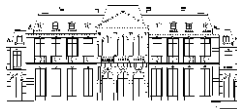


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**ADMINISTRATIVE TRIBUNAL**

Judgment of the Administrative Tribunal

handed down on 16 March 2000

**JUDGMENT IN CASES Nos. 43-46**

Mr. B., Mr. G., Mrs. H. and Mrs. T.

v/ Secretary-General

**Translation**

(The French version constitutes the authentic text)

JUDGMENT IN CASES Nos. 43-46 OF THE ADMINISTRATIVE TRIBUNAL

Sitting on Friday 10 March 2000  
at 2.30 p.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.

The OECD Council Resolution adopted on 29 January 1998 provides that “The Secretary-General is authorised to terminate the appointment of officials prepared to leave the employment of the Organisation by mutual consent under the Special Departure and Renewal Programme set out in this Resolution”.

Four officials of the International Energy Agency (IEA), namely, Mr. B., Mr. G., Mrs. H. and Mrs. T., who fulfilled the conditions as to age and length of service, applied.

By letter of 20 March 1998, these officials were informed individually that the Secretary-General could not accede to their request. The Joint Advisory Board, the convocation of which had been requested by the applicants, gave its opinion which was notified to the applicants on 8 April 1999, at the same time as the decision confirming the Secretary-General’s refusal.

On 5 July 1999, Mr. B., Mr. G., Mrs. H. and Mrs. T. each filed an application, registered as No. 043, 044, 045 and 046, respectively, asking the Tribunal to annul the Secretary-General’s decision refusing to grant them the benefit of the Special Departure and Renewal Programme .

On 15 November 1999, the Secretary-General submitted his comments rejecting the submissions of the appeal.

On 14 December 1999, each applicant submitted a reply.

On 17 January 2000, the Secretary-General submitted his comments in rejoinder.

On 29 February 2000, Mr. H., an official of the IEA, whose request to benefit from the Special Departure and Renewal Programme had also been refused, submitted an intervention document supporting Mr. B.’s submissions.

The Tribunal heard:

Maitre Roland Rappaport, Barrister, Counsel for the applicants;

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

It handed down the following decision:

The Tribunal considers that the four applications raise the same point of law and that it can give its ruling by means of a single decision which will, if necessary, take account of the features specific to each case.

### The facts

The applicants were informed, on 19 November 1997, that they fulfilled the conditions to benefit from the Special Departure and Renewal Programme (SDRP) which was to be submitted to the Council.

After adoption by the Council of a Resolution, on 29 January 1998, authorising implementation of this Programme, the applicants were invited, on 2 February, to apply, which Mr. B. did on 9 February, Mr. G. on 10 February, Mrs. H. on 4 February and Mrs. T. on 10 February. All four were informed, on 20 March, that their application had been refused on the ground that “termination of their appointment would not be compatible with the interests of the Organisation”.

They then addressed, on 7 April 1998, a joint letter to the Secretary-General stating that since the reason for the systematic refusal of their applications seemed to be that they worked for the International Energy Agency and since their cases had not been examined individually, the decisions refusing their applications seemed to them to be illegal. Before receiving a reply, they asked, in a letter of 13 May 1998, for the Joint Advisory Board to be convened.

On 11 June, the Executive Director replied, on behalf of the Secretary-General, that the latter had indeed decided to give priority to applications from staff whose posts came within Part I of the budget and that since these applications had used up the funds available, he had decided to refuse applications from officials whose posts came within Part II, as was the case for staff of the International Energy Agency.

On 19 and 24 June, the applicants confirmed that they requested a meeting of the Joint Advisory Board. The Board met on 9 July but only notified its opinion to the Secretary-General on 11 December following. The Board’s opinion was that since the Resolution of 29 January 1998 had not specified that the SDRP was to be funded exclusively out of Part I of the budget and since the fact of working for the IEA did not indicate a significant difference of situation, it asked the Secretary-General to re-examine the applications, which failing to grant the applicants appropriate compensation.

The Secretary-General decided to follow the first part of the opinion and on 8 January 1999 organised a meeting with the management of the IEA from which it transpired that the Agency did not support the departure of these officials since it was being asked to pay for their departure out of its budget.

