CONSEIL DE L'EUROPE
COUNCIL OF EUROPE

TRIBUNAL ADMINISTRATIF
ADMINISTRATIVE TRIBUNAL

Appeal No. 382/2006 (Michael REMMERT v. Secretary General)

The Administrative Tribunal, composed of:

Ms Elisabeth PALM, Chair,
Mr Angelo CLARIZIA,
Mr Hans G. KNITEL, Judges,

assisted by:

Mr Sergio SANSOTTA, Registrar,

has delivered the following decision after due deliberation.

PROCEEDINGS

1. Mr Michael Remmert lodged his appeal on 9 August 2006. The appeal was registered the same day under No. 382/2006.

2. On 24 October 2006, the appellant's representative, Professor Piquemal, lodged further pleadings.

3. On 24 November 2006, the Secretary General lodged his observations concerning the appeal. He was represented by Mr P. Titiun, the then Deputy Head of the Legal Advice Department, Directorate General I – Legal Affairs.

4. On 16 January 2007, the appellant lodged observations in reply.

5. The Tribunal having requested various items of information concerning the issuing of the special residence permit and diplomatic car number plates, the Secretary General submitted his reply in stages between 10 May and 29 August 2007. The appellant submitted his comments during the period between 22 June and 18 September 2007. In the last document, he also raised the question of *restitutio in integrum*.

6. As the parties had expressed their willingness to forego oral proceedings, the Tribunal decided that there was no need to hold a hearing.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The appellant, Mr Michael Remmert, is a permanent member of staff of the Council of Europe and a German national.

8. Appointed by the Council of Europe on 1 February 1994, he currently holds the grade A4 and is employed as a Project Manager in the Directorate General of Political Affairs.

9. Since February 1994, the appellant had been receiving the expatriation allowance under Article 6, paragraph 1, of Appendix IV (Regulations governing staff salaries and allowances – see paragraph 22 below) to the Staff Regulations.

10. The appellant had also been receiving an education allowance (as some of his children attend boarding school in Germany). Payment of this allowance is governed by Article 7 of the said Appendix IV (paragraph 23 below).

11. The appellant had a special residence permit issued by the French authorities via the Council of Europe. He had his cars registered in the special "CD" series intended for Council of Europe staff of his rank.

12. On 28 November 2005, the Directorate of Human Resources asked the appellant for further information concerning his residence in France. It asked him to complete a declaration on his honour and to supply proof that his residence was in France.

13. On 11 January 2006, the appellant returned the completed declaration together with various documents. He stated that his residence was in Strasbourg (where he was renting an apartment); he further indicated that his family had another residence in Kehl (Germany) and that two of his children were attending boarding school in Germany.

14. On 18 April 2006, the Directorate of Human Resources sent a letter to the appellant.

It reminded him that under Article 6, paragraph 1 iv), of the Regulations governing staff salaries and allowances, "when any point on the frontier of the country in which the staff member is a national is within a radius of 50 km from the duty station, such a staff member shall not be entitled to the expatriation allowance unless he or she supplies proof that he or she has established his or her actual and habitual residence in the country of service (…)".

The Directorate of Human Resources also stated that it had noted that the appellant had rented an apartment in France and that his wife and two of his daughters were living in Kehl, Germany. It added that the appellant had failed to show that he had established his actual and habitual residence in France.

It therefore informed the appellant that payment of the expatriation allowance and, accordingly, the education allowance would cease as from 1 June 2006. The appellant was also requested to return his special residence permit and green car number plates by the end of May 2006.

The relevant passages read as follows:

"It is clear that you are renting an apartment in France, the country of service. However, the requirement of proof of actual and habitual residence obviously calls for more than a simple confirmation of the fact that you are the tenant of a dwelling. Even assuming that the electricity bills based on the estimations made by the Electricité de Strasbourg could be considered as an element confirming your actual residence in France, there is no proof of the fact that you established there your habitual residence, especially taking into account the fact that your family is settled in Kehl, the German town easily accessible from Strasbourg on a daily basis.

