ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

ORGANISATION DE COOPÉRATION ET DE DÉVELOPPEMENT ÉCONOMIQUES

ADMINISTRATIVE TRIBUNAL

Judgment of the Administrative Tribunal

handed down on 21 May 2017

JUDGEMENT IN CASE No. 83

Mrs. AA
Applicant

v.

Secretary-General

Translation (the French version constitutes the authentic text).

JUDGMENT IN CASE No. 83 OF THE ADMINISTRATIVE TRIBUNAL

Sitting on 4 May 2017
At 10 a.m. in Château de la Muette,
2 rue André-Pascal in Paris

The Administrative Tribunal consisted of **:**

Mrs. Louise OTIS, Chair

Mr. Luigi CONDORELLI

And Mr. Pierre-François RACINE

with Mr. Nicolas FERRE and Mr. David DRYSDALE providing Registry services.

The Tribunal heard:

Mr. Christophe COURAGE, counsel of the Applicant;
Mr. Remi CEBE, Senior Legal Advisor of the Organisation's Directorate for Legal Affairs, on behalf of the Secretary-General; He was assisted by Mr. Auguste NGANGA-MALONGA and Mr. Peik MAKELA, Legal Advisors,
Mr. Jean-Pierre CUSSE, President of the Staff Association

It handed down the following decision:

Introduction

1. In its application for annulment and compensation lodged with the Registry on 9 September 2016, the Applicant requests that the decision of the Secretary-General of the Organisation for Economic Co-operation and Development (hereinafter referred to as the 'Organisation') of 10 June 2016 dismissing her application for recognition of occupational disease be annulled, and that monetary compensation be awarded to her in respect of non-material damage, loss of salary and medical expenses incurred as a result of her occupational disease.

2. The Secretary-General submitted his comments on 14 November 2016.

3. The Applicant submitted a reply on 14 December 2016.

4. The Organisation's Staff Association submitted written comments in support of the Applicant's application on 15 December 2016.

5. At the request of the Secretary-General's representative, the Chair of the Tribunal granted an extension to 15 February 2017 of the deadline set for the Secretary-General to submit a rejoinder. Finally, the Secretary-General submitted his comments in rejoinder on 14 February 2017.

The facts and the origin of the dispute

6. Ms XX was recruited by the OECD ('the Organisation') in June 2006 as an assistant at the Council and Executive Committee Secretariat, and took up her duties on 4 September 2006. From the following October she was assigned to assist the Assistant Director of the Council Secretariat. She received positive evaluations from her superiors during the years 2008, 2009 and 2010. Her fixed-term appointment was converted into an open-ended appointment as of 15 June 2011.

7. However, as of July 2007, Ms XX, feeling unsettled in the performance of her duties, underwent medical treatment, with prescriptions which were regularly renewed until 2012. There were two periods of non-active status, in December 2007 and June 2009.

8. On 9 May 2012, after a day on which she felt particularly distressed, Ms XX was again placed on non-active status. She was unable to resume her duties from that date until she was declared incapacitated on 1 May 2015. On the expiry of the four-month period of sick leave provided for in Article 20, g) of the *Staff regulations, rules and instructions applicable to officials of the organisation* ('the Regulations'), she was placed on non-active status for reasons of long-term sickness in accordance with Article 14 of the

Regulations, Article 17/1.7 of the Rules and Instruction 120/4.3. For 14 months, she maintained the entirety of her salary and then, from 6 November 2013, she maintained 80% of her salary for the next 18 months.

9. On 31 October 2014, Ms XX sent an application to the human resources management service for recognition of the occupational nature of a psychological illness on the basis of a certificate containing a diagnosis of burn out, the first finding of which dated from 9 May 2012.

10. In accordance with the Regulations, this request was transmitted to the Organisation's medical officer, Dr MM. After examining the Applicant, Dr MM concluded on 23 January 2015 that the disease was not occupational in nature. Consequently, the Organisation notified Ms XX by letter on 27 February 2015 of its refusal to recognise the occupational nature of her psychological illness.

