

***ADMINISTRATIVE TRIBUNAL***

Judgment of the Administrative Tribunal

handed down on 23 March 2010

**JUDGMENT IN CASE No. 67**

X

v/ Secretary-General

**Translation**  
(the French version constitutes the authentic text)

JUDGMENT IN CASE No. 67 OF THE ADMINISTRATIVE TRIBUNAL

Sitting on Monday 15 March 2010  
at 11 a.m. in the Château de la Muette,  
2 rue André-Pascal, Paris

The Administrative Tribunal consisted of:

Mr. Jean MASSOT, Chairman,  
Professor James R. CRAWFORD  
and Mrs. Louise OTIS,

with Mr. Colin McINTOSH and Mr. Christophe FAVRE providing Registry services.

On 11 March 2009, following a meeting a short time previously, the applicant wrote to the Secretary-General asking him, amongst other things, to keep his promise to ask the Council to renew her appointment. On 19 March, the Secretary-General replied that he had never made any such “promise”, letting it be understood that he would not accede to her request.

In a letter of 7 August 2009, the applicant asked the Secretary-General to withdraw the decision by which he refused the renewal of her appointment, a decision which, according to her, took effect on 2 May 2009, the date on which she ceased being employed by the Organisation. On 21 September 2009, the Executive Director, on behalf of the Secretary-General, replied that the definitive decision refusing this request had been communicated to the applicant by letter of 19 March 2009, and that there was therefore no need for the Secretary-General to take a new decision in this respect.

On 28 October 2009, the applicant filed an application (No. 067) asking the Tribunal to order the OECD to reinstate her in her duties and compensate her for the loss of income between her departure from the Organisation and the date of her reinstatement or, alternatively, to order the OECD to pay more than 600 000 euros in compensation for the prejudice she had suffered.

On 15 December 2009, the Secretary-General submitted his comments asking the Tribunal to declare the application to be inadmissible or, alternatively, to dismiss all the applicant’s claims.

On 18 January 2010, the applicant submitted her reply.

On 12 February 2010, the Secretary-General submitted his comments in rejoinder.

The Tribunal heard:

Maître Thierry Meillat, Counsel for the applicant;

and Mr. Nicola Bonucci, Head of the Organisation’s Directorate for Legal Affairs, on behalf of the Secretary-General.

It handed down the following decision:

## **The facts**

The applicant was recruited by the Organisation as Deputy Secretary-General for two years as of 2 May 2007 on the basis of a decision of the Council taken in application of Article 10.1 of the Convention on the OECD which provides that the Secretary-General “shall be assisted by one or more Deputy Secretaries-General or Assistant Secretaries-General appointed by the Council on the recommendation of the Secretary-General”.

On 28 February 2008, during her holidays, she suffered a serious skiing accident which required an operation. Having nevertheless resumed work, she suffered a fall on 10 June 2008 within the premises of the Organisation which further adversely affected her health. The compensation of this accident, recognized as being a work accident, is not in question in the present case.

The Secretary-General not having proposed the renewal of her contract to the Council, the applicant’s contract ended on 2 May 2009. In her application of 28 October 2009, the applicant requested the Tribunal to order the Organisation to reinstate her and to pay her compensation equivalent to a monthly salary of 17 023.56 euros during the period her contract had not been renewed or, alternatively, to pay her 408 565.42 euros for loss of income, 125 000 euros for material loss, 75 000 euros for moral prejudice and 3 000 euros for legal costs. Essentially, she argues that the Secretary-General’s decision not to propose the renewal of her contract, contrary to what she considers to be the custom at the Organisation, is tainted by illegal discrimination since it is related to her state of health.

## **In law**

### **On the substance**

There is no need for the Tribunal to reaffirm that the decision to renew the contract of an official, particularly at the level of Deputy Secretary-General, falls within the discretionary power of the appointing authority, but that it must of course comply with the rule forbidding any discrimination based on health as provided for in Regulation 5 of the Staff Regulations. It is ready to accept that proof of such discrimination could be based exclusively on evidence submitted by the official who claims to have been the victim thereof and that the Organisation would then have to argue the case. However, in the present instance, the applicant, who on numerous occasions contacted various national delegations after having been informed of the Secretary-General’s intention not to propose the renewal of her contract, never raised this issue but, instead, concentrated on rebutting the criticisms about the manner in which she had performed her tasks. The Tribunal therefore concludes that the mere fact that the applicant’s condition, following the falls she suffered, was not stable at the time when the decision not to renew her contract was taken, is not enough to provide the minimum evidence required in order to justify further investigation into whether there was discrimination or not. What is more, the Tribunal could not investigate this allegation further since the applicant’s application is inadmissible.

### **On the question of admissibility**

The applicant did not file her application with the Tribunal until 28 October 2009. Article 4 a) of the Resolution of the Council on the Statute and Operation of the Administrative Tribunal provides that “Applications shall be filed with the Registry of the Tribunal within three months from the date of notification of the rejection by the Secretary-General of the prior request or from the date of the implied refusal of such request.” In order to establish that her application was filed within the time limit, the applicant argues that she was only able to challenge an implied refusal by the Secretary-General of her prior request of 7 August 2009, which implied decision was dated 7 September, namely less than three months before the filing of her application.

The Tribunal cannot share this point of view, for already on 19 March 2009, the Secretary-General rejected a first prior request from the applicant asking him to reconsider the decision he notified to her on 5 March 2009.

Confirmation that the applicant was informed of the decision on 5 March is moreover provided by the fact that already on 15 March she wrote to delegations to tell them that the Secretary-General had informed her of his intention not to recommend renewal of her contract. She confirmed having received this information in similar letters of 19 March and 4 April. Lastly, she cannot deny having received on 15 April a letter informing her once more that her contract would terminate on 1 May, following which, on 29 April, she again contacted OECD Ambassadors by e-mail to inform them of her departure. Even if it were decided that the contested decision was not notified on 5 March -- and this is not the position of the Tribunal -- the applicant's prior request of 8 August would still not be within the time limit since it was submitted more than two months after the notification given on 15 April at a time when, still an official of the Organisation, the applicant had only two months in which to apply to the Secretary-General pursuant to Article 3 a) of the Resolution of the Council.

The Tribunal considers that there are no exceptional circumstances in this case which could lead to the admission of an application submitted after expiry of the time limit and that, therefore, the applicant's application is inadmissible.

### **On the reimbursement of legal costs**

The Tribunal considers that the applicant's request for reimbursement of her legal costs of 3 000 euros can be granted.

The Tribunal decides:

- 1) The application is dismissed
- 2) The Organisation will pay the applicant 3 000 euros for her legal costs