

CONSEIL DE L'EUROPE————— —————**COUNCIL OF EUROPE**

TRIBUNAL ADMINISTRATIF ADMINISTRATIVE TRIBUNAL

Appeal No. 191/1994 (EISSEN v. Secretary General)

The Administrative Tribunal, composed of:

Mr Gunnar LAGERGREN, ad hoc Chair,
Mr Kåre HAUGE,
Mr Alan GREY, Judges,

assisted by:

Mr Sergio SANSOTTA, Registrar, and
Mrs Claudia WESTERDIEK, Deputy Registrar,

delivers the following decision after due deliberations.

FACTS AND PROCEEDINGS

1. On 22 June 1989, Mr Eissen was re-elected by the European Court of Human Rights as its Registrar, with effect from 1 August 1989.
2. The parties submit that Mr Eissen, as Registrar of the Court, was in many respects assimilated to the staff of the Secretariat of the Council of Europe.
3. Rule 11 para. 2 of the Rules of Court states: "The Registrar shall be elected for a term of seven years. He may be re-elected." Article 24 of the Staff Regulations states: "A staff member shall retire on reaching the age of sixty-five years."

Under the former regulation, Mr Eissen could remain in his office as Registrar until 31 July 1996, but under the later his term of office would cease on 31 May 1994, when he had attained the age of 65.

4. In a letter of 28 January 1994, the President of the Court requested the Secretary General to take the necessary steps to regulate the administrative situation of Mr Eissen in view of his expressed intention of remaining in office as Registrar of the Court beyond 27 May 1994 (his 65th birthday).

The Secretary General having brought the question before the Committee of Ministers, the latter decided to resume consideration at its meeting to be held in March 1994.

5. On 21 March 1994, the President of the Court acknowledged receipt of a letter by the Secretary General of 18 February 1994 concerning the question of keeping Mr Eissen in his functions beyond the age of 65, and informed the Secretary General that the Plenary Court had decided unanimously:

- “(a) to mandate a working party to study, in consultation with the Secretary General, any measures which should be taken concerning the length of the terms of office of the Registrar and the Deputy Registrar with a view to avoiding in the future a conflict between Rule 11 para. 2 of the Rules of Court and Article 24 of the Staff Regulations;
- (b) to express the opinion that, in so far as possible, an **ad hoc** arrangement should be envisaged as regards Mr Eissen.”

6. On 8 April 1994, the Secretary General informed the President of the Court that the Ministers' Deputies had examined the situation of Mr Eissen and taken the following decision:

“The Committee considered unanimously that there was no call to authorise the Secretary General to conclude an **ad hoc** contract with Mr Eissen establishing a contractual relationship between him and the Organisation after he had attained the age of 65. In consequence, the official concerned will cease to exercise his functions on 31 May 1994”.

7. On 21 April 1994, Mr Eissen received the following memorandum, dated 19 April 1994, and signed for Mr J.-L. Gianardi, the Director of Administration:

“To the attention of Mr Eissen. I regret to inform you that the Ministers' Deputies, at their 511th meeting, considered unanimously that there was no call to authorise the Secretary General to conclude an **ad hoc** contract establishing a contractual relationship between yourself and the Organisation after you have attained the age of 65. In consequence, you will cease to exercise your functions on 31 May 1994, pursuant to Articles 23 para. 1 and 24 of the Staff Regulations.”

8. In a plenary meeting on 21 April 1994, the Court discussed the decision of the Committee of Ministers and decided to authorise the President to write:

- “(a) a letter to the Secretary General of the Council of Europe, acknowledging receipt of her letter of 8 April 1994 and taking note, with regret, of the decision of the Committee of Ministers according to which Mr Eissen would cease to exercise his functions as from 31 May 1994;
- (b) a letter to Mr Eissen informing him of the Court’s position.”

9. In accordance with the Court’s decision of 21 April 1994, letters were addressed, on 25 April 1994, by the President of the Court both to the Secretary General and to Mr Eissen. The letter to Mr Eissen explained that the Court had come to the conclusion that “it had no alternative but to accept the negative response of the Committee of Ministers to its request for a special ad hoc arrangement in your favour. It follows that your term of office as Registrar will cease on 31 May 1994.”