11. On 11 March 2015, Ms XX challenged this decision and requested that a specialist medical review procedure be carried out under the conditions stipulated in Instruction 122/4. As the two doctors designated by Ms XX and the Organisation, Dr RR and Dr GG respectively, were unable to agree, they designated a medical specialist, Dr BB, a psychiatrist. The latter, after examining Ms XX, concluded on 16 March 2016 that the disease was not occupational in nature.

12. Accordingly, in a letter dated 9 June 2016 from the Manager, Medical Insurance and Reception, Ms XX was informed of the decision of the Secretary-General of the Organisation to reject her application for recognition of an occupational disease in the light of the medical specialist's findings.

13. In the meantime, Ms XX had applied, on 12 February 2015, to receive an invalidity pension and an invalidity lump sum for total permanent disability. Following the meeting of the invalidity board and the medical board, Ms XX was granted the benefit of an invalidity pension alone.

14. Acting through her counsel, Ms XX lodged an appeal with the Administrative Tribunal on 9 September 2016 challenging the Secretary-General's decision of 9 June 2016 rejecting her application for recognition of an occupational disease.

The parties' arguments

15. In her comments lodged with the Registry on 9 September 2016, accompanied by 29 attachments, Ms XX outlined her career at the United States Embassy in Paris and the commendations she had received. On being recruited by the OECD in 2006, she

encountered from October onwards a destructive professional environment and management methods (the disregard by her supervisors of inter-service rules, a temporary ban on answering the telephone, the impossibility of planning her days, frequent confrontations with other members of the service, inappropriate and disrespectful behaviour by her director, requests to perform impossible tasks). Despite this, she received appreciation and positive evaluations from her superiors. The service suffered from a high staff turnover, but Ms XX's efforts to draw the attention of her superiors or the human resources department to this were unsuccessful.

16. Ms XX recalls the conditions under which she ended up receiving medical treatment involving antidepressants and anxiolytics, and then, after an episode of burn out on 7 May 2012 due to an exceptional work overload, went on constantly renewed sick leave. During this period Ms XX also saw a psychologist and a psychiatrist and received various other forms of treatment.

17. Finally, Ms XX recalls the chronology - described above - of her application for recognition of the occupational nature of her illness on the basis of the certificate issued by Dr RR on 28 October. It is stated that Dr MM, the doctor initially designated by the Organisation, behaved in a disconcerting and shocking manner towards her, which led her, after the first rejection of her application and with a view to the meeting of a medical board, to ask the Organisation to designate a doctor other than Dr MM, which it did.

18. Essentially, Ms XX contends that the Secretary-General's decision of 9 June 2016 is unlawful, being vitiated by an error of law because it is based on a medical opinion taken on the basis of an unlawful form.

19. She contends that the definition of occupational disease provided in the Regulations is clear and constitutes a right. Once the origin of the disease is attributable to the performance of the official's duties, its occupational nature is established, which confers on the official a right to the benefits provided for in such cases in the Regulations. As that definition is clear, under the principle of lawfulness (recognised in particular by the Administrative Tribunal of the International Labour Organization), the Secretary-General may not set additional conditions for the recognition of the official's right.

20. Second, she contends that the standard form provided by the Organisation is not consistent with the Regulations.

21. First, because it sets two additional conditions for the recognition of the occupational nature of the disease: the requirement of an essential and direct link between the duties performed and the origin of the disease and a rate of permanent, current or foreseeable incapacity of at least 25%.

22. Second, because the form violates Article 17/1.12 of the Regulations in that it refers to the French standards applicable to employees under private law, namely those set out in the French Social Security Code. In fact, OECD officials have a status similar to that of French public officials. Where necessary, it is therefore the public law rules applicable to such officials that should be applied.

23. Finally, Ms XX contends that the contested decision is unlawful in itself: the medical specialist was misled by the form and there is no indication that he would have replied negatively to the first question on the form if he had not taken account of the additional criteria unlawfully added in the second part of the form.

