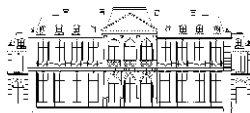


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ORGANISATION DE COOPÉRATION ET  
DE DÉVELOPPEMENT ÉCONOMIQUES



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ORGANISATION FOR ECONOMIC  
CO-OPERATION AND DEVELOPMENT

**ADMINISTRATIVE TRIBUNAL**

Judgment of the Administrative Tribunal  
handed down on 16 December 1993

**JUDGMENT IN CASES Nos 4-7**

Application N° 004 : Mr. R. F.  
N° 005 : Mr. M. F.  
N° 006 : Mrs. M. M.-B.  
N° 007 : Mrs. J. M.

v/Secretary-General

**Translation**

(The French version constitutes the authentic text)

JUDGMENT IN CASES Nos 4-7 OF THE ADMINISTRATIVE TRIBUNAL

Sitting on Tuesday 14 December 1993  
at 2 p.m., in the Château de la Muette  
2 rue André Pascal, Paris

The Administrative Tribunal was composed of

Mr. Jean MASSOT, Chairman,  
Mrs. Elisabeth PALM  
and Professor James R. CRAWFORD,

with Mr. Thierry MONNIER and Mr. Colin McINTOSH providing Secretariat services.

1. On 19 May 1993, Mr. R. F., a grade B official of the Organisation, filed an application registered as Application No. 004, requesting the Tribunal a) to annul the decision of 25 March 1993 by which the Secretary-General refused to review the calculation of the applicant's salary for the month of December 1992, which calculation took account of a deduction corresponding to the unemployment insurance contribution payable by French employees, such annulment to be accompanied by all the consequences in law resulting therefrom; b) to order the Organisation to pay the applicant the amounts incorrectly deducted from his salary since the month of July 1992; and c) to order reimbursement of the applicant's legal costs.

2. On 19 May 1993, Mr. M. F., a grade C official of the Organisation, Mrs. M. M.-B., a grade B official of the Organisation, and Mrs. J. M., a grade B official of the Organisation, filed applications registered as Nos. 005, 006 and 007, with the same submissions as those set out in paragraph 1, above.

On 20 September 1993, the Secretary-General submitted a single set of comments rejecting all four individual applications Nos. 004-007.

On 21 October 1993, the Staff Association lodged a submission in intervention supporting the applicants' submissions.

By letter dated 15 October 1993, counsel for the applicants informed the Registrar of the Tribunal that the applicants waived their right to submit a written reply.

The Tribunal heard

Professor David Ruzié, Professor at the University of Paris V, Counsel for the applicants;

Mr. Christian Schricke, Legal Counsel, Head of the Legal Directorate of the Organisation, on behalf of the Secretary-General;

And Mr. Jean-Louis Rossi, representing the Staff Association.

The Tribunal held that Applications Nos. 004-007 related to identical decisions, that they involved the same issues and that they should be joined together for the purposes of rendering a single judgment.

The Tribunal handed down the following judgment:

### The facts

At its session of 17 and 18 December 1992, the Council of the Organisation approved, with retroactive effect to 1 July 1992, new salary scales in accordance with the recommendations of the 14th Report of the Co-ordinating Committee on Remuneration and of the 254th Report of the Co-ordinating Committee of Government Budget Experts. On receiving their pay slips for the month of December 1992, which included back pay for the months of July to November, the applicants discovered that the new salary scales had been calculated on the basis of paragraph 11 of the 254th Report applicable to category B and C officials, in accordance with surveys of best local employers conducted by the Inter-Organisations Section in the Member countries concerned. They challenge the method of calculation applied whereby, by the Secretary-General's own admission, when converting gross salaries to the net salaries used as a basis for adjustment, account was taken of the contributions paid by French employees for unemployment insurance.

On 17 February 1993, the applicants asked the Secretary-General to reconsider his decision. On 25 March 1993, the Secretary-General refused to do so, and the applicants then referred the matter to the Tribunal.

First submission : taking unemployment insurance contributions into account is contrary to the provisions of paragraph 31 of Annex IV to the 254th Report of the Co-ordinating Committee of Government Budget Experts

The applicants claim that contributions to the French unemployment insurance scheme could be taken into account under the 159th Report which referred to the principles set out in the report of Working Party No. 16 - document CCG/W(78)2 (revised). Under paragraph 32 of this document, "To calculate the net minimum salary, it is necessary to deduct from gross salaries:

(a) national and supplementary social security contributions compulsorily payable by employees both in the private and public sectors".

They do not dispute that in France, contributions to the unemployment insurance scheme are compulsory social contributions.

They argue, however, that paragraph 31 of Annex IV to the 254th Report is based on an entirely different concept. This provision is drafted as follows: "Minimum salaries by grade are reduced:

i) by the amounts of the employee's contributions to compulsory national social security and pension schemes".

They point out that in France, contributions to the unemployment insurance scheme do not form part of the compulsory national social security system.

The Tribunal finds that this argument is well-founded. Given such a precise and clear difference in wording, the Tribunal cannot accept the Secretary-General's claim in defence that the effect of the two versions is the same and allows the practices applied since 1973 to be continued as before.

The Tribunal also feels that it serves no purpose to try to discover the reasons why, in the preparatory work for this document, it was decided not to retain a phrase which expressly provided that such contributions should not be deducted from salary except "to the extent that the staff of the Co-ordinated Organisations of the country concerned also contribute, compulsorily or generally, to schemes covering the same risks", which would have provided a further argument for not continuing to deduct unemployment contributions. Nor does the Tribunal consider it necessary to give an opinion on the significance of the brackets around the word unemployment in note (1), under B in the Appendix to Annex II (CCG/W(89)10), which lists the risks which could be covered by an employee's contributions to the national social security system. None of these considerations can alter the fact that according to the wording of paragraph 31, it is only the contributions to the national system of social security which are to be taken into account, nor the fact that in France, this system does not include unemployment insurance. By adopting wording so different from the previous version, the authors of the Report cannot have intended to continue with the situation prevailing previously.

Since the applications are upheld on the basis of this first submission, the Tribunal does not consider it necessary to give a ruling on the other submissions.

#### Intervention of the Staff Association

The Association pointed out that the applications concerned all staff of the Organisation and possibly of the other Co-ordinated Organisations, and that they had very important financial consequences for all those concerned. It supported the three submissions made by the applicants. The Tribunal takes note of the intervention of the Association.

#### Legal costs

In the circumstances of the case, the Tribunal considers that legal costs up to a maximum of FF 12 000 for the four applicants together, should be reimbursed.

For all these reasons, the Tribunal

- 1) Annuls the decisions of the Secretary-General;
- 2) Orders reimbursement, up to an overall maximum of FF. 12 000, of the legal costs of Mr. R. F., Mr. M. F., Mrs. M. M.-B. and Mrs. J. M.