In the light of the information you have provided, I regret to inform you that you do not meet the requirements of Article 6 of the Regulations governing staff salaries and allowances. Therefore, payment of the expatriation allowance and, accordingly, the education allowance, will cease as from 1 June 2006. You are also requested to return to [the Directorate of Human Resources] your special residence permit as well as the green number plates of your car before the end of May 2006."

15. On 15 May 2006, the appellant lodged an administrative complaint.

16. On the same day, the appellant applied to the Chair of the Administrative Tribunal for a stay of execution in respect of the administrative act of 18 April 2006 concerning withdrawal of the expatriation allowance and education allowance and the requests that he return his special residence permit and green plates.

17. On 30 May 2006, the Chair granted the requested stay of execution "insofar as it refers to withdrawal of the education allowance".

18. On 19 June 2006, the Secretary General dismissed the administrative complaint.

19. On the same day, the Organisation informed the appellant that he was to be the subject of an administrative inquiry (Instruction No. 51 of 10 June 2006).

20. On 29 September 2006, the appellant was informed that the Secretary General had decided not to take any disciplinary action against him.

21. In the meantime, on 9 August 2006, the appellant lodged the present appeal.

II. INTERNAL LAW

22. Article 6, paragraph 1, of Appendix IV (Regulations governing staff salaries and allowances) to the Staff Regulations deals with the granting of the expatriation allowance and reads as follows:

"1.i.The expatriation allowance shall be paid to staff in categories A, L and B, who at the time of their appointment were not nationals of the host state and had not been continuously resident on that state's territory for at least three years, no account being taken of previous service in their own country's administration or with other international organisations.

ii.This allowance shall also be paid to staff in the same categories who, although nationals of the host state, had been continuously resident for at least ten years in another state at the time of their appointment, no account being taken of previous service in their own country's administration or with other international organisations.

iii.In the event of a staff member who is entitled to the expatriation allowance being transferred to the country of which he or she is a national, he or she shall cease to be entitled to the expatriation allowance.

iv.When any point on the frontier of the country of which the staff member is a national is within a radius of 50 km from the duty station, such a staff member shall not be entitled to the expatriation allowance unless he or she supplies proof that he or she has established his or her actual and habitual residence in the country of service or, exceptionally and subject to agreement by the Secretary General, in another country of which he or she is not a national, taking account of his or her family circumstances."

23. Article 7 of the same Regulations concerns the granting of the education allowance and reads as follows:

"1. Staff members entitled to the expatriation allowance – with the exception of those who are nationals of the country in which they are serving – may request payment of the education allowance in respect of each dependent child, within the meaning of these regulations, regularly attending an educational establishment on a full-time basis.

(…)

3. Entitlement to the education allowance shall start on the first day of the month during which the child begins to attend school and not earlier than the age corresponding to the compulsory age of education of the national system followed by the school. It shall finish when the child stops full-time studies, and not later than the end of the month in which the dependent children allowance will no longer be paid.

(…)

13. At the beginning of the school year a staff member requesting an education allowance shall inform the administration as fully as possible on the expenditures which will be incurred for the education of each child. On the basis of that information the administration shall provisionally calculate the education allowance as described in paragraphs 6 to 12 above on an annual basis and make it payable at one twelfth of the total amount from the beginning of the school year.

14. At the end of the school year the staff member shall provide evidence of the total expenditure during the school year in order to facilitate the final calculation of the allowance. Positive or negative discrepancies between the final amount and the total sum of the monthly payments shall be settled as soon as possible.

(…)"

24. As regards the issuing of special residence permits, it should be noted that, following exchanges (a note verbale and e-mails), between the French authorities and the Council of Europe, for the purpose of providing information to the Tribunal, it emerged that staff who are not French nationals are entitled to hold such permits as, even if they decide to reside in Germany, they also have the right to reside in France by virtue of their association with the Council of Europe. They need to be able to prove this right by means of a *carte spéciale*.

25. As to the granting of diplomatic car number plates, further to the said exchanges, the French authorities finally stated that:

"it is clear from consultations with the competent French agencies that only Council of Europe staff residing in France are entitled to register their cars in the special series. This consideration, however, should not detract from the fact that withdrawal of the special registration is a matter for the host state and not for the Council of Europe."

