ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

ORGANISATION DE COOPÉRATION ET DE DÉVELOPPEMENT ÉCONOMIQUES

ADMINISTRATIVE TRIBUNAL

Judgment of the Administrative Tribunal

handed down on 21 March 2016

JUDGEMENT IN CASE No. 80

Mr. AA
Applicant

v.

Secretary - General

The English version constitutes the authentic text.

JUDGMENT IN CASE No. 80 OF THE ADMINISTRATIVE TRIBUNAL

Sitting on 3 February 2016
At 9.30 a.m. in Château de la Muette,
2 rue André-Pascal in Paris

The Administrative Tribunal consisted of :

Mrs. Louise OTIS, Chair

Mr. Luigi CONDORELLI

And Mrs. Hedvig FORSSELIUS

with Mr. Nicolas FERRE and Mr. Jean LE COCGUIC providing Registry services.

The Tribunal heard:

Mr. AA, Applicant;

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

Mr. BB, witness called by the Applicant;

Mr. CC, witness called by the Applicant;

Mrs. DD, witness called by the Applicant;

Mrs. EE, witness called by the Applicant.

I. INTRODUCTION

[1] In its application for annulment and compensation, the Applicant requests that the decision of the Secretary-General of the Organisation for Economic Cooperation and Development (hereinafter referred to as the 'Organisation') withholding the conversion of his fixed-term appointment to an open-ended appointment be annulled, that his reintegration under an open-ended appointment in a position of equal or similar standing be declared with compensation for the pecuniary and non–pecuniary damages allegedly suffered.

[2] The Applicant submitted an *expanded statement* on 27 April 2015. The Secretary-General of the Organisation submitted his comments on 30 June 2015. The Applicant submitted a reply on 30 September 2015. Finally the Secretary-General of the Organisation submitted his comments in rejoinder on 30 October 2015.

[3] The Applicant called four (4) witnesses namely BB, CC, DD and EE. Furthermore, the Applicant produced a written testimony by FF. Both parties submitted documentary evidence in annexes to their proceedings.

II. FACTUAL CONTEXT

[4] The Applicant is a citizen of both Mexico and the United States. In a letter dated 4 June 2009, he was offered an appointment as an Analyst-Teacher Policy in the Division YY of the Directorate XX at the OECD Headquarters in Paris.[1] This first appointment was for a period running from 24 June 2009 to 30 June 2010.

[5] Following this first appointment, the Applicant's fixed-term appointment was renewed annually until its termination effective 30 June 2014. The record kept by the Organisation during this period indicates that he excelled in his position and received frequent praise from his superiors.[2] Actually, the Applicant is a skilled professional who was dedicated to his work during the course of his appointment with the Organisation. That he excelled in his role and was highly regarded by both his peers and his superiors is beyond doubt; both conclusions were sustained by the written record of his employment and by witness testimony before the Tribunal. The skill

[1] Annex 1 to Comments of the Secretary-General, p.326.
[2] Annex 5 to the Application, p.83.

and competence of the Applicant in fulfilling his appointment are not disputed and they are not at issue in the present dispute.

[6] The offer letter dated 4 June 2009 specifies that the appointment would be governed "by the terms of this letter as well as by the OECD Staff Regulations, Rules and Instructions." The Acceptance Form attached to the offer letter, which the Applicant signed on 10 June 2009, clearly states: "Before returning this acceptance form, please refer to the information regarding visas (which must be obtained **before** coming to France)". [3]

[7] This information concerning visas for non-European nationals is found on page six of the attachments to the offer letter and can be read as follows: "Future staff members (and their family) from non-European Economic Area countries* must obtain a long-stay visa ***before*** coming to France. ***Please note that this procedure currently takes from one to two months***. The visa can only be issued by the French Consulate or Embassy of your home country or country of residence. It is imperative that you do not leave your country without this long-stay visa which is obligatory in order to obtain a residence permit ("titre de séjour spécial"). Otherwise you will be obliged to return to your country at your own expense to obtain it."[4]

[8] The Applicant's fixed-term appointment with the Organisation began on 24 June 2009. The correspondence attached to the application indicate that the Applicant was in Mexico City around this time. The correspondence between the Applicant and the Organisation shows (i) that the Applicant requested assistance from the Organisation in the visa application process and (ii) that the Applicant intended to apply for a visa while in Mexico City.

