



ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

Greffe du Tribunal Administratif

Registry of the Administrative Tribunal

ADMINISTRATIVE TRIBUNAL

Judgment of the Administrative Tribunal

handed down on 7 March 2006

JUDGMENT IN CASE No. 60

Mr. W.

v/ Secretary-General

Translation
(The French version constitutes the authentic text).

JUDGMENT IN CASE No. 60 OF THE ADMINISTRATIVE TRIBUNAL

Sitting on Friday 17 February 2006
at 9.30 a.m. in Annex Monaco of the OECD,
2 rue du Conseiller Collignon, Paris

The Administrative Tribunal consisted of:

Mr. Jean MASSOT, Chairman,
Professor James R. CRAWFORD
and Professor Arghyrios. A. FATOUROS,

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

In September 2004, Mr. W. who, two months previously, had been suspended with pay from his duties as administrator in the Environment Directorate pending completion of a disciplinary procedure brought against him, issued a writ against three of his colleagues before the *tribunal de grande instance de Paris*.

On 22 February 2005, the Secretary-General wrote to the *tribunal de grande instance*, invoking jurisdictional immunity for the three persons concerned.

By letter of 5 April 2005, Mr. W. asked the Secretary-General to withdraw his decision to invoke immunity before the French courts, but received no reply.

On 20 May 2005, Mr. W. filed an application (No. 60) requesting the Tribunal to rule that the Secretary-General's invocation of jurisdictional immunity for the three persons in question was illegal, and to award him a provision against the final assessment of damages. This application was distributed on 27 May 2005.

On 27 September 2005, the Secretary-General submitted his comments asking that the applicant's claims be held inadmissible and that, subsidiarily, the application be dismissed in its entirety.

On 27 October 2005, the Staff Association submitted written comments on the case, drawing attention to the legal and moral issues raised by the invoking of immunity when the result was to make it difficult for the staff member concerned to have his case heard.

On 31 October 2005, the applicant submitted a reply.

On 5 December 2005, the Secretary-General submitted his comments in rejoinder.

The Tribunal heard:

Maître Daniel Laprès, Barrister, Counsel for the applicant;

Mr. Nicola Bonucci, Head of the Organisation's Directorate for Legal Affairs, on behalf of the Secretary-General,

and Mrs. Marie-Christine Delcamp, on behalf of the Staff Association.

It handed down the following decision:

The facts

Following the events that gave rise to judgment no. 58 of the Tribunal of 16 March 2005, Mr. W., on 8 and 10 September 2004, summoned Ms. C. and Mrs. W., officials of the OECD, and Mr. M., an OECD expert, to appear before the *tribunal de grande instance de Paris* on charges of false accusations, defamation and *injures non publiques*.

On 22 September 2004, Mr. W. asked the Secretary-General to waive the immunity which could be claimed by these persons. On 12 October, the Head of Human Resource Management informed Mr. W., by e-mail, that this request was refused.

On 22 February 2005, the Secretary-General informed the *tribunal de grande instance*, through the intermediary of the French Ministry of Foreign Affairs, that in his view Ms. C., Mrs. W. and Mr. M. enjoyed jurisdictional immunity and that he had decided not to waive this immunity.

The *tribunal de grande instance* sat on 10 March 2005. On 18 March, the French Ministry of Foreign Affairs, correcting information given previously, wrote to the Secretary-General and to the President of the *tribunal de grande instance* to say that Ms. C., Mrs. W. and Mr. M. did enjoy jurisdictional immunity for acts carried out in their official capacity. On 1 April 2005, Mr. W. asked the *tribunal administrative de Paris* to declare this letter of the Ministry of Foreign Affairs dated 18 March 2005, null and void.

On 5 April, Mr. W. asked the Secretary-General to withdraw the letter of 22 February invoking jurisdictional immunity for Ms. C., Mrs. W. and Mr. M.

On 14 April, the *tribunal de grande instance* handed down its decision. It held that the three defendants enjoyed jurisdictional immunity and that, despite Mr. W.'s request of 22 September 2004, this immunity had not been waived. As a result, after pronouncing certain summonses to be null and void, it declared that the action brought by Mr. W. was, for the rest, inadmissible. On 21 April, Mr. W. lodged an appeal against this judgment, an appeal which has not yet been heard. On 20 May 2005, Mr. W. asked the Administrative Tribunal of the OECD to annul the Secretary-General's letter of 22 February 2005.

In law

As the ILO Administrative Tribunal has held on several occasions (most recently in judgment 2190 of 3 February 2003), it is for the international organisation in question to decide whether or not its officials enjoy jurisdictional immunity, and this in the context of its relations with a Member State, a matter which lies outside the jurisdiction of the international tribunal responsible for ruling on disputes internal to the organisation concerned. This is all the more true when the official whose immunity is in question is not the applicant before the tribunal competent to hear disputes between the organisation and its staff, but a third party with whom the applicant is in dispute before a court of a Member country.

While Section 30 of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946 provides for the jurisdiction of the International Court of Justice in the event of differences of interpretation of the Convention, there is nothing similar in favour of the OECD Administrative Tribunal in the Protocols annexed to the Convention of 14 December 1960 on the OECD governing the privileges and immunities of the Organisation.

Lastly, although Mr. W. invokes the right to a hearing, guaranteed notably by Article 6 of the European Convention for Protection of Human Rights and Fundamental Freedoms, the Tribunal finds that there is no risk of a denial of justice in this case, and that for two reasons. Firstly, it is very clear from the case-law of the French courts cited by Mr. W. himself and illustrated by the judgment of the *tribunal de grande instance de Paris* dated 14 April 2005, that these courts are not bound to accept an invocation of jurisdictional immunity by an official of an international organisation and that they look to see, in particular, whether the official was actually carrying out his duties within the organisation at the relevant time and whether he was acting in his official capacity (*Cass. Crim.* 5 March 1985 and 12 April 2005 published in the *Bulletin de la Cour de Cassation*). If, on the other hand, the OECD Administrative Tribunal were to assume jurisdiction over such a matter, there would be a risk of contradictory decisions being taken, on the one hand, by the Tribunal, and on the other, by the courts of a Member country. Secondly, the Tribunal notes that in the disputes between Mr. W. and the OECD, it has been fully competent to rule on the applications filed by him challenging the actions of staff members of the Organisation acting in their official capacity, and which are the subject of the judgments in cases nos. 58 and 61.

For all these reasons, the Tribunal holds that it does not have jurisdiction to rule on Mr. W.'s request concerning the Secretary-General's letter of 22 February 2005, there being no need to give a ruling on the question whether this request is still relevant following the decision of the *tribunal de grande instance*, nor whether it is admissible in terms of compliance with judicial time limits.

The comments of the Staff Association

The Tribunal noted the comments of the Staff Association which refer to the risk of a denial of justice.

Costs

The Tribunal is of the opinion that in the circumstances of the case, Mr. W. should pay the costs of the proceedings brought by him.

The Tribunal decides:

The application by Mr. W. is dismissed.