

ANNEX III - RESOLUTION OF THE COUNCIL ON THE STATUTE AND OPERATION OF THE ADMINISTRATIVE TRIBUNAL

(Adopted on 12 December 1991) [See Regulation 22 c), d) and e)]

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Article 1

Jurisdiction of the Tribunal

- a) The Administrative Tribunal of the OECD shall have jurisdiction over applications filed in the cases provided for under the Staff Regulations, and the Regulations for Council experts and consultants, auxiliaries or employees.
- b) The Tribunal shall also have jurisdiction over applications filed by the Staff Association or a trade union or professional organisation in respect of any act affecting them or directly prejudicing any rights accorded to them under the Regulations, Rules and Instructions applying to the officials of the OECD, Council experts and consultants, auxiliary staff or employees.
- c) The Tribunal shall have jurisdiction over applications filed by persons who are not members of staff of the Organisation, challenging the refusal of their application for appointment to functions governed by the above-mentioned Regulations, where it is alleged that such refusal was the result of discrimination based on the grounds of racial or ethnic origin, nationality, opinions or beliefs, gender, sexual orientation, health or disabilities.

Last update: January 2011

Article 2

Rules of Procedure

The Administrative Tribunal of the Organisation shall, subject to the provisions of this Resolution, establish its own Rules of Procedure.

Article 3

Written Request prior to the filing of Applications

- a) Subject to the provisions of Article 4 b) below, applications to the Administrative Tribunal shall not be admissible unless the applicant has given the Secretary-General a prior written request for withdrawal or modification of the contested decision, and the Secretary-General has rejected such request or has not replied within a period of one month. Such prior request shall be given to the Secretary-General within two months from the date of notification of the contested decision in the case of members of staff, the Staff Association or trade unions or professional organisations, or within four months from the date of such notification in the case of former members of staff or duly qualified claimants to the rights of members of staff or former members of staff.

b) In the case of applications referred to in Article 1 c) above, the time limit for submitting a prior written request to the Secretary-General shall be two months from the date of the notification to the job applicant of the rejection of his application. Such notification of rejection shall set out the terms of Articles 1 c) and 3 a), b) and c) of the present Resolution.

c) An additional period of two months for submitting such a prior written request shall be accorded to persons resident outside metropolitan France.

d) In exceptional cases, the Secretary-General may accept a request submitted after expiry of these time limits.

Article 4

Filing of Applications

a) 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. However, in exceptional cases, the Administrative Tribunal may admit applications filed after such time limit has expired.

b) If the applicant has referred the dispute to the Advisory Board or the Re-evaluation Commission, the application shall not be submitted to the Tribunal until the applicant has received notification of the decision of the Secretary-General taken after the opinion of the Advisory Board or the Commission. In such cases, the time limit laid down in paragraph a) above, shall run as from the date of notification of this decision.

Last update: April 2009

c) Applications shall be in writing; they shall set out all grounds of complaint invoked by the applicant and shall be accompanied by any documentary evidence in support thereof. When the application refers to the intention of the applicant to submit an expanded statement in which the grounds for such application will be amplified or supplemented, such expanded statement must be submitted at the latest one month after expiry of the time limits for filing applications. Should this time limit not be observed, the applicant shall be deemed to have withdrawn the application at the date of expiry of this time limit, even if the expanded statement is produced subsequently, unless the Chairman extends the time limit or the Tribunal judges the case to be exceptional.

d) Although the filing of applications shall not suspend the application of contested decisions, the Secretary-General, during the period within which applications may be filed or while the proceedings are under way, shall endeavour not to take any further steps which would alter the situation within the OECD to the detriment of the applicant and would thereby render impossible the redress claimed by the latter, should the Tribunal find the application well-founded.

Article 5

Intervention in the Proceedings by Third Parties

a) Any person entitled to file an application before the Tribunal may intervene in a case on the ground that he/she has rights which may be affected by the Tribunal's judgment. The Tribunal shall rule on the admissibility of such intervention. Should the Tribunal find that the principal application was well-founded, any person who intervened in support of the submissions made therein shall have the same rights, *mutatis mutandis*, as the applicant.

b) When it appears from the submissions in the application that, were they to be accepted by the

Tribunal, the judgment would adversely affect the rights of a third party, such person shall receive a copy of the application and be invited to participate in the proceedings. Should he/she accept such invitation and submit comments, he/she shall be joined as party to the proceedings.

c) The Staff Association may, if requested by the applicant, submit written comments on the case before expiry of the time limit for submission of thereply.