THE LAW

26. The appellant contests the decision to withdraw his expatriation and education allowances, special residence permit and diplomatic car number plates. He also asks the Tribunal to award him the sum of 3,000 euros to cover the costs incurred in the present appeal. In pleadings dated 18 September 2007, the appellant further raised the question of *restitutio in integrum*.

27. The Secretary General asks the Tribunal to dismiss the appeal as unfounded.

I. SUBMISSIONS OF THE PARTIES

28. The appellant relies on four arguments: violation of Article 6, paragraph 1, of the Regulations governing staff salaries and allowances, violation of Article 7 of the same regulations, violation of the rules governing the granting of the special residence permit and diplomatic car number plates and, lastly, failure to give reasons.

29. In support of his first point, the appellant maintains that the check to ensure that a person is eligible for the expatriation allowance, under Article 6 of the Regulations, is carried out only at the time of their appointment. That is the time when the staff member concerned must show that he or she has established his or her "actual and habitual residence" in the country of service. The appellant further argues that the text makes no mention of the possibility that this right might subsequently be forfeited and that therefore, under the general rule whereby all agreements must be interpreted in good faith, no such forfeiture is possible.

30. Alternatively, the appellant maintains that even supposing that Article 6, paragraph 1 iv could be construed as requiring the expatriation allowance to be withdrawn if the staff member is unable to prove that he or she continues to have his or her residence in France, the impugned decision would still be unlawful and would be in breach of the provision in question, even thus interpreted. In other words, the appellant considers that he has shown that he has established his "actual and habitual" residence in France. He refers here to rule No. 9 of Resolution (72) 1 adopted on 18 January 1972 by the Committee of Ministers of the Council of Europe on the standardisation of the legal concepts of "domicile" and of "residence". The appellant adds that "Strasbourg is where he works and Strasbourg is where he has chosen, for various practical and private reasons, to spend most of his time during the working week".

31. The appellant goes on to advance a series of arguments challenging the Secretary General's submission that the material supplied was insufficient to establish that the appellant had his "actual and habitual" residence in Strasbourg. The appellant reiterates that he is physically present in Strasbourg most of the time. He further submits that the fact that his family has its residence in Germany is no reason to conclude that he himself does not reside in France.

32. In support of his second point, the appellant maintains that the unlawfulness of the decision to withdraw the expatriation allowance automatically renders the decision to withdraw the education allowance unlawful as well.

Alternatively, the appellant submits that should the Tribunal find the decision to withdraw the expatriation allowance to be well-founded, he should still receive the education allowance in keeping with the general principle of law which prohibits any discrimination between staff. In effect, staff receiving the expatriation allowance and the education allowance "suddenly find themselves – through a decision which is without precedent in the history of the Organisation – deprived of the education allowance simply for having allegedly moved their residence from the other side [of the border]".

33. In support of his third point, the appellant contends that the decision to withdraw his special residence permit is unlawful, as there is nothing to indicate that such permits are intended solely for Council of Europe staff who have established their residence in France. The appellant notes from the information provided by the French authorities that they share this view.

As to the question of the registration of vehicles in the special series, the appellant submits that such entitlement arises from the special residence permit, as established by a memorandum sent to staff by the Administration.

34. Lastly, the appellant alleges failure to give reasons. He notes that while the reasons given for the decision to withdraw the expatriation allowance were inadequate and inappropriate, even less attempt was made to justify the decision to withdraw the special residence permit and the diplomatic number plates.

35. In conclusion, the appellant requests that the decision complained of be annulled and that he be awarded the sum of 3,000 euros to cover the costs incurred in the present appeal.

36. The Secretary General maintains firstly that entitlement to the expatriation allowance (as in the case of other allowances) is not conferred irrevocably simply because at one point, the staff member qualified for it. If the eligibility criteria for a particular allowance are no longer met, it ceases to be payable. According to case-law, moreover, entitlements should not be maintained in all circumstances.