[9] On 3 July 2009, the Applicant received a copy of the *Note Verbale* sent to the Ministry of Foreign Affairs by the Organisation in support of the Applicant's planned submission of a visa request to the French authorities in Mexico City. It appears, however, that the Applicant did not follow through with filing his request with the French authorities in Mexico City following this *Note Verbale*.

[10] That the Applicant did not follow through with the submission of his visa request in Mexico City is confirmed by the correspondence between Ms. GG at the *Bureau des Immunités*

[3] Attachment 1 to the Secretary-General's comments, p. 350.
[4] Attachment 1 to the to the Secretary-General's comments, p.331.

et Privilèges Diplomatiques (hereafter the "BIPD") and the Applicant dated 13 January 2010.[5] Ms. GG then wrote: " We have been in contact about your visa. I still don't know if you have obtained it! I have no news from you, and am a bit worried, since you have been working at OECD since June, and have never requested the "titre de séjour spécial". On the same day, the applicant replied as follows: " …I have not obtained yet, unfortunately, as the times that I have been in Mexico on mission I have been quite full of activities and meetings to do proper follow-up. I plan to have it by mid-February, however, and will quickly follow the request for the "titre". Yet following this communication, the Applicant did not follow up with regards to the visa and the "titre de séjour" until October 2013. Nor did the Organisation.

[11] On 18 October 2013, the Applicant sent an email to Ms. HH, inquiring about where he should direct his questions regarding his "carte de séjour" for France.[6] The Applicant claims that he submitted this query ahead of an OECD mission to Senegal on the basis that he would be required to submit a copy of his "carte de séjour" in order to obtain a visa to travel to Senegal.[7] Ms. HH responded by indicating that the Applicant should submit his query to the generic BIPD email address. Neither the Applicant nor the Organisation seem to have followed up on this correspondence.

[12] The Applicant received notice on 17 January 2014 that his fixed-term appointment would be converted into an open-ended appointment as of 24 June 2014 – the date at which he would reach five years of service with the Organisation.[8]

[13] On 30 January 2014 the BIPD sent a letter to the Embassy of Zambia in France requesting a visa for the Applicant to travel to Zambia[9].

[14] The Applicant undertook communication with the BIPD regarding his irregular visa status on 30 January 2014.[10] The Applicant appears to have required a "titre de séjour spécial" in order to obtain a travelling visa for an OECD mission to Zambia. The Applicant was advised by Ms. II that he would first need to obtain a long-stay visa to regularise his residence status in France. The Applicant was informed that he could only obtain this visa from his home country (Mexico or

[5] Attachment IV to the Secretary-General's comments.
[6] Annex 26 to the Application, p. 229.
[7] Application at para 38.
[8] Annex 2 to the Application, p.76.
[9] Annex 27 to the Application, p. 231
[10] Annex 27 to the Application, p. 231.

the United States). In order to support his application, the Organisation indicated that it would provide a letter to the relevant French Consulate. To this effect, Ms. II requested that the Applicant provide the address from which he intended to initiate the visa process. The Applicant responded that he would initiate this process from a home address in Las Vegas, Nevada.[11]

[15] On 5 March 2014, the Applicant requested a meeting with both the BIPD and the Human Resources department of the Organisation to better understand his options for obtaining a visa. He was provided with a detailed response from Ms. HH concerning the required visa procedures and it appears that a meeting eventually took place on March 12. The Applicant and the Organisation communicated throughout March and April 2014 in order to resolve the Applicant's irregular visa situation. The record for this two-month period indicates that the Organisation used inconsistent terminology and provided information that was often unclear with regard to the visa the Applicant was expected to apply for.