10. On 18 May 1994, Mr Eissen lodged a complaint with the Secretary General against the decision of 19 April 1994. And on the same day, Mr Eissen made an application to the President of the Administrative Tribunal for a stay of execution of the Secretary General’s decision of 19 April 1994.

11. By letter of 30 May 1994, signed by two officials of the registry on behalf of the President of the Court, the Secretary General was supplied with an extract from the Minutes of a plenary administrative session held on 26 and 27 May 1994 which revealed - that the Court had inter alia :

- (a) considered that, in light of the prevailing situation and in order to ensure the proper functioning of the Court, it was necessary to take certain practical decisions;
- (b) confirmed that, in accordance with the decision conveyed to Mr Eissen in the President’s letter of 25 April, it would proceed on the basis that Mr Eissen’s term of office as Registrar would cease on 31 May 1994;
- (c) decided to make arrangements as soon as possible for the election of a successor.

12. Remarks or questions on impartiality or appearance of impartiality having been raised, the Chair and the Deputy Chair of the Administrative Tribunal, both members of the European Court of Human Rights, decided on 26 May 1994 not to participate in the resolution of the present case.

13. On 20 June 1994, upon invitation by the Secretary General of 25 May 1994 and by the Committee of Ministers of 9 June 1994, to appoint an ad hoc Chair of the Tribunal, the Court, pursuant to Article 1 para. 1 of the Statute of the Tribunal, appointed Judge Gunnar Lagergren, former member of the Court and former Chair of the Appeals Board as ad hoc Chair of the Tribunal for the purpose of the present case.

14. In an Order of 7 July 1994, the ad hoc Chair rejected the application for a stay of execution.

15. On 17 August 1994, Mr Eissen lodged his appeal.

16. After an exchange of written observations, the public hearing took place at the Council of Europe on 14 November 1994 in the presence of the appellant, Mr Soler-Couteaux, the appellant's counsel, and Mr Harremoes, Director of Legal Affairs, representing the Secretary General, assisted by Mr Giakoumopoulos, Principal Administrative Officer in the Directorate of Legal Affairs.

SUBMISSIONS OF THE PARTIES

17. The appellant requests the Tribunal:

- (a) to set aside the contested decision of the Secretary General of 19 April 1994;
- (b) to order that he will be reinstated as Registrar of the Court with retroactive effect from 1 June 1994;
- (c) to order the Council of Europe to pay him the sum of 100.000 French francs, as well as legal interest, to cover non-material damage;
- (d) to order the Council to pay 100.000 French francs to cover his appeal costs; and as a subsidiary claim,
- (e) to order the Council to pay Mr Eissen sums to cover the material damage he would suffer if not reinstated with effect from 1 June 1994;
- (f) to order the Council to pay compensation to Mr Eissen for his impossibility of making use of the whole of his leave entitlement in 1994;
- (g) to order the Council to pay to Mr Eissen the damage, calculated over a fifteen-year period, resulting from loss of pension at the full rate through being unable to acquire the necessary length of service; and in any case,
- (h) to order the Council to cover all costs and expenses.

18. Upon a request by the Secretary General, the Tribunal reserved the right of the Parties to make, once the Tribunal has given its decision on the merits of the case, further written submissions as to the quantum of any award to be made to Mr Eissen.

The appellant's arguments may be summarised as follows:

19. The appellant emphasises that it was from the European Convention of Human Rights itself that the Court derives the power to organise its Registry.

Within the framework of the power thus conferred upon it, the Court from the outset planned its Registry to be under its authority and to be an integral part of the Court.

It therefore decided to appoint its own Registrar in an election and to give him or her a seven-year term of office.

It was simply for the sake of convenience, for practical reasons, and particularly to facilitate moves by officials of the Registry and by members of the Secretariat from one organ to the other, that the Court agreed that its Registry would be attached to the Secretariat of the Council for administrative and budgetary purposes.

Thus it is clear that this attachment to the Secretariat does not imply the full application to the Registrar of the Court of the Staff Regulations, but necessarily has to be interpreted subject to specific rules expressly laid down by the Court, among them the method of appointing the Registrar and his or her term of office.