On 15 March 1999, the Secretary-General informed the four applicants that he confirmed his decision not to admit them to the SDRP and that since benefiting from this Programme was not a right, he could not pay them any compensation. It is not disputed that these letters were not communicated to the applicants until 8 April 1999.

These are the decisions in respect of which the applicants filed applications on 5 July 1999.

### Legal framework

The Tribunal has looked at Council Decision No. 180 of 15 November 1974 establishing an International Energy Agency of the Organisation, Article 1 of which provides that “an International

Energy Agency [...] is hereby established as an autonomous body within the framework of the Organisation”. Article 7 a) stipulates that “the organs of the Agency shall be assisted by an Executive Director and such staff as is necessary who shall form part of the Secretariat of the Organisation ...”, while Article 10 a) provides that “the budget of the Agency shall form part of the Budget of the Organisation and expenditure of the Agency shall be charged against the appropriations authorised for it under Part II of the Budget which shall include appropriate Budget estimates and provisions for all (underlining added by the Tribunal) expenditure necessary for the operation of the Agency. Each Participating Country’s share in financing such expenditure shall be fixed by the Governing Board”.

The Tribunal concludes from the above that it is not legally possible to make Part I of the budget pay for expenditure relating to the staff of the Agency. It notes, however, that this was not made clear in the Council Resolution of 29 January 1998 and that, on the contrary, officials of the Agency were invited to apply, in the same way as the other officials of the Organisation, despite the fact that it had already been decided that the Programme was to be financed out of Part I of the budget.

#### Validity of the claims

From the foregoing, the Tribunal finds that after the opinion given by the Joint Advisory Board, the Secretary-General was legally correct in asking the Agency if it accepted to finance out of its budget the expenditure corresponding to the application of the SDRP to its staff and, when the Agency declined, in refusing the applications made by Mr. B., Mr. G., Mrs. H. and Mrs. T. The applicants’ submissions asking for the decisions of 20 March 1998, as confirmed on 15 March 1999, to be annulled, must therefore be dismissed.

The Tribunal notes, however, that the way in which the Organisation treated the applications made by Mr. B., Mr. G., Mrs. H. and Mrs. T. was not correct; that in encouraging them to apply despite the fact that in the absence of an agreement with the Agency about the funding of the Programme their applications could not be successful, it gave them false hope, even if it was clear that not all applications could be accepted. The Tribunal also notes that the opinion of the Joint Advisory Board, which is a body of the Organisation, was not sent to the Secretary-General till more than 6 months after the meeting of the Board, whereas, according to Instruction 122/1.8 of the Staff Regulations, “the Board shall make recommendations by majority vote and transmit them to the Secretary-General within two months of the last meeting devoted to discussion of the dispute”. Lastly, the Tribunal notes that after having received the opinion of the Agency, on 8 January 1999, the Secretary-General waited a further 3 months before informing the applicants of his final decision.

Even though the applicants, who keep their jobs within the Organisation, have not suffered any material prejudice, the Tribunal considers that the way in which the Organisation acted caused them moral prejudice which would be justly compensated by awarding each of them the sum of 20.000 francs.

#### Costs

The Tribunal considers that in the circumstances of the case, the applicants are entitled to 5.000 francs each towards reimbursement of their costs.

#### The intervention of Mr. H.

The Tribunal understands that Mr. H., the fifth official of the International Energy Agency whose application for the SDRP was refused, wishes to invoke Article 5 a) of the Council Resolution on the Statute and Operation of the Administrative Tribunal in order to have the same rights, *mutatis mutandis*, as the applicants. The Tribunal, informed of the fact that the application of Mr. H. was

refused on 20 March 1998, as were those of the applicants, cannot help but note that Mr. H. did not take any legal action between that date and his intervention of 29 February 2000. His submissions are therefore late, and thus inadmissible.

The Tribunal decides:

- 1) The Organisation will pay an indemnity of 20.000 francs each to Mr. B., Mr. G., Mrs. H. and Mrs. T.
- 2) The Organisation will pay each of the applicants the sum of 5.000 francs towards reimbursement of costs.
- 3) The intervention of Mr. H. is dismissed.
- 4) The remaining submissions of the applications are rejected.