37. The Secretary General adds that the concept of "actual and habitual" residence should be understood as meaning the place where the staff member has established his or her permanent or habitual centre of interest, with the intention of giving it a stable nature. It transpires from the material submitted by the appellant and from his declarations, however, that he has no wish to establish his permanent or habitual centre of interest in France, with the intention of giving it a stable nature. The fact that the appellant rents an apartment where he spends little time is in no way indicative of a resolve to establish the centre of his interests in France. Particularly as he owns a house some seven kilometres from the said apartment and, most importantly, his workplace, a house in which the rest of his family lives and where he spends several nights week.

38. The Secretary General notes, lastly, that the appellant has not supplied any document or material that might convince the Tribunal that he does in fact have his actual and habitual residence in France.

39. With regard to the second point, the Secretary General notes that only staff who are entitled to the expatriation allowance can claim the education allowance. It follows from this

that since the appellant is not entitled to the expatriation allowance, he cannot claim the education allowance.

40. In response to the submissions in support of the third argument, the Secretary General maintains that the information given in the Guide for non-French Council of Europe staff members and their families has no statutory or regulatory basis.

In the light of the information provided by the French authorities (paragraphs 5 and 24-25 above), the Secretary General accepts that staff residing in Germany are entitled to the special residence permit issued by the French authorities and maintains that such persons are not entitled to diplomatic car number plates.

41. Lastly, the Secretary General denies that there was any failure to give reasons. In responding to the appellant's complaint about the withdrawal of the expatriation allowance, he maintains that he addressed the other points raised, in that these other points are related to the first one, of which they are merely a consequence.

42. In conclusion, the Secretary General asks the Tribunal to dismiss the appeal as unfounded.

II. TRIBUNAL'S ASSESSMENT

43. As to the first argument, the Tribunal considers firstly that, as stated in its case-law, "the Secretary General may reconsider his decision to grant a given allowance to a staff member if a re-examination of the file justifies such action" (ATCE, Appeal No. 283/2001, Polackova-Rossi v. Secretary General, Decision of 5 December 2001, paragraph 27).

Established in a case involving the withdrawal of an allowance for a dependent child, this principle also applies to the granting of the expatriation allowance. For the expatriation allowance is intended not to compensate for the inconvenience involved in moving when taking up a post but rather, as indeed the appellant himself correctly notes, to offset, by means of a fixed sum, a series of objective disadvantages which only expatriate staff experience and which involve financial and non-financial factors.

Consequently, the Tribunal considers that the Secretary General was justified in checking whether the appellant still satisfied the conditions on the basis of which the expatriation allowance was granted at the time of his appointment.

44. In response to the arguments advanced by the appellant (paragraph 30 above), the Tribunal notes that under the terms of the Article 6, paragraph 1 iv. in question (paragraph 22 above), staff who are in the appellant's position must prove that they have their actual and habitual residence in France. The Tribunal, however, is not convinced by the appellant's claim that he supplied such proof. For the material submitted in support of his claims does not establish, given the evidence gathered by the Secretary General, that the appellant does actually live in France. While it is true that the appellant produced a lease and stated – without, however, supplying what the Tribunal would consider to be sufficiently detailed evidence – that he lived in the Strasbourg apartment during the week under a "bachelor-type" arrangement, the fact remains that the family resides only a few kilometres from the appellant's workplace and, most importantly, from his "French residence".

45. The Tribunal, mindful of the need for the Council to avoid inquiring about staff members' private affairs in an intrusive manner, considers that the appellant would have been justified in wanting to provide only strictly necessary information. However, it is clear that under the aforementioned Article 6, incontrovertible proof needs to be furnished in order to avoid any abuse. That means that the information provided must be satisfactory in order to unequivocally show that the staff member continued to be entitled to the expatriation allowance. Such proof was not supplied, either during the administrative examination of the file or during the proceedings before the Tribunal.

46. Consequently, the appellant's first argument must be dismissed.

47. As to the second argument, which concerns the decision to disqualify the appellant from receiving the education allowance, the finding that the decision on the expatriation allowance is lawful automatically entails the dismissal of the main branch of this second argument.