Article 6

Pre-hearing Procedure

a) The Rules of Procedure shall specify how and when the written comments of the parties, together with any supporting documentary evidence, shall be submitted.

b) The Tribunal may order any measure of investigation and may require the production of any document which it deems useful for the consideration of applications before it. Documents so produced shall also be communicated to the Secretary-General and the applicant.

c) Between sessions, the Chairman or other judge designated by the Chairman for that purpose shall make interim decisions on all measures requested of him/her.

d) Where the Chairman of the Tribunal holds that an application is clearly inadmissible or devoid of merit, the Chairman may instruct the Registrar to take no further action on it until the next session of the Tribunal. Such ruling shall suspend all procedural time limits. After considering the application and, where appropriate, the opinion of the Advisory Board or the Re-evaluation Commission, the Tribunal may either summarily dismiss the application, by unanimous decision, as being clearly inadmissible or devoid of merit, stating the grounds therefor, or it may decide to proceed with the case in the normal way.

Last update: April 2009

Article 7

Convening of the Tribunal

a) The Tribunal shall be convened by its Chairman.

b) The Tribunal shall, as a general rule, hear cases within six months of the filing of the application.

c) In fixing the date of sessions, the Chairman may depart from the general rule laid down in paragraph b) of this Article for the purpose, inter alia, of enabling several cases to be dealt with at one session, provided that the period specified shall in no case exceed eight months.

Article 8

Composition of the Tribunal

a) In the event of the absence or inability to act of the Chairman, he/she shall be replaced by the deputy designated by him/her. The Chair shall be taken by the judge who has served for the longest period or, in cases of equal seniority, by the oldest judge.

b) In the event of the absence or inability to act of one of the judges, he/she shall be replaced by the deputy designated by the Chairman.

- c) In the event of the death, resignation or prolonged inability to act of the Chairman, a judge or a deputy, a new appointment shall be made for the unexpired term.
- d) The Tribunal shall not be validly constituted unless three members are present.
- e) The judges and deputies shall be impartial and completely independent in the exercise of their duties.

Article 9

Registry of the Tribunal

- a) After consulting the Chairman of the Tribunal and the Staff Association, the Secretary-General shall appoint the Registrar of the Tribunal and a Deputy Registrar to assist and where necessary take the place of the Registrar.
- b) In the performance of their duties, the Registrar and Deputy Registrar shall be answerable only to the Tribunal.

Last update: January 92

Article 10

Hearings of the Tribunal

- a) The hearings of the Tribunal shall be in public unless the Tribunal decides otherwise, either on its own initiative or at the request of one of the parties. Part or all of the hearing may be held *in camera*. Hearings in any case involving matters of discipline shall be held *in camera*.
- b) The parties to the proceedings and, in cases where it has submitted written comments in accordance with Article 5 c), the Staff Association may attend the hearing and address the Tribunal orally in support of submissions contained in their written statements. They may be assisted or represented for this purpose. The Staff Association may, in all cases, nominate a representative to attend hearings before the Tribunal. The Tribunal may authorise such representative to address them briefly.
- c) Any person having attended a hearing of the Tribunal held *in camera* shall observe the strictest secrecy concerning any facts that may have come to his/her knowledge or any opinions expressed in the course of the proceedings.
- d) At the request of one of the parties and with the consent of the other parties, the Chairman may direct that the case shall proceed without an oral hearing.
- e) The deliberations of the judges shall be in secret and no other person shall be present.

Article 11

Witnesses

- a) The Tribunal shall hear any witnesses whose evidence it deems useful. Should a witness be unable to attend the hearing of the Tribunal, the witness may be invited to reply in writing to the questions put to him/her.

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b) Any member of the staff of the Organisation called as a witness shall appear before the Tribunal and may not refuse to give the information requested. Should an a staff member fail to meet these obligations, the Tribunal may, if it does not consider such failure justified, impose a fine of such amount as it shall see fit, without prejudice to any disciplinary measure by the Secretary-General. However, a witness may refuse to give information for reasons of professional secrecy which the Tribunal accepts as justified, having regard to the general principles of law.