20. The appellant further explains that - because he exercises his functions under an elected mandate - he may cease to exercise them only when the mandate has been discharged. Any other course of action, and particularly termination of the Registrar's functions prior to expiry of his mandate for reasons connected with the age limit, would violate the very principle of his election, and the duration of the mandate conferred on him by election.

Even more seriously, this would affect the Court's powers under the Convention, since it would in effect annul the Court's decision to appoint a Registrar for a period of seven years.

21. Therefore, the decision concerning the advisability of extending Mr Eissen's term of office beyond the age of 65 by ad hoc contract was wrongly referred to the Committee of Ministers, which was also mistaken in assuming that it had authority to take this decision.

The decision itself is both redundant in principle and unlawful in content. It assumes, in fact, that the Registrar of the Court is to be treated, in all matters affecting his status as an ordinary member of the Organisation itself.

22. A decision distinct from that of the Committee of Ministers was taken by the Secretary General alone, formalising the cessation of functions. This decision is the aforementioned one of 19 April 1994. Such a decision was essential, inter alia, to enable the official to exercise his pension rights. A formal decision must also be taken, so that, if necessary, the official may challenge it. The decision of 19 April 1994 was also real, to the extent that the Secretary General proceeded to practical execution of it, inter alia, by sending Mr Eissen the administrative documents necessary for the assessment of his pension rights.

23. The appellant finally states that the contested decision comes neither from the Committee of Ministers nor the Court. First and foremost, it is clear from the file that the Court did not intend to take a decision. Initially, it confined itself to suggesting that the Secretary General find an ad hoc arrangement to regulate Mr Eissen's situation. At a second stage, it confined itself to taking formal note of the position of the Committee of Ministers that it was impossible to maintain Mr Eissen in his functions beyond the retirement age. It did so, however, only with regret, as it stated in its "letter" of 21 April 1994, which clearly shows that the challenged decision is not its own.

24. The Secretary General invites the Tribunal to dismiss Mr Eissen's appeal in its entirety.

The Secretary General's arguments may be summarised as follows:

25. The Secretary General submits that the Tribunal has no jurisdiction in the present case, since in reality Mr Eissen's appeal is directed against the Court and not against any supposed decision of the Secretary General.

26. In the first place, it was the Court itself which requested the Secretary General to take steps to regulate Mr Eissen's administrative situation were he to remain in office beyond 27 May 1994. On being informed that the matter had been submitted to the Committee of Ministers, the Court, as is evident from President Ryssdal's letter of 21 March 1994 to the Secretary General, in effect acknowledged that the power of decision on the specific question of Mr Eissen's remaining in office beyond his 65th birthday lay with the Committee of Ministers and not with the Court alone.

27. In the second place, when submitting the matter to the Committee of Ministers, the Secretary General dealt solely with Mr Eissen's administrative situation in terms of the Staff Regulations, in that she sought authority to conclude an ad hoc contract establishing a contractual relationship between him and the Organisation after he had attained the age of 65. It was the Committee of Ministers itself - and not the Secretary General - which added the conclusion that Mr Eissen would "cease to exercise his functions on 31 May 1994". Furthermore, this decision of the Committee of Ministers was subsequently accepted by the Court as being legally valid. Then, in its decision of 21 April 1994, the Court "noted" the decision, albeit "with regret". Again, in his letter of 25 April to Mr Eissen the President explained that the Court had concluded that it had no alternative but to accept the negative response from the Committee of Ministers and that it followed that Mr Eissen's "term of office as Registrar [would] cease on 31 May 1994".

28. It follows from the foregoing that Mr Eissen's appeal is misconceived. To begin with, it is based on the assumption that it was the Secretary General who decided to terminate his functions as Registrar for the Court, whereas in reality she did no more than seek, in vain, to obtain from the Committee of Ministers authority to enter into a purely administrative arrangement which would have enabled Mr Eissen to continue to be employed by the Council of Europe after his 65th birthday, but which did not and could not concern his status **as Registrar**

(the latter status being a matter for the Court). Once the aforesaid authority had been refused, the relevant provisions of the Staff Regulations (requiring retirement at age 65) automatically determined Mr Eissen's administrative situation: there was no need for any individual decision at all on the part of the Secretary General, any more than there is a need for a decision that any person who attains a prescribed retirement age shall retire. It was the Court itself which accepted the situation that obtained following the decision of the Committee of Ministers and then, in its own decisions of 21 April and 26-27 May 1994, concluded that Mr Eissen's functions as Registrar ceased on 31 May 1994 and nominated an Acting Registrar as from 1 June 1994.

