

The Tribunal handed down the following decision:

The facts

After having had auxiliary, consultant, part-time, or very short duration contracts since 1 January 1989, Mrs. P.-G., a Canadian national, was recruited by the Organisation on the basis of a two-year fixed-term contract from 1 January 1996. She complains that the Organisation refused to offer her the expatriation allowance under this contract, whereas she had received this allowance under her contracts between December 1990 and July 1993.

The legal background

The parties do not dispute that Mrs. P.-G.'s application must be decided in the light of the decision handed down by the Tribunal on 25 June 1997 in the case of Mrs. S. (No. 23). This means that for Mrs. P.-G., as an official recruited after 31 December 1995, the length of residence in France before first being recruited to the Organisation that has to be taken into account for the purpose of determining entitlement to the expatriation allowance, is one year before 1 January 1989.

On the argument that, at 1 January 1989, Mrs. P.-G. had not had her residence in France for one year

As the Tribunal held in its decision No. 17 (Mrs. R.), "residence" in a country is judged on the basis of the transfer to this country of the centre of the family, professional and economic interests of the official concerned.

In this case, according to the information she gave the Organisation on 30 June 1988, Mrs. P.-G. arrived in France in the autumn of 1985, aged 23, and studied at the University of Paris III in the years 1985-86, 1986-87 and 1987-88. As from May 1987, she worked 15 to 20 hours a week, paid at the minimum wage, in a language school, while pursuing her studies for which she continued to receive a loan from a Canadian bank. The fact that she indicated on the curriculum vitae she attached to her application in June 1988 that she and a French citizen were living as husband and wife is not enough for her to be considered as having transferred the centre of her family, professional and economic interests to France for more than a year before 1 January 1989. The Tribunal notes, moreover, that it is not disputed that after expiry of her temporary residence permit on 12 November 1988, Mrs. P.-G. remained in France on the basis of a simple tourist visa. This being so, and without needing to reach a decision on the other arguments, the Tribunal holds that Mrs. P.-G. should be granted her request that the Secretary-General's decision of 14 March 1997 be annulled, and the Organisation ordered to pay her the expatriation allowance as from 1 January 1996.

On the intervention by the Staff Association

The Tribunal notes the intervention by the Staff Association which argued that Mrs. P.-G. had an acquired right to the expatriation allowance.

On costs

The Tribunal decides that in the circumstances of the case, the Organisation shall pay FF 11 000 to Mrs. P.-G. to cover her legal costs.