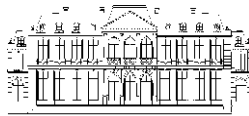


OCDE

ORGANISATION DE COOPÉRATION ET  
DE DÉVELOPPEMENT ÉCONOMIQUES



OECD

ORGANISATION FOR ECONOMIC  
CO-OPERATION AND DEVELOPMENT

**ADMINISTRATIVE TRIBUNAL**

Judgment of the Administrative Tribunal

handed down on 18 June 1998

**JUDGMENT IN CASE No. 31**

Mr. P.

v/ Secretary-General

**Translation**

(The French version constitutes the authentic text)

JUDGMENT IN CASE No. 31 OF THE ADMINISTRATIVE TRIBUNAL

Sitting on Wednesday 10 June 1998  
at 10.00 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 Professor Luigi CONDORELLI,

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

On 4 July 1997, Mr. P., a grade A3 official of the Organisation, submitted a prior request to the Secretary-General asking him to withdraw his decisions of 7, 16 and 30 May 1997 refusing the applicant's requests for dispensation from notice and compensation for the material and moral prejudice he claimed to have suffered because of the Organisation's failure to fulfil its legal obligations towards him. By letter of 9 September 1997, the applicant was informed that the Secretary-General did not intend to change his decisions.

On 7 November 1997, Mr. P. filed an application (No. 31) requesting the Tribunal to annul the Secretary-General's decision of 9 September 1997, with all the legal consequences resulting therefrom, and to order payment by the defendant to the applicant of costs of an amount to be determined at the end of the procedure.

On 12 January 1998, the Secretary-General submitted his comments rejecting all the applicant's submissions.

On 9 February 1998, the Staff Association filed an intervention document in support of the applicant's submissions.

On 11 February 1998, the applicant submitted a reply.

On 13 March 1998, the Secretary-General submitted his comments in rejoinder in which he maintained his submissions rejecting Mr. P.'s application.

The Tribunal heard:

Maître Jean-Didier Sicault, Lecturer in International Civil Service Law at the Paris I and Paris II Universities, Barrister at the Court of Appeal of Paris, Counsel for the applicant;

Mr. David Small, acting Legal Counsel, and Mr. Joao Viegas, on behalf of the Secretary-General;

and Mr. Patrice Billaud, on behalf of the Staff Association.

It handed down the following decision:

The facts

On 14 November 1996, at a meeting of members of staff of the Organisation outside working hours and premises, Mr. P. was the victim of an attack by a colleague, Mr. G., which caused him significant injury as a result of which he was placed on sick leave until 21 January 1997. On 19 November 1996, having learned that Mr. G. had resumed working in the Statistics Directorate where he himself worked, Mr. P. asked the Head of Personnel to provide guarantees against any recurrence of such an attack. He repeated this request in a letter sent to the Secretary-General on 5 January 1997, then in a memorandum to the Head of Personnel on 27 January 1997.

Meanwhile, having obtained an assurance from the Director of Statistics that Mr. G. had been transferred for a period of three months, Mr. P. resumed his duties in this Directorate on 21 January 1997. It was only on 3 February 1997 that the new Head of Personnel replied to Mr. P.'s correspondence, inviting him to resume work and asking him to report any threats made against him. On 4 April 1997, Mr. P. wrote to the Head of Personnel again, saying that since he had not obtained sufficient guarantees he wished to leave the OECD, and claiming that the Organisation was to blame for this situation. He was again placed on sick leave from 9 to 19 April.

On 9 April 1997, the Head of Personnel confirmed to Mr. P. the tenor of their meeting on 1 April: since the Organisation did not consider his departure to be in the interests of the service, application of the provisions of Article 11 a) v) was excluded. On 18 April, Mr. P. sent the Secretary-General a letter in which he submitted his resignation as from 16 May 1997, the date on which he was to begin a new job with the European Community, asked to be dispensed from giving notice and claimed the payment of various indemnities to compensate the material and moral prejudice for which he said the Organisation was to blame.