29. The foregoing analysis reveals a fundamental misconception in Mr Eissen's appeal. He argues, in essence, that the situation regarding his retirement age is governed solely by Rule 11 para. 2 of the Rules of Court (providing that the length of the Registrar's term of office is seven years), or at least that the terms of this provision prevail over those of Article 24 of the Staff Regulations (requiring retirement at age 65). What this argument overlooks is the distinction between his functional status as Registrar and his administrative status as an official of the Council of Europe. The former status is governed by the Rules of Court and is a matter for the Court, whereas the latter status is governed by the Staff Regulations and is a matter for the Secretary General, within the limits laid down by the Committee of Ministers. That this is the true position is accepted by the Court itself, or else why should the President of the Court, in his letters of 28 January and 21 March 1994 have requested the Secretary General to take the necessary steps to regulate Mr Eissen's administrative situation?

30. The Secretary General further expresses the view that the Registrar of the Court can perfectly well continue to serve as Registrar even if he ceases to be an official of the Council of Europe, for instance, on attaining the age of 65. The only condition thereto is that the Court accepts to have a Registrar who no longer has the capacity of an official of the Council. However, in such a situation it would be hard to discern to what source reference could be made to determine such matters as the official's remuneration package, social insurance cover and pension rights.

31. The Secretary General also points out that in his contract of employment with the Council of Europe of 1 January 1962, Mr Eissen undertook to be fully bound by the provisions of the Staff Regulations and any regulations made thereunder, as then in force and as subsequently amended. He therefore consented to be bound by Article 24 of the Staff Regulations on retirement age. Following Mr Eissen's first election as Registrar, it was made clear that his contract as an official of the Council of Europe had been modified in that, "in respect of the performance of his functions", he came under the authority of the Court. There was no mention of any other modification and neither Mr Eissen nor the Court contested or questioned this arrangement. Here again the applicant's submission as to an implicit modification as a result of the Court's Rules is misleading. The applicant disregards the fundamental distinction between his administrative status and his status as Registrar.

THE TRIBUNAL'S OPINION

32. In considering the present case three administrative acts come out prominently.

First, the decision of the Committee of Ministers at their 511th meeting from 5 to 8 April 1994 (see paras. 6 and 7 above);

second, the memorandum of 19 April 1994, signed on behalf of the Secretary General (see para. 7); and

third, the conclusion of the Court in a plenary meeting on 21 April 1994, followed by the letter of 25 April 1994 from the President of the Court to Mr Eissen (paras. 8 and 9).

33. When the Committee of Ministers denied the requested authority for the Secretary General to conclude an ad hoc contract with Mr Eissen, establishing a contractual relationship between him and the Organisation after he had attained the age of 65, the Committee added that, in consequence, Mr Eissen would cease to exercise his functions on 31 May 1994. The Tribunal is not in a position to state why this addition was made and how far it goes. For instance, did the Committee take position on Mr Eissen's term of office as Registrar or only on his status as staff member of the Council of Europe?

However, the decision of the Committee exists but, as such, is outside the jurisdiction of the Tribunal. Nor is the appeal of the appellant directed against that decision.

34. Having regard to Article 59 para. 1 of the Staff Regulations, the Tribunal has no difficulty in finding that the memorandum of 19 April 1994 contains an individual decision or at least a measure taken by the Secretary General.

Furthermore, nobody has contested that the Registrar and the Deputy Registrar of the Court are entitled to institute complaints procedure and appeals procedure under Articles 59 and 60 of the Staff Regulations as being, for that purpose, "staff members".

Before the Tribunal was also raised the question whether it would have jurisdiction over a decision by the Secretary General, when she, as in the present case, has been bound to pursue execution of a decision by the Committee of Ministers with no possibility of questioning that decision. Jurisdiction in similar cases has been accepted "due to the fact that our organisation's dispute system provides only for appeals against the Secretary General". (See ABCE N°101-113/84, Stevens and others, decision of 15 May 1985; N°118-128/85, Jeannin and others, decision of 30 April 1986, and N° 133-145/86, Ausems and others, decision of 3 August 1987). The Tribunal finds no reason to deviate from that uncontested jurisprudence.