[16] In an email dated 27 March 2014, the Applicant expressed doubts as to whether this type of visa was applicable to his situation as it did not seem that the visitor "D" visa applied to those seeking work authorisation in France. The Applicant provided information concerning an alternative procedure applicable to employees but was informed by Ms. HH that "this was not the procedure we are following with the French Consulate in Los Angeles."[12]

[17] On 31 March 2014, the Organisation submitted a *Note Verbale* to the French Ministry of Foreign Affairs asking for leniency in the case of the Applicant.[13] The French authorities via the Protocol at the Ministry of Foreign Affairs, declined to issue the Applicant a "visa de long séjour D" on the grounds that he had been living and working in France since 24 June 2009 without any authorisation.[14] The Protocol also reminded the Organisation that it should not in any case address itself directly to diplomatic missions and French consulates abroad but use the *Note Verbale*.[15]

[18] The reply from the Protocol however was not transferred to the Applicant until June 2015 during the proceeding before the Tribunal.

[11] Annex 10 to the Application, p. 151.
[12] Annex 10 to the Application, p. 167.
[13] Annex 28 to the Application, p.233.
[14] Attachment II to the Comments of the Secretary-General, p. 351
[15] Attachment II to the Comments of the Secretary-General, p. 351

[19] Hence, the Applicant was undisputedly unaware of the decision of the Protocol and the very same day, 2 April, Ms HH at the BIPD sent him a copy of the *Note Verbale* which he had asked for as part of the preparations to apply for a visa at the consulate in the United States.

[20] Despite this unfavourable outcome, the Organisation nevertheless required the Applicant to follow through with the initial process of applying for a visitor "D" visa from the United States. It was agreed that the Applicant would continue to work while in the United States via a teleworking arrangement. The Applicant therefore travelled to the United States on 7 April 2014 and proceeded to compile his application from a home address in Las Vegas.[16] He submits in his written arguments that this process led him to establish *de jure* residence and domicile in Las Vegas, Nevada.

[21] It also appears from the file that shortly after, on 8 April 2014, the Organisation held an internal meeting on visas and residence permits. The title of the first slide of the presentation read "What has recently changed"? and then it is noted that the "French Protocol Service applies very strictly the Regulations → **No more flexibility"**. On the same slide the following impacts are set out for incoming staff: visa is **compulsory** for non EU citizens. The impact for Staff on board: Residence permit is **compulsory** for non EU citizens.

[22] The Applicant presented himself for his appointment at the French Consulate in Los Angeles on 15 May 2014. He submits he was told by the person attending that the French Consulate would not accept/receive his visa application until the corresponding 'French authorities in France' responded to the 'Note Verbale' drafted by the OECD dated 31 March 2014. The Applicant also notes that he was told at the French Consulate in Los Angeles that he could not even submit his application for consideration while a response to the OECD from French authorities was pending.

[23] Following his appointment at the French Consulate, the Applicant communicated with his supervisor, Mr. FF, requesting his assistance in following up with the BIPD with regards to his unsuccessful attempt to apply for a visitor "D" visa.[17]

[16] Annex 32 to the Application, p. 255.
[17] Annex 36 to the Application, p.272.

[24] The Applicant then contacted the French Consulate in Los Angeles to inquire about the possibility of applying for a different type of visa. He does not appear to have received a response. The Applicant returned to Paris by 1 June 2014 – having been unsuccessful in his attempt to secure a visitor "D" visa. Once again, it shall be underlined that the Applicant at this point still had not been informed by the Organisation of the reply by the French Protocol of 2 April.

[25] On 18 June 2014 – i.e. six days before the conversion to an open-ended appointment was to take effect – the Applicant received a notice from Mr. JJ (a Staff Administration Officer at the Organisation) on behalf of the Head of Human Resources. This notice informed the Applicant that the conversion of his appointment could not proceed as planned on 24 June 2009 given that the Applicant was not authorised to enter or stay in French territory.[18] The Applicant was instead offered a one-year renewal of his fixed-term appointment in accordance with Staff Regulation 9 a iii[19] on the condition that he be posted in Washington as of 1 July 2014. This message specified that these arrangements would "allow the Organisation to review your situation in due time in light of the decisions that will be made by France in the meantime." The message moreover stated: "Of course, your situation will be reviewed as soon as the French authorities have notified the OECD of their final decisions."