48. As to the secondary submission that the general principle of law which prohibits any discrimination was disregarded, the Tribunal notes that treating different situations differently does not constitute discrimination. The situation of German nationals who do not live in the Council's host country but rather in their own country is most certainly different from that of other staff who are entitled to the expatriation allowance. It follows that no discrimination may be considered to have occurred.

49. As to the third argument, concerning violation of the rules governing the granting of the special residence permit and registration of vehicles in the French diplomatic series, the Tribunal notes that the information provided by the French authorities was not disputed by the Secretary General during the proceedings before the Tribunal.

According to this information, the issuing and withdrawal of the special residence permit and the car number plates are solely a matter for the French authorities.

Yet the French authorities did not exercise their right of withdrawal in this instance. In acting as he did, the Secretary General exceeded his authority in the matter. Consequently, his decision to effect this withdrawal was unlawful and should be annulled.

50. As to the fourth argument that no reasons were given, the Tribunal notes that this argument refers only to the decisions concerning the special residence permit and the registration of vehicles in the special series.

Having come to the conclusion that the third argument is well-founded, the Tribunal has no need to consider this fourth argument, as the decision to withdraw the special residence permit and the car number plates must in any case be annulled for the reasons stated above.

51. In his last letter to the Tribunal, the appellant maintained "that the decisions complained of caused him prejudice of a financial nature". He added that "in addition to the annulment of these decisions" he was also seeking "*restitutio in integrum* and hence full compensation".

52. Assuming that the appellant wishes the Tribunal to rule now on a claim for compensation for damage under Article 60, paragraph 2, of the Staff Regulations, the

Tribunal finds that the appellant has failed to file submissions in due form and, in particular, has not supplied it with the evidence required to make a ruling at this stage. This finding does not prevent the appellant from exercising his rights under the procedure laid down in Article 59, paragraph 1 *in fine* of the Staff Regulations.

53. The appellant, who used the services of a lawyer, has claimed 3,000 euros for costs. The Tribunal finds it reasonable that the Secretary General should reimburse the sum of 2,000 euros (Article 11, paragraph 2, of the Statute of the Administrative Tribunal – Appendix XI to the Staff Regulations).

For these reasons, the Administrative Tribunal:

Declares the appeal to be well-founded as to the complaint concerning withdrawal of the special residence permit and withdrawal of the car number plates;

Dismisses the remainder of the claims;

Orders the Secretary General to pay the sum of 2,000 euros in costs.

Delivered in Strasbourg on 3 October 2007, the French text being authentic.

The Registrar of the Administrative Tribunal	The Chair of the Administrative Tribunal
S. SANSOTTA	E. PALM

ORDER OF THE CHAIR OF 30 MAY 2006

in the case of REMMERT v. Secretary General

THE FACTS

1. The appellant, Mr Michael Remmert, is a permanent member of staff of the Council of Europe and a German national.

2. Appointed by the Council of Europe on 1 February 1994, he currently holds the grade A4 and is employed as a Project Manager in the Directorate General of Political Affairs.

3. Since February 1994, the appellant had been receiving the expatriation allowance under Article 6 § 1 of Appendix IV (Regulations governing staff salaries and allowances) to the Staff Regulations. This provision reads as follows.

> "1.i. The expatriation allowance shall be paid to staff in categories A, L and B, who at the time of their appointment were not nationals of the host state and had not been continuously resident on that state's territory for at least three years, no account being taken of previous service in their own country's administration or with other international organisations.
>
> ii.This allowance shall also be paid to staff in the same categories who, although nationals of the host state, had been continuously resident for at least ten years in another state at the time of their appointment, no account being taken of previous service in their own country's administration or with other international organisations.
>
> iii.In the event of a staff member who is entitled to the expatriation allowance being transferred to the country of which he or she is a national, he or she shall cease to be entitled to the expatriation allowance.
>
> iv.When any point on the frontier of the country of which the staff member is a national is within a radius of 50 km from the duty station, such a staff member shall not be entitled to the expatriation allowance unless he or she supplies proof that he or she has established his or her actual and habitual residence in the country of service or, exceptionally and subject to agreement by the Secretary General, in another country of which he or she is not a national, taking account of his or her family circumstances.
>
> (…)"