On 7 May, the Head of Personnel asked Mr. P. to reconsider his decision while confirming that Mr. G. would resume working in the Statistics Directorate on 12 May but reminding Mr. P. that his colleague had, on 4 April, been given an eight months' suspended prison sentence by the *Tribunal de grande instance de Paris*. In the same memorandum, he informed Mr. P. that his request to be dispensed from notice could not be granted and that his claims for compensation would be refused. On 16 May, the same Head of Personnel, noting that Mr. P. had been absent since 19 April, informed him that if he did not resume his duties by 20 May, he would be deemed to have abandoned his post and that the amount corresponding to notice and emoluments paid since 19 April would be deducted from his leaving allowance.

On 30 May, the Head of Personnel confirmed to Mr. P. the Organisation's position. On 4 July, Mr. P. asked the Secretary-General to annul the decisions of the Head of Personnel dated 7, 12 and 30 May and to grant him the requests he had made in his letter of 18 April. On 9 September, the Head of Personnel informed Mr. P. that the Secretary-General refused his requests, and added that an additional sum would be deducted from his leaving allowance to pay for health costs already reimbursed but which had been incurred after 21 April 1997.

Mr. P.'s application is directed against all these decisions.

On the submission that the Organisation failed in its duty of protection.

The Tribunal notes with regret that the Organisation, as indeed it recognised during the proceedings, did not reply quickly enough to Mr. P.'s requests concerning the circumstances of his return to work, in particular as regards the duration of Mr. G.'s transfer.

It does not, however, consider that this negligence, which cannot be excused by the fact that the Head of the Human Resource Management Division was being replaced, caused the prejudice complained of by Mr. P.

It notes, in the first place, that the violent incident opposing Mr. P. and Mr. G. occurred outside working hours and premises and that even though it arose following a friendly meeting on the premises of the Organisation, the latter is in no way responsible for its occurrence.

The Tribunal notes in the second place that Mr. P. has not claimed that between his return to work on 21 January, and 1 April, the date on which a “negotiated departure” was refused him, he was threatened in any way by Mr. G., and has not shown that he was in any real danger. While recognising that the injuries inflicted on Mr. P. could have had a lasting traumatic effect on him and made him never want to be in contact with Mr. G. again, the Tribunal is of the opinion that the Organisation was not obliged, in the circumstances of the case, to give priority to this consideration. For one thing, the origin of the traumatic incident of which Mr. P. was a victim was totally external to the Organisation, and for another, transferring Mr. G. permanently did not appear compatible with the proper functioning of the service; in the third place, the two officials would not have been in permanent contact, and lastly, there was every reason to think that with a suspended prison sentence hanging over his head, Mr. G. would abstain from re-offending. The Tribunal considers, more generally, that the Organisation’s obligation to protect its staff does not mean that it must at all costs prevent any subjective feeling of insecurity, with no objective basis, irrespective of whether or not this risks comprising the proper functioning of the service.

In these circumstances, the Tribunal is of the opinion that the Organisation was not in breach of its obligation to protect its staff, and that Mr. P.’s departure is indeed attributable to a decision he took himself, in full knowledge of the facts.

#### On the claim that there was a misuse of power

The Tribunal notes, first of all, that the allegation that the Organisation treated Mr. G. with greater indulgence than other officials is not backed up by any shred of proof based on similar cases of altercations outside the place of work.

It notes, secondly, that while the Organisation applied the letter of the law following Mr. P.’s decision to take up his new functions with the European Community on 16 May, it cannot be condemned for this nor can it be deduced that its decisions of 7, 16 and 30 May were based on a desire to get rid of Mr. P. at the least possible cost.

In these circumstances, the alleged misuse of power has not been established.

Since all the submissions were unfounded, the application must be dismissed.

#### On the intervention of the Staff Association

The Tribunal notes the intervention of the Staff Association in which it points out that the Organisation delayed in replying to Mr. P.’s requests and that it did not sufficiently extend the period of Mr. G.’s temporary transfer.

#### As to costs

The Tribunal decides that in the circumstances of the case, the Organisation shall pay FF 7 000 to Mr. P. towards his legal costs.

The Tribunal decides:

- 1) The application is dismissed;
- 2) The Organisation shall pay Mr. P. the sum of FF 7 000.