[26] The Applicant responded to this notice on 18 June 2014 by accepting the renewal of his appointment.[20] He also inquired about the grounds on which he was unauthorised to remain on French territory and that the notification or the communication from the French authorities related to the matter should be shared to him. Moreover he asked for a confirmation that the conversion would take effect if and when the visa situation was to be resolved.

[27] Mr. JJ responded on 26 June 2014 by indicating that French authorities had refused to deliver the Applicant "a visa PROMAE according to elements in their possession" and that, as a

[18] Annex 4 to the Application, p.81.

[19] « the fixed-term appointment may be renewed once or more, provided that the total duration of service under such fixed-term appointment does not exceed five years. However, such fixed-term appointment may be renewed after a period of five years of continuous employment in the following cases:
…
- in very limited circumstances and when the Organisation's interests so warrant, for a further period not exceeding three years."

[20] Annex 6 to the Application, p.112.

consequence, the Applicant was "not authorised for the moment to enter or stay in French territory, for reasons outside of the OECD's control."[21] The Applicant was also informed that "the conversion of your fixed-term appointment to an open-ended one cannot therefore be recommended or decided now. Your situation will be reviewed in due time in light of the decisions that will be made by France in the coming months about your entry and stay in French territory but also of the long term interests of the Organisation and the organisational requirements." The latter part of the long-term interests was not mentioned in the notice of 18 June.

[28] On 30 June 2014, the Applicant received a memo from Mr. JJ on behalf of the Head of Human Resources at the Organisation concerning his appointment. This message specified that he was to be posted in Washington as of 1 July 2014 and that his fixed-term appointment was henceforth renewed until 30 June 2015.[22]

[29] Pursuant to the suggestion of his supervisors, the Applicant took leave from the Organisation as of 2 July 2014 while his visa issues remained unresolved. The Applicant also communicated with Ms. HH with regards to his visa and reiterating his demand that the HRM share the notification or communication from the French authorities. The applicant received a somewhat confusing reply on 2 July 2014 indicating that the Applicant should make a new appointment with the French Consulate in Los Angeles and that the consular administration had full authority to evaluate the situation and deliver an appropriate visa.[23]

[30] The Applicant communicated to Mr. JJ on 9 July 2014 that he was "still in the midst of considering the offer."[24] He also asked Mr. JJ to confirm what the date of his last day with the Organisation would be and what his last salary payment and leave allowance would be should he decide to decline the offer.

[31] Mr. JJ responded on 11 July 2014 noting that, as the Applicant had already accepted the extension of his contract, he could not decline but rather resign from his position.

[21] Annex 6 to the Application, p. 111.
[22] Annex 9 to Application, p.123.
[23] Annex 8 to the Application, p. 117.
[24] Annex 16 to the Application,p.200.

[32] On 14 July 2014, the Applicant replied to the 30 June 2014 memo from Mr. JJ regarding the terms of his fixed-term appointment renewal in Washington.

[33] Mr. JJ responded to the Applicant's 14 July 2014 email on 16 July 2014 and confirmed (i) the Organisation's receipt of the refusal and (ii) that the Applicant's appointment with the Organisation had therefore effectively ended on 30 June 2014.

[34] Via a letter addressed to the Secretary-General of the Organisation dated 17 October 2014, the Applicant submitted a written request prior to the filing of an application before the Administrative Tribunal. This letter both asserts the Applicant's claims on the merits and defends his interpretation of the timeline by which his request for withdrawal would be within the timeline prescribed by Article 3 a) of the Resolution of the Council on the Statute and Operation of the Administrative Tribunal.