4. The appellant had also been receiving an education allowance (as some of his children attend boarding school in Germany). Payment of this allowance is governed by Article 7 of the said Appendix IV which reads as follows:

> 1. Staff members entitled to the expatriation allowance – with the exception of those who are nationals of the country in which they are serving – may request payment of the education allowance in respect of each dependent child, within the meaning of these regulations, regularly attending an educational establishment on a full-time basis.
>
> (…)
>
> 3. Entitlement to the education allowance shall start on the first day of the month during which the child begins to attend school and not earlier than the age corresponding to the compulsory age of education of the national system followed by the school. It shall finish when the child stops full-time studies, and not later than the end of the month in which the dependent children allowance will no longer be paid.
>
> (…)
>
> 13. At the beginning of the school year a staff member requesting an education allowance shall inform the administration as fully as possible on the expenditures which will be incurred for the education of each child. On the basis of that information the administration shall provisionally calculate the education allowance as described in paragraphs 6 to 12 above on an annual basis and make it payable at one twelfth of the total amount from the beginning of the school year.
>
> 14. At the end of the school year the staff member shall provide evidence of the total expenditure during the school year in order to facilitate the final calculation of the allowance. Positive or negative discrepancies between the final amount and the total sum of the monthly payments shall be settled as soon as possible.
>
> (…)"

5. The appellant had a special residence permit issued by the French authorities via the Council of Europe. He had his cars registered in the special "CD" series intended for Council of Europe staff of his rank.

6. On 28 November 2005, the Directorate of Human Resources asked the appellant for further information concerning his residence in France.

7. On 11 January 2006, the appellant returned a completed declaration together with various documents. He stated that he had a residence in Strasbourg (where he was renting an apartment). He further indicated that his family had another residence in Kehl (Germany) and that two of his children were attending boarding school in Germany.

8. On 18 April 2006, the Directorate of Human Resources wrote to the appellant.

It reminded him that under Article 6, paragraph 1 iv), of the Regulations governing staff salaries and allowances "*when any point on the frontier of the country in which the staff member is a national is within a radius of 50 km from the duty station, such a staff member shall not be entitled to the expatriation allowance unless he or she supplies proof that he or she has established his or her actual and habitual residence in the country of service* (…)".

The Directorate of Human Resources also stated that it had noted that the appellant had rented an apartment in France and that his wife and two of his daughters were living in Kehl, Germany. It added that the appellant had failed to show that he had established his actual and habitual residence in France.

It therefore informed the appellant that payment of the expatriation allowance and, accordingly, the education allowance would cease as from 1 June 2006. Mr Remmert was also asked to return his special residence permit and his green number plates.

The relevant passages read as follows:

> *" It is clear that you are renting an apartment in France, the country of service. However, the requirement of proof of actual and habitual residence obviously calls for more than a simple confirmation of the fact that you are the tenant of a dwelling. Even assuming that the electricity bills based on the estimations made by the Electricité de Strasbourg could be considered as an element confirming your actual residence in France, there is no proof of the fact that you established there your habitual residence, especially taking into account the fact that your family is settled in Kehl, the German town easily accessible from Strasbourg on a daily basis.*
>
> *In the light of the information you have provided, I regret to inform you that you do not meet the requirements of Article 6 of the Regulations governing Staff salaries and allowances. Therefore, payment of the expatriation allowance and, accordingly, the education allowance, will cease as from 1 June 2006. You are also requested to return to [the Directorate of Human Resources] your special residence permit as well as the green number plates of your car before the end of May 2006."*

9. On 15 May 2006, the appellant lodged an administrative complaint.

10. On the same day, the appellant applied to the Chair of the Administrative Tribunal for a stay of execution in respect of the administrative act of 18 April 2006 concerning withdrawal of the expatriation allowance and education allowance and the requests that he return his special residence permit and green plates.

11. On 22 May, the Secretary General submitted his observations on the application for a stay of execution.

12. On 25 May 2006, the appellant lodged observations in reply.

THE LAW

13. Under Article 59, paragraph 7, of the Staff Regulations, an application for a stay of execution of an administrative act may be made if its execution is likely to cause him or her "grave prejudice" difficult to redress.

