



**ADMINISTRATIVE TRIBUNAL**

Judgment of the Administrative Tribunal

handed down on 24 March 2011

**JUDGMENT IN CASE No. 69**

Mrs. I

v/ Secretary-General

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

JUDGMENT IN CASE No. 69 OF THE ADMINISTRATIVE TRIBUNAL

Sitting on Friday 11 March 2011  
at 2.00 p.m. in the Château de la Muette,  
2 rue André-Pascal, Paris

The Administrative Tribunal consisted of:

Professor James R. CRAWFORD, Chairman,  
Professor Luigi CONDORELLI  
and Mr. Alfredo MADUREIRA,

with Mrs. Anne Carblanc providing Registry services.

On 5 December 2006, Mrs. I. was notified of a decision confirming that her appointment as a consultant would end on its date of expiry, namely 31 December 2006.

In a letter dated 17 January 2007, the applicant submitted a prior written request that this decision be modified so that the end of her appointment might be considered as a dismissal and the protective provisions of French social law might be applied to her. On 1 February 2007, the applicant was notified of the decision to refuse this prior request.

At this juncture Mrs. I. filed successive applications before the Paris Industrial Tribunal, the Paris Appeals Court and lastly the Court of Cassation which, like the lower jurisdictions, in a ruling handed down on 29 September 2010, confirmed the jurisdictional immunity the OECD enjoyed before the French judge, stressing that solely the Administrative Tribunal of the Organisation was competent to settle this type of dispute.

On 22 November 2010, Mrs. I. then submitted a request (No. 069) asking the present Tribunal to order the Organisation to pay various sums to compensate her for the prejudice she claimed to have suffered as a result of the ending of her appointment on 31 December 2006.

On 21 December 2010, the Secretary-General submitted his comments asking the Tribunal, in the first instance, to hold the request inadmissible or, in the second instance, to dismiss all the applicant's claims.

On 26 January 2011, the applicant submitted a reply.

On 18 February 2011, the Secretary-General submitted his comments in rejoinder.

The Tribunal heard:

Maître Bertrand Loubeyre, 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:**

Mrs. I. was hired by the OECD as a salaried consultant on 21 May 2001 on a fixed-term contract for a period of two months. On its expiry, this contract was renewed until 31 December 2001. It was subsequently renewed, on each occasion for a period of one year, until 31 December 2006. As the contract was not renewed at this last date of expiry, Mrs. I's appointment came to an end, as the Head of Human Resources had confirmed to her in a message sent on 6 December 2006.

Further to these events, as stated previously, on 17 January 2007 Mrs. I. sent a letter – which meets the requirement for a “prior written request” set out in Article 3 a) of the Resolution of the Council on the Statute and Operation of the Administrative Tribunal – to the Head of Human Resource Management aimed at securing the modification of the decision not to renew her appointment, a decision which, in the opinion of the applicant, was to be considered as an unlawful dismissal. This prior request was refused by the OECD in a letter dated 1 February 2007. Further to this letter, Mrs. I. did not submit an application to the present Tribunal within the time limit specified in Article 4 a) of the Resolution of the Council on the Statute and Operation of the Administrative Tribunal, according to which: “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.” She decided instead to submit an application before the French courts which, at all jurisdictional levels, recognised and confirmed the jurisdictional immunity of the OECD and, in consequence, recognised the exclusive competence of the Administrative Tribunal of the OECD to rule on the subject of the dispute. Following the ruling by the Court of Cassation on 29 September 2010, Mrs. I. eventually applied to this Tribunal by submitting the present request, in which she asks that the OECD be ordered to pay her various sums on several counts (indemnity for the notice period, loss of employment and requalification, damages and interest, etc.). She repeatedly insisted on these requests in her reply of 26 January 2011, as well as orally at the hearing.

In both his response of 21 December 2010, his rejoinder of 18 February 2011 and oral argument at the hearing, the Secretary-General pointed out, with regard to the substance, that by not renewing Mrs. I.'s fixed-term contract as a consultant beyond its expiry date of 31 December 2006, the OECD was not in breach of any of the relevant and applicable legal provisions (which could not include those of French law). Above all, however, the Secretary-General pleaded that the request was inadmissible in that it had not been submitted to the Tribunal within the time limit stipulated in the above-mentioned Article 4 a) (namely within three months of Mrs. I.'s notification of the decision of 1 February 2007 rejecting her prior request), but only some two and a half years after its expiry. The Secretary-General stressed the fact that Mrs. I. was perfectly aware of the existence of this time limit as well as the exclusive competence of the Tribunal with regard to the matter, recalling that the OECD had on several occasions drawn her attention in a timely manner to these details, a fact which the applicant did not dispute.

## **In law:**

The Tribunal does not have to examine thoroughly the request by Mrs. I. as it is clearly inadmissible.

Mrs. I. does not claim to have respected the time limits specified in Article 4 a) of the Resolution of the Council on the Statute and Operation of the Administrative Tribunal for the submission of her application; she does not claim, either, to have been unaware of the constraining nature of this time limit, nor does she dispute that the OECD had clearly recalled to her, in due time, the applicable procedure. On

the contrary, the applicant claims that her request should be held to be admissible in the name of the principle enshrined in Article 2241 of the French Civil Code, according to which the submission of an application to an incompetent jurisdiction interrupts the time limits for proceedings or for lapse of rights. She alleges in addition to (if not in connection with) this claim that, in this instance, exceptional circumstances obtain which, in accordance with the last sentence of the above-mentioned Article 4 a) (“However, in exceptional cases, the Administrative Tribunal may admit applications filed after such time limit has expired.”), could lead the present Tribunal to authorise a request submitted outside the prescribed time limit.

The Tribunal considers that the “exceptional cases” referred to in Article 4 a) can only apply, in principle, to wholly singular situations involving major impediments or significant obstacles for which the person concerned cannot be held responsible and which resulted in the failure of the latter to comply with the prescribed time limits. In this instance, the Tribunal notes that it is the applicant herself who, in full knowledge of the facts, freely chose to file an application before the French courts and not the present Tribunal, despite having been made fully aware of the consequences of her choice. Besides which, as the Secretary-General rightly points out in his written comments, there was no reason why Mrs. I. could not have sought to follow both courses of action at the same time. In short, *imputet sibi* if the substance of Mrs. I.’s cause could not be ruled upon by any judge.

The argument that Mrs. I. claims to derive from Article 2241 of the French Civil Code cannot be upheld in that there can be no doubt that both the employment relationship between the OECD and its members of staff and the operation of the Administrative Tribunal are subject to the law of the Organisation and not to French law. The relevance of invoking the principle proclaimed in the above-mentioned Article of the French Civil Code is further diminished by the fact that it is not applicable, as such, to disputes in the civil service.

For the above reasons, the Tribunal holds that the request submitted by Mrs. I. is inadmissible.

The Tribunal does not have to rule on the reimbursement of the costs of the proceedings as no request was submitted to it in this respect.

Done in Paris, 25 March 2011

James R. CRAWFORD  
Chairman

Anne CARBLANC  
Registrar