[35] The Head of Human Resources Management at the Organisation, Ms. Michèle Pagé, responded on behalf of the Secretary-General to the Applicant's written request via a letter dated 23 December 2014. In this letter, she both asserts that the Applicant has not submitted his request within the prescribed timeline and refutes his claims on the merits. The Applicant claims to have only received this letter at the office of his legal counsel on 26 December 2014. The Applicant responded to the Secretary-General in a letter dated 5 February 2015, refuting the interpretation of the timeline proposed by the Organisation and reiterating his claim to an impartial hearing before this Tribunal.[25]

III. OVERVIEW OF PARTIES' POSITIONS

[36] The Applicant submitted in his application that "there is sufficient evidence […] to justify investigation by the OECD Administrative Tribunal into whether there was negligence, vitiated procedures, abuse of authority, arbitrariness and attempts of concealment on behalf of officers and leadership of the Organisation" with regard to the visa procedures undertaken by the Organisation, the 18 June 2014 decision not to convert his appointment, and the alleged "decision" of 16 July 2014 to end his appointment effective 30 June 2014. He further contested

[25] Annex 42 to the Application, p. 297.

the argument by which his application to the Tribunal would be time-barred by Articles 3 and 4 of the Statute of the Tribunal.

[37] The Applicant claimed to have suffered "personal injury, financial injury, moral prejudice and long-term detriment" to both his career and his family situation. He requested the following remedies from the Tribunal: (i) a declaration of the Organisation's liability; (ii) an award of prospective damages of an indeterminate amount related to the "highly probable long-term impact" of the decisions on himself and his family; (iii) an award of pecuniary damages commensurate with the seriousness of the financial injury he suffered and an award of non-pecuniary damages commensurate with the personal injury he suffered; (iv) an order that the Organisation provide all of the relevant communication related to his standing vis-à-vis the authorities of France, Mexico and the USA; (v) an order that the Organisation cover the costs related to an extension of the full medical coverage currently held and paid for by the Applicant covering himself and his two sons; (vi) an annulment of the decisions dated 16 July 2014, 30 June 2014 and 18 June 2014 and an offer of reintegration into the Organisation starting 1 July 2015 under an open-ended appointment; and (vii) an order that the Organisation pay the reimbursement of documented legal and related costs incurred by the Applicant in the amount of 11,800 euros, finally adjusted to 15 000 euros.

[38] The Organisation opposed the claims brought by the Applicant. It first argued that, having *voluntarily* rejected the renewal offer dated 18 June 2014, the Applicant severed his employment ties to the Organisation and therefore has no legal cause of action. The Organisation also submitted that the claims should be dismissed as inadmissible based on (i) the Applicant being time-barred from submitting an application pursuant to Article 3 of the Statute of the Tribunal and (ii) his failure to submit a valid request for reconsideration prior to instituting proceedings before the Tribunal. In the alternative, the Organisation argued that the claims should be dismissed on the merits.

IV. ANALYSIS

On examination of the application, the expanded statement, the comments of the Organisation, the applicant's reply, the Organisation's comments in rejoinder and having heard the parties and the witnesses, the tribunal concludes the following:

a. Time bar to the application

[39] The Organisation argued that the application was time barred by virtue of Article 3 of the Statute of the Administrative Tribunal or, alternatively, by Article 4. For the reasons that follow, however, the Tribunal concludes that the application is not time barred.

i. Article 3

[40] Pursuant to Article 3(a) of the Statute of the Administrative Tribunal, "written request for withdrawal or modification of the contested decision […] shall be given to the Secretary-General within two months from the date of notification of the contested decision." Article 3(a) further specifies that an additional two months shall be given to former members of staff and Article 3(c) adds that an "additional period of two months for submitting such a prior written request shall be accorded to persons resident outside Metropolitan France." The delay afforded to the Applicant therefore depended on the date of the contested decision and whether the Applicant qualified for any additional delay at that time.

[41] First, contrary to what the Applicant asserts, the contested decision cannot be found in the communication between Mr. JJ and the Applicant on 16 July 2014 as the message sent by Mr. JJ only confirms receipt of the Applicant's own rejection of the renewal offer. The decision rather appears to have taken place on 18 June 2014 when the Organisation revoked its commitment to convert the Applicant's appointment to an open-ended one.