Article 12

Judgments of the Tribunal

a) Judgments of the Tribunal shall be by majority vote and in writing. They shall address the grounds relied upon by the parties and state the reasons on which they are based.

b) Judgments shall not be subject to appeal except for purposes of rectification of error ("erreur matérielle"), revision or interpretation.

c) Within one month from the date of notification of the annulment by the Tribunal of a decision of the Secretary-General, the Secretary-General may, in exceptional cases, where he deems it impossible or inadvisable to take the steps which such annulment would imply, request the Tribunal to fix instead an amount of compensation to be paid to the applicant as redress for any injury incurred.

The Tribunal shall fix such amount after hearing the arguments of the opposing

parties. Last update: January 92

Article 13

Reimbursement of Expenses

a) The Tribunal may decide that the Organisation shall, within reasonable limits, reimburse justified expenses incurred by the applicant.

iv) The Tribunal may also decide that the Organisation shall reimburse travel and subsistence expenses incurred by witnesses it has heard, within the limits laid down by the Rules in force in the Organisation.

c) When making decisions under the present Article, the Tribunal shall have regard to the special circumstances of the dispute, in particular its nature and complexity, and the amount of money involved.

Last update: January 92

RULES OF PROCEDURE OF THE TRIBUNAL

[adopted by the Tribunal on 20th January 1992]

Rule 1

Languages

- a) The official languages of the Tribunal shall be English and French.
- b) Applications and interventions may be submitted in English or in French. All documentary evidence shall also be submitted in English or French together with the original version if this is not in either of these two languages. The written comments of the Secretary-General shall be submitted in the language used by the applicant. If so requested by a member of the Tribunal, these documents shall be accompanied by a translation into the other official language. The Registrar of the Tribunal shall be responsible for the preparation of such translations and shall communicate them to the parties.
- c) At hearings of the Tribunal, oral comments may be made in English or French and shall, at the request of one of the judges or one of the parties, be interpreted simultaneously into the other language.
- d) Judgments shall be delivered in one of the official languages and, under the responsibility of the Registrar of the Tribunal, translated into the other one. The only authentic text shall be the original version.

Rule 2

Filing of Applications

- a) Applications for submission to the Tribunal shall be drawn up in duplicate and shall, as far as possible, follow the models annexed to these Rules. They shall set out clearly the principal and subsidiary submissions of the applicant.
- b) Documentary evidence in support of the application shall in all cases include the contested decision together, in cases other than those referred to in Article 4 b) of the Resolution of the Council on the Statute and Operation of the Administrative Tribunal (hereinafter referred to as the "Resolution"), with the written request addressed to the Secretary-General and, except where no reply has been received from him, the communication notifying the applicant that his request has been rejected. If the original documents are not available, the applicant shall produce certified copies thereof.

Last update: January 92

Rule 3

Pre-hearing Procedure

- a) The Registrar of the Tribunal shall receive documents addressed to the Tribunal and shall carry out the notifications provided for below. He shall open and compile the file of each case with all possible despatch and within the prescribed time limits.
- b) Applications shall be communicated to the Secretary-General who shall make his comments thereon in writing within two months from the date of communication of the application or, where appropriate, of the

expanded statement. Where an Advisory Board or a Re-evaluation Commission has been set up, its report shall be attached to the comments. The comments of the Secretary-General shall be communicated to the applicant who may within one month of such communication submit a reply in writing.

c) The Secretary-General may within one month from the date of communication of the reply submit his comments in rejoinder.

d) The time limits for the pre-hearing procedure specified in this Rule shall cease to run from 15 July to 15 September. They may be extended by the Chairman of the Tribunal where he finds there are good grounds for so doing.

e) If necessary, any measure of investigation or hearing of witnesses may, if the Tribunal so decides, be conducted by one of its members or by any other person whom the Tribunal may designate for that purpose. As far as possible, no evidence shall be taken under this paragraph until after the parties have been heard thereon; a report thereon shall be made to the Tribunal in writing.

f) The Chairman of the Tribunal shall decide whether, in pursuance of Article 5 b) of the Resolution, the application should be communicated to a third party who should be invited to participate in the proceedings. He shall fix the time limit within which such third party may submit his comments. Should the third party accept this invitation and submit comments within the time limit fixed, he shall become a party to the proceedings and have the same rights, *mutatis mutandis*, as the applicant and the Secretary-General. His comments shall be communicated to the applicant and to the Secretary-General.