24. Consequently, Ms XX asks the Tribunal:

- to find that the standard form used by the Organisation for the assessment of the occupational nature of an 'unclassified' disease is unlawful;

- to annul the Secretary-General's decision of 9 June 2016 and recognise the occupational nature of her illness;

- to order the Organisation to award her compensation for non-material damage;

- to require the Organisation to withdraw the form used for the assessment of the occupational nature of an 'unclassified' disease;

- to require the Organisation to provide Dr BB with a form that is consistent with the Regulations and to ask him to issue an opinion on this basis;

- to require the Organisation to pay her, as applicable, compensation for loss of salary and the medical expenses incurred as a result of her illness;

- to order the Organisation to pay her costs in the amount of 6,720 euros inclusive of tax.

25. In his comments lodged with the Registry on 14 November 2016, accompanied by five attachments, the Secretary-General, after recalling the facts of the case, first states that the invalidity pension granted to Ms XX was granted for a non-occupational disease, as the Organisation had failed to recognise the occupational nature of the disease and the invalidity board had failed to find that Ms XX's invalidity was due to an occupational disease.

26. He contends that, under the provisions of Instructions 122/4.5 and 122/4.6, the Secretary-General decision must be in conformity with the conclusions of the medical specialist, unless these display an obvious material error. The only question in this case, therefore, is whether the medical specialist made such an error.

27. Recalling the definition given by the Tribunal of a material error, which relates to the material accuracy of the facts, he notes that Ms XX's argument does not relate to this point, but is based on challenging the form sent to the medical specialist which, she argues, is inconsistent with the provisions of points c) and d) of Article 17/1.12 of the Regulations. Firstly, it is claimed that, by mentioning in the first question to the medical specialist the criteria of (c) and (d), the form improperly anticipates a difficulty of interpretation; secondly, the reference to French legislation is alleged to lead to the setting of additional criteria for the recognition of the occupational nature of a disease.

28. The Secretary-General contends that this argument is irrelevant, as the medical specialist concluded, irrespective of the criteria examined, that the occupational nature of Ms XX's psychological illness could not be recognised.

29. He adds that the Tribunal has previously ordered and decided in its Judgment 79 that the question that appears on the questionnaire should be put to a medical board. Furthermore, even purely on the basis of point c) of Article 17/1.12 of the Regulations, recognition of the occupational nature of a disease presupposes the existence of a direct and essential link between the disease and the performance of the official's functions. Regarding the application by analogy of French legislation, this is expressly provided for by the Regulations, and not merely by the Secretary-General.

30. He contends that the form does not set any condition additional to the provisions of the Regulations, inasmuch as French legislation makes recognition of the occupational nature of a disease subject to two criteria: it must have been essentially and directly caused by the person's habitual work and it must be of a severity resulting in a foreseeable permanent disability of at least 25%; the letter of appointment to the medical specialist and the form reflect this jurisprudence.

31. He adds that the reference to French legislation should be understood as the legislation applicable to employees under private law; this is the common law of social protection in France. The application of the scheme applicable to French officials under public law does not in any way alter the nature of the proof of origin of the occupational disease, he argues.

32. In any event, firstly, the terminology of occupational accidents and diseases is specific to the general French Social Security scheme; secondly, until 1993 the Organisation's officials were subject to the general French Social Security scheme, and the wording of the agreement between the Organisation and France of 24 September 1991 shows continuity between the previous scheme and the current scheme which is specific to the Organisation; and finally, on several occasions, in particular in Judgment 35, the Tribunal has applied the French Social Security Code.

33. As regards the occupational nature of an illness, the case-law of the French Court of Cassation is that if the declared disease is not classified in the Schedule of Occupational Diseases annexed to the Social Security Code, its occupational nature may nevertheless be recognised if the disease is essentially and directly caused by the person's habitual work and results in a permanent disability of at least 25%. In this context, the form given to the medical specialist is lawful as it is in conformity with the Regulations, and furthermore the medical specialist concluded that whatever the criteria used, the occupational nature of the origin of the disease declared by Ms XX is not established.

34. The Secretary-General concludes that the claim for compensation for non-material damage should be dismissed as unjustified, as should Ms XX's other claims, which are unquantified, making it impossible for the Tribunal to assess these claims and any right she may have to benefit from the provisions of Article 17/1.13 of the Regulations.