[42] Second, the Tribunal accepts that the Applicant had established *de jure* residence in Las Vegas at the time of the decision, meaning that he was entitled to an additional two months pursuant to Article 3(c). However, the Tribunal does not accept that the Applicant also benefitted from an additional two months by virtue of being a former member of staff. As the

decision dated 18 June 2014 is the true contested decision, the Applicant is not entitled to the additional two months afforded to former employees on the basis that he was a current employee at the time.[26]

[43] The Applicant was consequently entitled to four months to file his application: two months per Article 3(a) in addition to two months for residing outside France pursuant to Article 3(c). He therefore had until 18 October 2014 to submit his written request. The record indicates that the Applicant submitted his request via a letter dated 17 October 2014, which within the prescribed time frame of four months afforded to current employees residing outside France at the time of the decision. [27]

ii. Article 4

[44] Article 4 of the Statute requires that "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."[28] The Tribunal accepts that the 23 December 2014 letter may be interpreted as the rejection of the written request. The application dated 15 March 2015 was therefore within the three month period prescribed by Article 4 of the Statute.

b. The merits of the application

[45] With regard to the merits of the Application, it is clear from the record that the Appellant did not fulfil his obligation to obtain the requisite visa ("visa d'entrée") and residence permit ("Titre de séjour spécial") to regularise his residence status in France.

[46] It appears from (1) the offer letter dated 4 June 2009, (2) the contract and acceptance letter signed on 10 June 2009, (3) the special request dated 3 July 2009 by the Organisation to the *Consulat de France* at Mexico and (4) the subsequent communication between the Applicant

[26] Judgement N° 67 of the OECD Administrative Tribunal.
[27] Annex 39 to the Application, p.288.
[28] Staff Regulations, Rules and Instructions Applicable to Officials of the Organisation, Annex III: Resolution of the Council on the Statute and Operation of the Administrative Tribunal.

and the Organisation that the Applicant knew that obtaining the visa was his responsibility and that he had not followed through with this obligation.

[47] Given that France began imposing stricter visa requirements on foreign nationals in 2013, it is unsurprising that the Applicant's irregular visa status caused problems with regard to his employment at the Organisation's headquarters in Paris. That he was deemed inadmissible in France due to his 5-year irregular status explains why the Organisation could not proceed to converting the Applicant's appointment for permanent employment on French territory.

[48] The Applicant argued that the Organisation was negligent in supporting his application for the requisite entry visa and residence permit needed to live and work in France. The record does not demonstrate any negligence from the Organization who offered its support and assistance in 2009 and 2010.

[49] Indeed, the Organisation has responsibilities and obligations towards its officials under the Staff Rules and Regulations and pursuant to the convention and protocols regulating the Organisation's diplomatic immunities and privileges and following general principles of international civil service law.

[50] However, it was the contractual duty of the Applicant to take all necessary steps to obtain his long-stay visa and residence permit. The information concerning visas for non-European nationals was clearly stated in the attachments to the offer letter: "Future staff members (and their family) from non-European Economic Area countries* must obtain a long-stay visa ***before*** coming to France…It is imperative that you do not leave your country without this long-stay visa which is obligatory in order to obtain a residence permit ("titre de séjour spécial"). Otherwise you will be obliged to return to your country at your own expense to obtain it."[29]

[51] Had the Applicant complied with his obligations to obtain a long-stay visa and a residence permit in 2009 and, when reminded by the Organization, in 2010, the administrative imbroglio with the French authorities would have never happened in 2014.

[52] The duty of care toward international staff does not encompass a constant and rigorous monitoring over professional staff who (1) have been well informed of their administrative

[29] *Supra*, note 4

obligations at the outset, (2) have been reminded to comply with it and (3) have reassured the Organisation that: " I plan to have it by mid-February (2010), however, and will quickly follow the request for the "titre".[30] Reciprocal trust is also a principle that should guide the international administrative public service.