14. The claimant applied for a stay of execution in respect of the four decisions set out in the letter of 18 April 2006. He contends that the execution of these decisions is likely to cause him grave prejudice difficult to redress.

With regard to the education allowance, he points out that the decision in question would result in an immediate, near-30% cut in his income. He notes that he receives this allowance because two of his children are attending boarding school in Salem, Germany, and that the said reduction would cause him serious financial difficulties if he had to continue paying the tuition costs for the boarding school. As a result, his daughters might have to leave the boarding school and return home where no comparable curriculum is available. Apart from the negative impact on his children's education, the psychological consequences would be even more severe: both children are very much involved in the curricular and extra-curricular activities of the boarding school and have grown up there. They receive grants, which cover a small portion of the fees in recognition of their contribution to the life of the school. The eldest has only one year to go before taking the international baccalaureate. For her to return to the school later would be difficult if not actually impossible.

It is clear therefore that "revocation of the education allowances would cause serious prejudice to the appellant and his children".

15. With regard to the expatriation allowance, the appellant points out that payment of the education allowances is dependent on entitlement to the expatriation allowance. Since it is a precondition for the education allowance, the expatriation allowance should not be withdrawn so that the appellant can continue claiming the education allowance.

The appellant adds that Article 6 § 1 of Appendix IV establishes that entitlement to the expatriation allowance is determined at the time of appointment and that no information is given as to the conditions and circumstances in which a correctly awarded allowance may be withdrawn. The arguments put forward by the Directorate of Human Resources do not reflect the provisions of Article 6 and the decision to revoke the payment is unjustified.

16. As regards the request that he return his special residence permit, the appellant notes that he would in that case be unable to prove his status and privileges and immunities. As a result, those rights could no longer be formally and effectively guaranteed to him in France, the country where he works, or elsewhere. Withdrawing the residence permit would further deprive him of the right to legally maintain a residence in France, a residence which he is currently maintaining and which he has no intention of giving up.

Lastly, the undisputed fact that he has a residence in Strasbourg preserves his right to the special "CD" registration issued by the *préfecture* of Strasbourg.

Consequently, non-possession of the residence permit would cause him irreparable prejudice.

17. In his observations, the Secretary General stated that "the decision to cease paying the allowances in question has not been implemented yet. What is more, the appellant will not suffer any prejudice. Should his administrative complaint and any appeal which he might lodge prove to be well-founded, the allowances in question would be paid to him retrospectively. It follows that no prejudice has been caused to the appellant and that were such prejudice to occur, it would not be difficult to redress."

The Secretary General therefore requests that the application for a stay of execution be dismissed.

18. The Chair notes that the appellant submitted that "revocation" of the education allowance would cause him grave prejudice and, on the subject of the expatriation allowance, advanced arguments which would be more appropriately considered in relation to the merits of the case rather than in an application for a stay of execution. Applications of this kind are not intended to establish whether or not the appellant is entitled to the said allowance and to the other benefits which have been withdrawn from him. Such matters may be settled only when considering the merits of any appeal which the appellant may lodge later.

The purpose of the present proceedings is to prevent an appellant from suffering grave prejudice difficult to redress as a result of the execution of a contested decision before such decision is subsequently withdrawn by the Organisation or annulled by the Tribunal if it is found to be erroneous.

Consequently, the Chair must merely ascertain whether there is a risk in this case of the appellant – or his children, as regards the education allowance – suffering grave prejudice and, if so, whether it would be difficult to redress.

19. The Chair notes that the dispute between the appellant and the Administration concerns a matter which is essentially of a pecuniary nature, as the dispute concerning the withdrawal of the special residence permit (the only question which is not of a pecuniary nature) is incidental to the main issue (payment of the expatriation allowance).

20. By definition, however, and except in specific cases where the appellant is in a very precarious financial situation – which the appellant does not claim to be - a pecuniary dispute is unlikely to cause "grave prejudice difficult to redress".