35. In her comments by way of rejoinder lodged with the Registry on 14 December 2016, Ms XX contends that it is incorrect that her argument is based on mere assertions. She disputes the argument that the scope of the Tribunal's control of the Secretary-General's decision is confined to ascertaining whether there is any obvious material error. Neither the Regulations nor the case law of the Tribunal, as shown by Judgment 38, restrict the scope of the Tribunal's control in this way, other than to deprive officials of their right to an effective remedy.

36. She contends that the Tribunal may exercise full control over the process leading to the formulation of the medical specialist's opinion. She points out that point c) of Article 17/1.12 does not in any way require an essential and direct link between the origin of the disease and the functions performed, but merely states that the disease must be attributable to those functions. She disputes that the Tribunal in Judgment 79 found the form to be consistent with the Regulations, as this form was developed later on. She reiterates that the Organisation has, from the start, prejudiced the debate by introducing confusion in the doctors' methodology. Finally, she repeats her argument concerning the need to apply the legislation governing French officials under public law, which requires neither an exclusive link nor the condition of a disability level of more than 25%.

37. Ms XX therefore maintains her conclusions, with the exception of her claim for compensation for non-material damage.

38. In his comments by way of rejoinder lodged on 14 February 2017, the Secretary-General points out that the medical specialist, who had been given the task of deciding between two irreconcilable opinions, gave his findings following a full examination and that it was in full knowledge of the case that he took the view that the occupational nature of the illness could not be recognised.

39. He again contends that only an obvious material error could lead him to depart from the conclusions of the medical specialist, but that in the present case those conclusions display no such error.

40. He points out that the letter of appointment and the form were drafted on the basis of the jurisprudence of the Tribunal, which in its Judgment 79 requested that the questions referred to in that letter and in the form be submitted to the medical board. The same applies to the use of French social security legislation. Finally, the conclusions of the medical specialist are clear and final. While it is true that he could have confined himself to the first question, he also concluded that even from the point of view of the criteria of the French legislation, the occupational nature of the illness presented by Ms XX was not established.

41. Accordingly, he concludes that all of Mrs XX's claims should be dismissed.

42. Written comments submitted by the Staff Association were registered on 15 December 2016. The Association considers that the definition of occupational disease in point c) of Article 17/1.12 is clear and precise. The only question is whether the cause of the disease can be attributed to the performance of the functions. Point d) of Article 17/1.12 confines itself to setting the standards to be applied where paragraphs a) to c) contain principles requiring interpretation. The wording of the form, which was definitely created after Judgment 79, confuses the different paragraphs of Article 17/1.12. Nowhere do the Regulations mention any 'unclassified' illnesses. The presentation of the form is misleading, as if it were designed to induce the board to take the view that there are interpretation difficulties right from the start. Moreover, point c) of Article 17/1.12 is not even quoted.

43. The Association also contends that the Organisation, by adopting the new 1993 Regulations with regard to social protection, has set itself free from French legislation, except in cases where those Regulations refer specifically and directly to that legislation, which is not the case for the definition of occupational disease.

44. It therefore believes that Ms XX is justified in seeking the annulment of the Secretary-General's decision of 9 June 2016.

The hearing of 4 May 2017

45. Mr CC, after recalling Ms XX's career before she joined the Organisation in 2006, the difficulties she had encountered in her duties from 2007, the medical disorders she suffered, in particular from 9 May 2012 onwards, and the chronology of the steps taken to obtain recognition of the occupational origin of the psychological illness with which

she is affected, repeated her written argument concerning the unlawfulness of the form given to the medical specialist and the letter of appointment addressed to him.

46. He contended that the medical specialist is unable to give a correct answer on the grounds of point c) of Article 17/1.12 of the Regulations, as the questions asked are blurred, and no one knows what he would have answered if he had first of all been required to answer on these first grounds alone.

47. He also contends that the form is still unlawful because, in relation to point d) of Article 17/1.13 of the Regulations, it refers to a criterion - that of the minimum percentage of permanent incapacity - taken from the general French Social Security scheme, whereas reference should be made to the scheme applicable to French officials under public law.