Last update: May 2009

Rule 4

Intervention

a) Any person who, in pursuance of Article 5 a) of the Resolution, wishes to intervene in a case shall draw up an application in intervention and file it with the Registrar of the Tribunal. Submissions contained in the intervention document shall not have any other purpose than to support the submissions of either the applicant or the defendant.

b) Applications in intervention may be filed at any time prior to the opening of the hearing before the Tribunal.

c) The Registrar shall send a copy of the intervention document to the parties to the proceedings.

d) Interveners may request communication of the comments of the parties to the proceedings. The Chairman shall decide which documents are to be communicated to interveners. However, in the cases referred to under Article 5 b) of the Resolution of the Council, all comments of the parties shall be communicated automatically.

Rule 5

Comments of the Staff Association

a) The Staff Association may avail itself of the possibility provided for in Article 5 c) of the Resolution by submitting its comments to the Registrar who shall send a copy to the parties.

b) The comments shall be accompanied by evidence establishing that the applicant has requested the Association to submit comments.

c) The Registrar shall communicate to the Staff Association the documents of the written procedure relating to the stage of the procedure preceding the filing of the reply as well as subsequent documents.

Last update: January 92

Rule 6

Powers of the Chairman

a) As far as possible, measures shall not be taken under Article 6 of the Resolution until the parties to the application have been heard thereon; such measures shall be the subject of a report to the Tribunal in writing.

b) Should the applicant withdraw his application, the Chairman may accept the withdrawal without convening the Tribunal for this purpose, provided the withdrawal is unconditional.

Rule 7

Convening of hearings

a) The date of hearings shall be decided by the Chairman after consulting the parties and the Staff Association when the Association has submitted written comments in accordance with Article 5 c) of the Resolution. It shall be notified by the Registrar to the judges, parties, interveners and the Staff Association as a general rule at least 20 days in advance. A copy of the file of each case shall be sent with this notification to each of the judges. The Chairman shall rule on any request for the hearing to be postponed.

b) As soon as the Registrar has received the comments in rejoinder or as soon as the time limit for submitting such comments has expired, he shall inform the parties who then have one week in which to notify him in writing of the names and description of the witnesses they wish to call, together with the reasons why they wish to question them.

c) Unless the Chairman of the Tribunal considers that their evidence would not be useful, the witnesses cited by the parties shall be summoned by the Registrar by any means allowing proof that the summons was received by the addressee, as a general rule, at least two weeks before the day of the hearing. The letter of summons shall set out the terms of Article 11 of the Resolution.

d) Any request that a witness be called made after expiry of the period referred in paragraph b) above shall be submitted along with the grounds for the request to the Chairman of the Tribunal for decision. Those witnesses whose evidence the Tribunal or its Chairman deems useful shall be summoned by the Registrar, if possible in accordance with the provisions laid down in paragraph c) above.

Last update: May 93

Rule 8

Hearings

a) There shall be a hearing of all parties, except where Article 10 d) of the Resolution applies, and deliberations by the Tribunal in private, at each meeting of the Tribunal. The Tribunal may decide to sit despite the absence of one of the parties, provided such party was duly notified of the date of the hearing.

b) The Chairman shall be responsible for the conduct of proceedings.

c) The Tribunal shall rule on any objection made with regard to its composition, before consideration of the case before it.

d) Before hearing a witness, the Chairman shall request him to give an undertaking to reply fully and accurately to the questions put to him. When the hearing is in camera, he shall draw his attention to the fact that all those attending the hearing are bound to secrecy. If the witness is a member of the staff, the Chairman shall inform him that by virtue of Article 11 b) of the Resolution, it is his duty to give any information required of him. At the request of one of the parties, the Tribunal may decide that a recording shall be made of the evidence given by witnesses.

e) Where in the course of a meeting of the Tribunal, it appears that further investigation, under Rule 3 e) of these Rules, is necessary to enable it to render its judgment, the Tribunal may, if it deems it appropriate, agree to render its judgment without holding a new meeting for that purpose. In such cases, the Registrar shall inform the parties of the outcome of the investigation and of the time limit within which they may submit any comments on the matter. The Tribunal shall render judgment after having received these comments or, where appropriate, after expiry of the time limit for submitting them accorded to the parties.