[53] In 2014, after the refusal of his visa application by the French Ministry Of Foreign Affairs, the Applicant was offered a one-year contract that he first accepted then declined. The Organisation thus tried to find a solution and a remedy to the problematic situation and maybe diplomatic discussions would have solved the problem pertaining to the non-compliance with the entry-visa requirement for non-residents.

[54] However, the record indicates that the Organisation was unnecessarily opaque in its communication with the Applicant regarding the 2014 fixed-term contract. Moreover, the information and the terminology used by the Organisation regarding the attempt to remedy the situation regarding the issuance of the visa and the residence permit was often misleading and imprecise.

[55] Moreover, the Applicant should have been informed about the reply from the Protocol denying a favourable outcome of the demand for a visa before 2015 considering its essential nature and that it is was of vital interest and importance to the Applicant. It is clear from the file that the Applicant on numeral occasions asked to be informed about the Organisation's communication with the French authorities. Omitting to inform the Applicant of the reply from the French Protocol is even more aggravating considering that the Applicant – following the Organisation's advice – travelled to the United States just a few days after without being informed of that reply. Also in this respect, the Organisation's way of proceeding amounts to a breach of its duty of care.

[56] Finally, the 18 June 2014, the Applicant was notified that "[his] situation will be reviewed in due time in light of the decisions that will be made by France in the coming months about [his] entry and stay in French territory. On 26 June the Organisation added "<u>but also of the long term interests of the Organisation and the organisational requirements</u>."[31]

[30] *Supra*, note 5
[31] Annex 6 to the application, p.111.

[57] Given the terms of the 17 January 2014 notice regarding the conversion of the Applicant's appointment, the language employed by the Organisation appears equivocating. Having previously committed itself to converting the appointment, the Organisation could reasonably be expected to reassess this commitment in light of the Applicant's visa status.

[58] Yet it is far from clear that the Organisation was equally entitled to reassess this commitment in light of unspecified "long term interests." The vague language employed by the Organisation must have created substantial uncertainty for the Applicant with regard to his career and his family situation and the Tribunal cannot rule out that this uncertainty may have contributed to his ultimate decision as regards the renewed fixed-term appointment in Washington.

[59] However, it must be reminded that much of the ill fortune that befell the Applicant after the refusal of his visa application by the French Protocol in 2014 arose not only from the omissions by the Organisation but to a large extent was the consequence of the Applicant's breach of his own obligation to apply for the visa and his subsequent decision regarding the one-year contract that he first accepted then declined. Even considering the vague language employed by the Organisation, the fact remains that it was the Applicant and not the Organisation who ultimately took the decision to reject the renewal, in practice to resign and to leave the Organisation.

[60] In light of the circumstances at hand, the Applicant suffered moral damages that the Tribunal awards at 15 000 euros.

[61] Finally, the Tribunal concludes that the Organisation should bear compensatory damages such as the documented legal costs, expenses and financial loss incurred by the Applicant. The Tribunal sets these costs and expenses at 15 000 euros from which 2 900 will be paid directly to the Staff Association.

IV. CONCLUSION

[62] It is clear from the record that the Applicant had an obligation to obtain a visa before entering France to begin his appointment in June 2009. He did not fulfil this obligation prior to commencing his appointment with the Organisation nor did he seek to remedy his irregular visa

status following the queries of the Organisation. The Tribunal concludes that his application must fail on its merits for this reason.

[63] However, considering the role of the Organisation in the confusion surrounding the opaque communication and its omission to inform the Applicant adequately with regard to the withheld conversion, the Tribunal awards 20 000 euros in moral damages and sets compensatory damages such as the documented legal costs, expenses and financial loss incurred by the Applicant at 15 000 euros from which 2 900 euros will be paid directly to the Staff Association.

V. DECISION

FOR THE ABOVE REASONS

1. The Organisation shall pay the Applicant moral damages at the amount of 20 000 euros.
2. The Organisation shall pay the Applicant costs at the amount of 15 000 euros from which 2 900 euros shall be paid directly to the Staff Association.
3. All other claims are dismissed.

Louise Otis
Chairman

Nicolas Ferré
Registrar