48. In response to the Tribunal's questions, Mr CC explained that Ms XX is currently in a position of invalidity, not of retirement, and requested that the specialist medical review be repeated on the basis of a lawful form.

49. Mr RC, on behalf of the Secretary-General, first explained that the Organisation had previously recognised the occupational origin of psychological illnesses.

50. With regard to the form, he pointed out that before 1993, the Organisation's officials were affiliated to the French Social Security scheme. When their own specific scheme was set up, reference to the French scheme was kept in the event of any difficulties in interpreting the Regulations. The term 'work accident' is taken from that scheme, whereas the term 'service accident' is used in the scheme for French officials under public law. The Tribunal itself, in its Judgments 35 and 39, has referred to the French Social Security scheme.

51. Mr RC emphasised that the medical specialist's answers were all that mattered, and he answered 'no' to all three questions asked.

52. He noted that the claims for compensation are not quantified and that the claim for compensation for non-material damage was not included in the rejoinder.

53. In conclusion, he stressed three points: the specialist's conclusions are final; there is no obvious material error; and the Secretary-General was required to take a decision in accordance with the specialist's conclusions.

54. In response to the Tribunal's questions, Mr CC indicated that Ms XX had not worked since 2009 and that he was maintaining the claim for non-material damage.

55. Mr JPC, speaking on behalf of the Staff Association, strongly condemned the application of French law to the disadvantage of Ms XX, when priority should be given to the grounds of point c) of Article 17/1.12 of the Regulations, which recognises an

occupational disease as soon as its origin is attributable to the functions performed in the Organisation.

56. In response to the Tribunal's questions on the criteria for attributability, Mr JPC, while accepting the direct link criterion, argued that the existence of a working environment conducive to the outbreak of illness is sufficient for there to be attributability.

57. In response to the question of the impact of pre-existing conditions, Mr CC stated that if there were external causes, there was no attributability. But it was debatable whether the criterion should be added that the degree of permanent incapacity must be at least 25%.

58. Mr RC was of the opinion that only the doctors could answer the question of whether an illness was attributable to the person's functions. He confirmed that if the occupational disease was recognised, the invalidity board would review Ms XX's situation.

Applicable law

59. Article 17/1.12 of the Rules is worded as follows:

' a) An accident shall be deemed to be a work accident where it occurs as a result of, or in connection with, functions performed within the Organisation and causes physical injury to a serving official.

…

c) An occupational disease which is attributable to the performance of functions within the Organisation shall be deemed to be a work accident.

d) In the event of difficulty in interpreting principles set out in paragraphs a) to c) hereinabove, analogous reference shall be made to the French legislation applicable to work accidents and occupational diseases, and to relevant decisions of the French courts... '

60. Concerning the specialist medical review procedure, Instructions 122/4 and 5 state that:

'In all cases where the Secretary-General takes a decision based on a medical opinion and where the official concerned disputes the medical grounds thereof, the latter may, within 15 days from receipt of the written notification of the decision, request that the medical opinion on the basis of which the decision was taken be subject to a specialist medical review procedure.

122/4.1 When an official disputes a medical opinion, the doctor he/she designates shall consult with the doctor designated by the Secretary-General with a view to giving a joint opinion to be transmitted to the Secretary-General.

Where the two doctors fail to reach agreement, and at the request of the official concerned, they shall nominate a medical specialist within 30 days from the date of contention of the medical opinion...

122/4.2 The medical specialist, assisted as necessary by the doctors designated by the Secretary-General and the official, shall carry out such examinations, analyses and other investigations as he deems necessary. The medical specialist shall render his/her opinion within 30 days of his/her nomination...

122/4.3 The opinion of the medical specialist or of the medical board shall relate exclusively to the medical opinion submitted to the review procedure under Instruction 122/4.

122/4.4 The official shall bear the cost of the specialist review procedure when it confirms the medical opinion on the basis of which the initial decision had been taken by the Secretary-General.

122/4.5 The conclusions of the medical specialist or of the medical board shall be communicated to the Secretary-General and the official concerned. Such conclusions shall be final, except where there is an obvious material error. The conclusions of the medical specialist may include, in the form of a separate document, considerations and justifications of a medical nature to be disclosed only to the doctor designated by the Secretary-General and the doctor designated by the official.

