



**Report on the
dispute following the dismissal of a BIML Secretary
42nd CIML Meeting - Item 9.1**

On 13 September 2004, after a number of written warnings, the BIML Director dismissed Miss Laurence Lichtig, Secretary at the BIML since January 1997.

On 31 December 2004, Miss Lichtig took the dispute concerning her dismissal to the “Prud'hommes”, the French industrial tribunal (composed of representatives of both employers and employees).

The CIML President then requested Mr. Faber, CIML Past President, to compile an independent report on the events leading up to the dismissal.

On 18 July 2005 the Prud'hommes declared itself competent to pronounce judgment on the case, considering that for administrative reasons (see below) the Administrative Tribunal of the International Labor Organization (ILO) could not deal with it. However, the Prud'hommes postponed examining the case to a further hearing.

1 Competent jurisdiction

The first question was to decide which jurisdiction was competent and which law was applicable.

The BIML Staff Regulations state:

Article XXIII: "All disputes that may occur on the application of the provisions of the present Regulations or in the relations of the Director with his/her staff shall be settled in the following order:

- *privately by mutual agreement between the agent and the Director of the Bureau,*
- *in case of disagreement, by the President of the Committee,*
- *in the event of agreement being impossible, by placing them before the Administrative Tribunal of the International Labor Organization whose decisions the two parties undertake to respect."*

The Statutes of the Administrative Tribunal of the International Labour Organization, Article II-5, state:

"The Tribunal shall also be competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials and of provisions of the Staff Regulations of any other international organization meeting the standards set out in the Annex hereto which has addressed to the Director-General a declaration recognizing, in accordance with its Constitution or internal administrative rules, the jurisdiction of the Tribunal for this purpose, as well as its Rules of Procedure, and which is approved by the Governing Body."

In September 2004 when Miss Lichtig was dismissed, the OIML had not yet submitted, for ILO approval, its recognition of the competency of the ILO Administrative Tribunal. This approval was requested at the beginning of 2005 and subsequently granted in November 2005.

2 Applicable law

The OIML Convention is an intergovernmental Treaty and takes precedence over French Law.

This Convention states (Article XXI) that:

"The statutes of the Director, of the assistants and of the employees or agents, shall be determined by the Committee, in particular as regards conditions of recruitment, work, discipline and pension."

The Staff Regulations, including the provisions therein related to the competency of the various jurisdictions, should therefore take precedence over French Law.

3 Appeal

The Bureau appealed against the declaration of competency of the French Prud'hommes Tribunal. The French Court of Appeal made the following decisions on 30 March 2006:

- Considering that the recognition by the OIML of the competency of the ILO Administrative Tribunal was not yet approved at the moment the dismissal was decided, and considering that the complainant must have a possibility of recourse, the French jurisdictions shall be competent for this case;
- For any future cases, the ILO Administrative Tribunal will be competent;
- The prevailing authority applicable for this case shall be the BIML Staff Regulations, which take precedence over French law, and the Prud'hommes Tribunal shall therefore refer to the BIML Staff Regulations.

This decision of the Court of Appeal confirmed the interpretation of the Bureau, but made a special case for this affair, without making it into a precedent.

4 Final judgement

The final judgement of the Prud'hommes Tribunal was pronounced on 9 May 2007. It did not refer to French law, only to the BIML Staff Regulations.

The conclusions of the Tribunal were that the justification for the dismissal was not documented well enough and that it was also partly in contradiction with the renewal of Mrs. Lichtig's contract one year prior to her dismissal.

The Prud'hommes Tribunal awarded a compensatory payment of 40 000 € which was half way between:

- no payment (if the dismissal had been fully justified), and
- full payment of salary up to the end of her contract (if the dismissal had been unfair).

The CIML President considered that this decision did not create an unacceptable precedent and decided not to appeal the decision.

The decision was therefore accepted.