As to the merits of the Secretary General's memorandum, the Tribunal has noted, *inter alia*, the conflict between the general rule in Article 24 of the Staff Regulations and the special provisions in Rule 11 para. 2 of the Rules of Court (see para. 5 above) and also observed the appellant's undertaking in his contract of employment with the Council of Europe. However, the

Tribunal, having regard to its findings below, does not consider it necessary to examine the Secretary General's memorandum any further.

35. Decisions of the European Court of Human Rights are beyond the reach of the Tribunal's jurisdiction. This is not challenged by the parties. However, for the resolution of the present dispute it is of importance to establish the precise meaning and character of the relevant actions of the Court with bearing on the appellant's case.

36. It follows from the documents in this case that the Court in a plenary meeting on 21 April 1994 discussed the decision of the Committee of Ministers at its 511th meeting and came to the conclusion that it had no alternative but to accept the negative response of the Committee to the Court's request for a special ad hoc arrangement in Mr Eissen's favour and that, accordingly, his term of office as Registrar would cease on 31 May 1994. This decision, that Mr Eissen's term of office as Registrar would cease on 31 May 1994, is confirmed, beyond doubt, by the letter of 30 May 1994 on behalf of the President of the Court, referred to in para. 11 above. The appellant's arguments as to the intention of the Court and that its decision was "not its own" lose all weight given the final and unequivocal decision of the Court of 21 April 1994.

Once the appellant's term of office as Registrar was terminated on 31 May 1994, after he had attained the age of 65, any continuing service at the Secretariat of the Council was excluded by the provision of Article 24 of the Staff Regulations, requiring retirement at age 65.

37. Finally the Tribunal considers that since no unlawfulness on the part of the Secretary General has been established, the appellant's requests for compensation have no legal foundation and must be dismissed.

38. As to the potential conflict between the rule in Article 24 of the Staff Regulations and the provisions in Rule 11 para. 2 of the Rules of Court (see para. 34 above), the documents of the case provide ample evidence that this was a problem of long standing of which both the Secretary General and the Court were well aware.

The problem has been referred to in various contexts, and should have been resolved, in the opinion of the Tribunal, preferably when Mr Eissen was elected for the seven year term going beyond his 65th birthday.

Article 11 para. 3, first sentence, of the Statute of the Administrative Tribunal states: "In cases where it has rejected an appeal, the Tribunal may, if it considers there are exceptional circumstances justifying such an order, decide that the Council shall reimburse in whole or in part properly vouched expenses incurred by the appellant." The Tribunal finds that the above considerations constitute such exceptional circumstances and awards the appellant a sum of 50,000 French francs for expenses.

For these reasons,

The Administrative Tribunal:

Declares the appeal unfounded;

Dismisses it in its entirety;

Orders that the Council of Europe shall pay the appellant the amount of 50,000 French francs for expenses.

Done in Strasbourg, on 25 November 1994, the English text being authentic.

The Registrar of the
Administrative Tribunal

The ad hoc Chair of the
Administrative Tribunal

S. SANSOTTA

G. LAGERGREN

Appendix 1.

THE AD HOC CHAIR'S ORDER OF 7 JULY 1994 in the case of M.A. EISSEN v. Secretary General

PROCEEDINGS AND FACTS

1. In 1989, Mr Eissen was re-elected by the European Court of Human Rights as its Registrar for a term of seven years, expiring on 31 May 1996.
2. On 21 April 1994, Mr Eissen received the following memorandum, dated 19 April 1994, and signed for Mr J.-L. Gianardi, the Director of the Administration:

“To the attention of Mr Eissen. I regret to inform you that the Ministers’ Deputies, at their 511th meeting, considered unanimously that there was no call to authorise the Secretary General to conclude an ad hoc contract establishing a contractual relationship between yourself and the Organisation after you have attained the age of 65. In consequence, you will cease to exercise your functions on 31 May 1994, pursuant to Articles 23.1 and 24 of the Staff Regulations.”

Nobody has denied that this memorandum was issued on behalf of the Secretary General.

The words “pursuant to” and what follows were not included in the Committee of Ministers’ decision as it has been presented to me.