122/4.6 The Secretary-General shall, where appropriate, take a new decision in accordance with the conclusions reached by common agreement by the doctors designated by himself/herself and the official or, in the event of specialist review, in accordance with the conclusions of the medical specialist or medical board, as soon as such conclusions are brought to his/her attention. Such decision shall be notified forthwith to the official concerned in writing. The new decision shall take effect on the same date as the original decision which it shall cancel and replace. The decision by the Secretary-General confirming his/her initial decision, or the new decision by the Secretary-General shall be, where appropriate, the decision by which the Secretary-General has rejected a prior request under the terms of Article 3 of the Resolution of the Council on the operation of the Administrative Tribunal and can only be challenged in front of the latter. '

The Tribunal's appraisal

61. According to the Applicant, the definition of occupational disease is clear and constitutes a right, and the medical specialist did not need to refer to French law. Moreover, the standard form on which the medical specialist's findings appear violate the Regulations by setting additional conditions. Finally, it is claimed that the Applicant's illness is undeniably an occupational disease and should have been recognised as such.

62. The letter of appointment states that: *'It is now your task to issue a medical opinion on the following question: are the criteria set forth under Article 17/1.12 c) and d) of the Rules fulfilled in the present case so that the occupational nature of the disease declared by Mrs X can be recognised?*

Article 17/1.12 c) states that an occupational disease which is attributable to the performance of functions within the Organisation shall be deemed to be a work accident.

Article 17/1.12 d) stipulates that "in the event of difficulty in interpreting principles set out in paragraphs (…) c) hereinabove, analogous reference shall be made to the French legislation applicable to (…) occupational diseases, and to relevant decisions of the French courts (…) " For the purposes of application of this legislation, we wish to emphasise that, to the extent that the psychological illness declared by Ms XX to the OECD does not appear in any of the schedules of occupational diseases (an 'unclassified disease'), its occupational nature can only be recognised if it is established that:

1. the psychological illness that Ms XX declared to the OECD was essentially and directly caused by her habitual work for the Organisation;

2. Due to the psychological illness she has declared to the OECD, Ms XX suffers from a permanent partial incapacity or a foreseeable permanent incapacity of at least 25%.'

63. The table in the form was completed as follows:

Are the criteria set forth under Article 17/1.12 c) and d) of the Rules fulfilled in the present case so that the occupational nature of the disease declared by Ms XX can be recognised?	*(yes)* **no**
In the event of difficulties in interpreting Article 17/1.12 c) and application by analogy of French legislation and case law [Article 17/1.12 d] • Was the unclassified disease essentially and directly caused by the person's habitual work for the OECD? • As a result of the unclassified disease, does the person concerned suffer from a permanent incapacity or a foreseeable permanent incapacity of at least 25%?	*(yes)* **no** *(yes)* **no**

64. First of all, the Tribunal considers it necessary to settle two questions which have been debated by the parties, referring to Judgment 82 also pronounced today.

65. The first is the question of the scope of point c) of Article 17/1.12: 'An occupational disease which is attributable to the performance of functions within the Organisation shall be deemed to be a work accident. '

66. The attributability of the origin of the disease means that the direct and essential cause of the disease lies in the person's work within the Organisation, without any need to refer to French legislation if the matter can be resolved without further difficulty.

67. The expression 'originally' refers to the primary source of the event, to its decisive cause. The origin of the occupational disease must be directly and essentially attributable to the performance of the Applicant's functions within the Organisation. These are the same criteria as those found in point d) of Article 17/1.12. If an occupational disease which originates directly and essentially from the performance of functions within the Organisation has grown worse or has caused deterioration resulting from the vulnerability that it originally caused, this does not alter its classification. It will remain an occupational disease.

68. Moreover, to a certain extent and depending on the particular circumstances of each case, the existence of a pre-existing, asymptomatic, personal health condition is not an absolute obstacle to recognition of an occupational disease, if it is found that the performance of the functions was the direct cause of the incapacity.