Rule 9

Judgments

a) Judgments of the Tribunal shall, in addition to dealing with the arguments presented by the parties and stating the grounds for the decision, include a summary of the pre-hearing proceedings and of the hearing. Judgments shall be signed by the Chairman and by the Registrar of the Tribunal who shall notify them to the parties and, where appropriate, interveners, and to the Staff Association in cases where the latter has submitted written comments on the case under Article 5 c) of the Resolution, as soon as possible after they have been adopted.

b) Judgments shall be notified to the applicant in their original version and, subsequently, in the language of procedure chosen by the applicant if different from the language of the original version. The time limits for appeals under Rules 10, 11 and 12 of these Rules shall not begin to run against the applicant until notification to him in the language of procedure chosen by him.

c) Judgments shall be communicated by the Registrar to any person who so requests. However, the Tribunal may decide that a judgment shall not be communicated until the name of the applicants or any person mentioned therein has been deleted.

d) If the Secretary-General requests the Tribunal to fix an amount of compensation under Article 12 c) of the Resolution, reasons must be given for the request. The request shall be communicated to the applicant by the Registrar who shall invite him to make his views known within one month at most and to specify the amount of compensation he claims. The request shall also be communicated to the Staff Association in order for it to make its position known in cases where it has submitted written comments under Article 5 c) of the Resolution. The Secretary-General shall receive communication of the comments of the applicant and, where appropriate, of the Staff Association, and shall have one month in which to make known his position concerning the submissions of the applicant. The Tribunal shall then fix the amount of compensation on the basis of the written procedure, unless an oral hearing has been requested by the applicant or by the Secretary-General.

Rule 10

Appeal for rectification

When a judgment is vitiated owing to a mistake ("erreur matérielle") or an error relating to the submissions in the application, and this error or mistake may have decisively influenced the decision of the case, one of the parties may file an appeal for rectification with the Tribunal, within three months from the date of notification of the judgment.

Rule 11

Appeal for revision

- a) One of the parties may request the Tribunal to revise a judgment in the event of the discovery of a fact or evidence of decisive importance which, at the time of the judgment, was unknown to the Tribunal and to the party requesting revision.
- b) The appeal must be lodged with the Registry of the Tribunal within three months from the date of discovery of the fact or evidence and within five years from notification of the judgment in question.

Rule 12

Appeal for interpretation

Where the operative provisions of a judgment are ambiguous or incomplete or where they are inconsistent either with each other or with the *ratio decidendi* (reasons in point of law), one of the parties may, within three months from notification of the judgment, request the Tribunal to interpret it.

Rule 13

Procedure on appeal against a judgment

In the event of an appeal requesting rectification, revision or interpretation of a judgment of the Tribunal, the provisions of the Resolution and of these Rules shall apply, *mutatis mutandis*, to the appeals procedure and judgment.

Last update: January 92

Rule 14

Calculation of Time Limits

- a) The time limits laid down in the Resolution and Rules of Procedure shall run from midnight of the first day of each time limit as defined in the provision concerned. Saturdays, Sundays and official holidays shall count when calculating a time limit. However, where the last day of a time limit is a Saturday, Sunday or official holiday at OECD Headquarters, the time limit shall be extended to include the first working day thereafter.
- b) Where, under the Resolution or Rules of Procedure, a time limit runs from a communication or notification, it shall begin to run only from the date of reception of the notification or communication by the party to whom the time limit applies.

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Appendix 1

Model Application to the Tribunal

- 1 Name, first name(s) and address of applicant.
- 2 Author, date and subject matter of the contested decision.
3. Statement of facts, including:
 - a) date of the prior written request addressed to the Secretary-General;
 - b) date of reply, or reference to absence of reply from the Secretary-General;
 - c) where appropriate, the date when the applicant received notification of the decision of the Secretary-General taken after the opinion of the Advisory Board or the Re-evaluation Commission.
4. Legal grounds and arguments submitted.
5. The principal and subsidiary submissions of the application (redress sought).
6. Date and signature.

Last update: May 2009

Appendix 2

Model Application for Intervention before the Tribunal

1. Application in relation to which intervention is requested.
2. Name, first name(s) and address of intervener.
3. Statement of reasons explaining the intervener's interest in the outcome of the dispute.
4. Legal grounds and arguments relied on.
5. Intervener's submissions (redress sought).
6. Date and signature.

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