Article 24 of the Staff Regulations states: “A staff member shall retire on reaching the age of sixty-five years.”

3. In a letter of 25 April 1994, the President of the Court informed Mr Eissen that the Court in a plenary meeting on 21 April 1994 “came to the conclusion that it had no alternative but to accept the negative response of the Committee of Ministers to its request¹ for a special ad hoc arrangement in your favour. It follows that your term of office as Registrar will cease on 31 May 1994”.

4. On 18 May 1994, Mr Eissen lodged a complaint with the Secretary General against the decision of 19 April 1994.

5. On the same 18 May 1994, Mr Eissen made an application to the Chair of the Administrative Tribunal for a stay of execution of the Secretary General’s decision of 19 April 1994. This application was supplemented by a memorial of 25 May 1994. Mr Eissen maintains, inter alia, that the decision of 19 April 1994 is illegal since the basis for his mandate as Registrar is only the election by the Court with its recognized independence and the term of this election

¹ *note by the registry*: as modified by the order of 1st August 1994 printed in the following page.

cannot be changed by reference to provisions valid for members of the staff of the Council of Europe. Mr Eissen also emphasizes the urgency of the matter since to resume his office would be more and more painful after months of absence and would practically be excluded if a new Registrar would be elected. In sum, the decision of 19 April 1994 has caused him grave prejudice difficult to redress.

6. Remarks or questions on impartiality or appearance of impartiality having been raised, the Chair and the Deputy Chair of the Administrative Tribunal, both members of the European Court of Human Rights, decided on 26 May 1994 not to participate in the resolution of the present case.

7. On 20 June 1994, upon invitation by the Secretary General of 25 May 1994 and by the Committee of Ministers of 9 June 1994, to appoint an ad hoc Chair of the Tribunal, the Court, pursuant to Article 1 para. 1 of the Statute of the Tribunal, appointed me as ad hoc Chair of the Tribunal for the purpose of this case.

At that stage of the proceedings, no objection to the jurisdiction of the Tribunal had been made.

8. On 28 June 1994, the Secretary General answered to the complainant's application. In this answer the Secretary General submits that the Administrative Tribunal has no jurisdiction in the present case, since in reality the complaint is directed to the European Court of Human Rights and not against any supposed decision of the Secretary General. The Secretary General also indicates that it was the Committee of Ministers itself - and not the Secretary General - which dealt with the complainant's situation as Registrar, by adding the conclusion that he would "cease to exercise his functions on 31 May 1994". The Secretary General adds that this decision of the Committee of Ministers was subsequently accepted by the Court as being legally valid.

9. On 6 July 1994, the complainant submitted his comments in reply. In this reply the complainant confirms the jurisdiction of the Tribunal and states that the decision of the Secretary General of 19 April 1994 and only that decision has caused the complainant to leave his functions as Registrar. He also mentions that the election of a new Registrar would render the situation irreversible.

OPINION

10. Under Article 59 para. 7 of the Staff Regulations, a complainant may apply for a stay of execution of an administrative act if its execution is likely to cause him "grave prejudice difficult to redress".

11. Article 8 of the Statute of the Administrative Tribunal further states that the Chair shall rule within fifteen days on applications for a stay of execution of an administrative act.

12. This time-limit has already expired on account of the particular procedural circumstances

referred to above. However, a departure from the time-limit prescribed in Article 8 is necessary in this case in order to ensure that the complainant is not deprived of his statutory right to have his application for a stay of execution resolved. In other words, this Tribunal or its Chair must be deemed to possess the inherent power to regulate matters of procedure necessary for carrying out the functions for which they are responsible (see *Veerman v. Federal Republic of Germany*, Decisions of the Arbitral Commission on Property, Rights and Interests in Germany, Vol. 1, 1958, pp. 119-120).

Therefore, I accept to rule on the present application for a stay of execution, and I do so within the shortest possible time after my appointment. Support for this decision is also to be found in Rule 42 of the Rules of Procedure of the Appeals Board/Administrative Tribunal, which reads: "All matters not provided for in the present Rules shall be dealt with by decision of the Tribunal or, when it is not in session, by decision of the Chair which shall be binding only in respect of the particular case."