The application should therefore be dismissed. In order to justify his application for a stay of execution, however, the appellant also alleges grave prejudice difficult to redress in relation to the education of his two children who are attending boarding school in Germany. The appellant suggests that he is planning to withdraw the children from the boarding school if he is no longer to receive the education allowance. He further suggests that he will re-enrol them in the boarding school if, after winning the current case, the said allowance is reinstated. Among his alleged concerns, he refers in particular to the problems which his children would have settling back into the school if they had to suffer this disruption. The Secretary General, for his part, has not disputed these claims.

The Chair recalls that the European Convention on Human Rights protects the right to education (Article 2 of the Additional Protocol to the Convention). Although there is no need to consider whether the present case falls within the framework protected by the Convention, the Chair considers it appropriate that account be taken of the problems which the two children may encounter as a result of the aforementioned disruption and, and as a provisional measure, that execution of the decision of 18 April 2005 be stayed insofar as it concerns the education allowance. The Chair further notes that the decision to cease paying the allowance already granted seems to take effect at a time when the school year has not yet ended.

21. With regard to the expatriation allowance, the appellant has failed to show that non-payment of the allowance is likely to cause him prejudice difficult to redress other than that connected with his children's right to education on the basis of which execution of the decision to revoke the education allowance has been stayed. The legal nature of this decision allows the Chair to order such a stay without also ordering a stay of execution of the decision concerning the expatriation allowance, the granting of which is nevertheless a necessary condition for entitlement to the education allowance.

22. With regard to the request that the special residence permit be returned, the Chair considers that the situation here is not one that is likely to cause the appellant – an EU national – prejudice difficult to redress. The Secretary General, moreover, is bound to provide such assistance as the appellant may require as a result of his being ineligible for the special residence permit.

23. As to the request to return the green plates, the execution of this decision will undoubtedly cause pecuniary prejudice but not what could be described as prejudice difficult to redress. The Secretary General will in fact be required to redress such prejudice, and to make any other redress which the appellant might seek, should it be found, when considering the merits of the case, that this decision was incorrect.

24. The Secretary General states that the decision to revoke the allowances in question has not been implemented yet but provides no information as to the special residence permit and the green plates.

The Chair notes that her decision in these two matters of the special residence permit and the green plates does not prevent the Secretary General from deciding of his own accord to delay execution of these two secondary measures pending the settlement of the main issue.

25. The Chair recalls that some restraint is called for in exercising the exceptional power conferred on her by Article 59, paragraph 7, of the Staff Regulations (see ABCE, Chairman's Order of 31 July 1990, paragraph 12, in the case of Zaegel v. Secretary General; and ATCE, order of the Chair of 1 December 1998, paragraph 26, in the case of Schmitt v. Secretary General, order of the Chair of 14 August 2002, paragraph 16). Since the purpose of the urgent procedure is to ensure that the administrative proceedings are fully effective, the application for a stay of execution must show that the requested measure is necessary in order to avoid grave prejudice difficult to redress. Otherwise not only the smooth running of the departments but also the management of major sectors of the Organisation would be undermined.

26. It follows from the above considerations that the application for a stay of execution is well-founded insofar as it refers to the continued payment of the education allowance.

For these reasons,

Exercising my jurisdiction to make interim orders under Article 59, para. 7, of the Staff Regulations, Article 8 of the Statute of the Administrative Tribunal and Rule 21 of the Rules of Procedure of the Administrative Tribunal,

Having regard to the urgency of the matter,

I, CHAIR OF THE ADMINISTRATIVE TRIBUNAL,

- grant the stay of execution requested insofar as it refers to the revocation of the education allowance;

- order that this stay be rendered void if the appellant does not appeal to the Administrative Tribunal within the time prescribed in Article 60 § 3 of the Staff Regulations against any dismissal of his administrative complaint;

- order that the stay of execution expire on the date on which the Administrative Tribunal delivers its decision;

- dismiss the remainder of the application for a stay of execution.

Done and ordered in Bargemon (Var), 30 May 2006.

The Registrar of the Administrative Tribunal	The Chair of the Administrative Tribunal
Sergio SANSOTTA	Elisabeth PALM