69. Finally, the medical specialist must be aware that the burden of proof for an occupational disease lies not with scientific certainty but with the balance of the evidence.

70. The second question relates to the branch of French legislation relating to occupational diseases to which reference should be made in cases where the specialist has difficulty in interpreting point c) of Article 17/1.12.

71. In the first place, it should be recalled that the common law on social protection in France applies to employees in the private sector, since civil servants benefit from a special regime; in light of this, the reference made by the Regulations to the French legislation on occupational diseases should be interpreted, in the absence of any statement to the contrary, as a reference to the regime defined by the Social Security Code and to the jurisprudence of the courts of the judicial system.

72. Secondly, the institution by the Organisation of a specific social protection scheme for its officials is taken into consideration by the Agreement between the Government of the French Republic and the Organisation signed on 24 September 1991, which appears in Appendix 1 to Annex XIV of the Regulations. This agreement stipulates to what extent the Organisation's staff, henceforth subject to 'an autonomous social protection scheme', are consequently exempt from 'compliance with the French Social Security scheme', and to what extent they remain subject to it and continue to benefit from it (Articles 1 to 4). It also stipulates the extent to which the Organisation, as an employer, is subject to 'French Social Security legislation' (Article 5). The same expressions ('French Social Security', 'French Social Security scheme', 'Social Security legislation or

regulations', etc.) are used in many other provisions of the Agreement, as well as in the Administrative Arrangement established by the parties on the same date for the application of the Agreement. As this is an agreement between a State and an international organisation, reference should be made to the principles of interpretation set out in the Convention on the Law of Treaties between States and International Organizations or between International Organizations established in Vienna on 21 March 1986.

73. Article 31 of this convention states that: '1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. '

74. On the one hand, as stated earlier, the ordinary meaning of the term 'French legislation on occupational diseases' is the legislation codified in the Social Security Code. It is nowhere stated that the intention of the parties would have been to give a special meaning to those terms.

75. On the other hand, the context in which this Agreement was concluded must be taken into account, in particular the fact that it supersedes the previous Agreement of 5 March 1959 which provided for the application of 'French Social Security legislation' to the Organisation's staff. The constant element here is that the officials were, under the terms of this Agreement, affiliated to the general French social security scheme. These terms have not changed meaning merely because by the 1991 Agreement the Organisation has set up its own social protection scheme, which the 1991 Agreement takes into account and recognises as replacing the French Social Security scheme. It follows that in the context of these Regulations, the terms in question have retained the meaning they have had since 1959.

76. Having settled these points, it is necessary to examine the answers given by the medical specialist to the questions put to him in the letter of appointment sent to him by the Organisation, which were given in the form he had to complete.

77. As the Tribunal ruled in Case 82 and as has been pointed out in § 67 above, the concept of attributability referred to in point c) of Article 17/1.12 of the Regulations implies the existence of a direct and essential link between the functions performed in the Organisation and the origin of the disease.

78. The form phrases the first of the two questions raised by point d) of Article 17/1.12 in precisely these terms. Once the medical specialist had answered this question in the negative, it makes sense that he answered the question raised by point c) of Article 17/1.12 in the same way, since the criteria are exactly the same.

79. Despite the confusion which the form may have caused by its title and the use of the conjunction 'and' instead of 'or', the fact remains that the medical specialist did not commit an obvious error, i.e. an error of fact not involving any appraisal, when it concluded that the occupational disease had not been caused by the performance of functions within the Organisation.

80. However, it would be good practice for the Organisation to transmit to the medical board a completely neutral form which (1) is simply entitled Request for medical opinion and (2) places Instruction 17/1.12 c) in a separate section from Instruction 17/1.12 d).

81. In the present case, in light of the foregoing, the Applicant has not shown that the Secretary-General's decision was unlawful and, consequently, the application is dismissed.

82. However, the new form required elaborate argumentation. The Organisation must therefore pay costs in the amount of 2,000 euros.

FOR THESE REASONS, THE TRIBUNAL

DECIDES

The application for annulment and compensation is dismissed except in respect of costs which are limited to 2,000 euros.

All other claims in the application are dismissed.