13. Approaching now the heart of the present application it should be stated that the exceptional power of the Chair under Article 59 para. 7 of the Staff Regulations evidently calls for some self-restraint in its exercise (cf. J. Sztucki: *Interim Measures in the Hague Court*, 1983, pp. 112, 115, and the Chair's Orders of 31 July 1990, paragraph 12, in the case of *Zaegel v. Secretary General*, and of 2 March 1994, paragraph 13, in the case of *Fender v. Secretary General*).

14. It cannot be denied that the series of administrative acts mainly referred to above, amongst them the one contained in the memorandum of 19 April 1994, has caused the complainant prejudice, although these acts do not relate to the complainant's performance of his duties as Registrar which has generally been recognized as outstanding. However, the complainant's monetary damages are not "difficult to redress", since they can be made good simply by payment of an indemnity or by compensation in some other material form and such payment can be ordered by the Administrative Tribunal in the form of an enforceable decision (Article 60 para. 2 of the Staff Regulations). Nor are, in my assessment of all circumstances, the non-pecuniary damages caused by the events in question, which can only to some extent be redressed by awarding a sum of money, "grave" enough to support the grant of the requested stay of execution (see the above- mentioned *Zaegel* case, paragraph 11).

15. Consequently, the complainant's application for a stay of execution is unfounded.

16. In rejecting the present application for a stay of execution I have not been bound to reach any preliminary opinion on the question of the Tribunal's jurisdiction to entertain the merits of this case (see Sztucki, *op. cit.*, at pp. 227 and 247-248 with reference *inter alia* to the *Aegean Sea* case before the International Court of Justice).

17. Although the jurisdiction of the Tribunal is in dispute, I feel obliged to recall that Article 60 para. 5 of the Staff Regulations provides as follows: "While an appeal is pending, the Secretary General shall avoid taking any further measure in respect of the appellant which, in the event of the appeal being upheld, would render unfeasible the redress sought."

For these reasons,

Exercising my jurisdiction to make interim orders under Article 59 para. 7 of the Staff Regulations and Article 21 of the Rules of Procedure of the Appeals Board/Administrative Tribunal,

I, AD HOC CHAIR OF THE ADMINISTRATIVE TRIBUNAL,

Decide

- that Mr Eissen's application for a stay of execution is rejected.

Done and ordered in Strasbourg on 7 July 1994, the English text of the Order being authentic.

The Registrar of the
Administrative Tribunal

The ad hoc Chair of the
Administrative Tribunal

S. SANSOTTA

G. LAGERGREN

Appendix 2.

**THE AD HOC CHAIR'S ORDER (FOR RECTIFICATION) OF 1 AUGUST 1994
in the case of M.A. EISSEN v. Secretary General**

Upon the request of 13 July 1994 by the Secretary General, signed by the Deputy Director of Legal Affairs, Ms Marie-Odile WIEDERKEHR, for the rectification of a clerical error in paragraph 3 of the order of 7 July 1994 in the present case,

I accept the proposed rectification and acknowledge, pursuant to Article 12 of the Statute of the Administrative Tribunal, that the said paragraph should read:

3. In a letter of 25 April 1994, the President of the Court informed Mr Eissen that the Court in a plenary meeting on 21 April 1994 “came to the conclusion that it had no alternative but to accept the negative response of the Committee of Ministers to its request for a special ad hoc arrangement in your favour. It follows that your term of office as Registrar will cease on 31 May 1994”.

The erroneous inclusion of the words “to its regret” in lieu of the words “to its request” must have its origin in the following part of the same letter of 25 April 1994:

“In a plenary meeting on 21 April 1994 the Court discussed the decision of the Committee of Ministers and **decided** to authorise the President to write:

(a) a letter to the Secretary General of the Council of Europe, acknowledging receipt of her letter of 8 April 1994 and taking note, **with regret** (emphasis added), of the decision of the Committee of Ministers according to which Mr Eissen will cease to exercise his functions as from 31 May 1994;

(b) a letter to Mr Eissen informing him of the Court’s position.”

Done and ordered in Stockholm and Strasbourg on 1 August 1994.

The Registrar of the
Administrative Tribunal

The ad hoc Chair of the
Administrative Tribunal

S. SANSOTTA

G. LAGERGREN