

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

TRIBUNAL ADMINISTRATIF ADMINISTRATIVE TRIBUNAL

**Appeals Nos. 216/1996, 218/1996 and 221/1996
(PALMIERI (II, III and V) v. Secretary General)**

The Administrative Tribunal, composed of:

Mr Carlo RUSSO, Chair,
Mr Kåre HAUGE,
Mr José da CRUZ RODRIGUES, Judges,

assisted by:

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

has delivered the following decision after due deliberation.

PROCEEDINGS

1. Mr PALMIERI lodged two appeals on 21 February 1996 and a third on 6 May 1996. These appeals were registered on 21 February, 1 March and 9 May 1996 under files Nos. 216/1996, 218/1996 and 221/1996.
2. On 11 and 18 April and 17 June 1996 the Secretary General submitted his observations on the three appeals.
3. The appellant filed memorials in reply on 2 May, 14 May and 5 July 1996.
4. On 26 March 1996 the appellant applied to the Chair of the Administrative Tribunal for a stay of execution of Mr A.'s appointment to a post of Head of Division in the Office of the Clerk of the Parliamentary Assembly of the Council of Europe. In an Order of 10 April 1996 the Chair noted that the appellant had withdrawn his application for a stay of execution.
5. On 23 September 1996 the Tribunal decided to hold a single hearing for the three appeals.

6. On 20 November 1996 the Secretary General filed the record of the Transfers and Promotions Panel's meeting concerning the impugned appointment.

7. The public hearing took place in Strasbourg on 25 November 1996. The appellant was represented by Professor D. RUZIÉ. The Secretary General was represented by Mr R. LAMPONI, Principal Administrative Officer in the Legal Adviser's and Treaty Office Division, Directorate of Legal Affairs, assisted by Mr P. GARRONE, Administrative Officer in the same Directorate.

THE FACTS

8. Mr Giovanni Palmieri, an Italian national, began service with the Council of Europe in 1976. Until spring 1996 he held a post of principal administrative officer in the Office of the Clerk of the Parliamentary Assembly (grade A4); since then he has been assigned to the Directorate of Political Affairs.

In a decision of 23 November 1995 the Tribunal ruled admissible six appeals (Nos. 202-207/1995) lodged by the appellant and five other Council of Europe staff members and annulled Mr A.'s appointment to a post of Head of Division in the Office of the Clerk of the Assembly (grade A5), for which the appellants had applied (Vacancy Notice No. 140/94 of 14 October 1994).

9. The three appeals giving rise to the present decision relate to administrative measures taken after the decision of 23 November 1995; their subject-matter is the appellant's reinstatement in the duties which he had been performing before Mr A.'s appointment (appeal No. 216/1996), the conduct of the new promotion procedure (appeal No. 218/1996) and the new appointment decision (appeal No. 221/1996).

10. The Tribunal refers to the "Facts" part of the decision of 23 November 1995 with regard to the facts earlier than that date which are relevant to the three appeals being considered here.

A. Appeal No. 216/1996

11. On 6 December 1995 the Secretary of the Transfers and Promotions Panel informed the appellant that the Secretary General had decided, following the Tribunal's decision of 23 November 1995, that the applications submitted in response to Vacancy Notice No. 140/94 of 14 October 1994 would be reconsidered by the panel. The panel's secretary also told the appellant that he would be invited for a further interview with the Deputy Clerk of the Assembly. The secretary added that an assessment report would be produced for the purposes of the procedure in question. That report was prepared in accordance with a provisional assessment procedure introduced by the Secretary General following the Administrative Tribunal's decision of 24 February 1996 in the Bouillon case (appeal No. 186/1994).

12. On 13 December 1995 the appellant lodged an administrative complaint with the Secretary General challenging the legality of the two above-mentioned measures. He requested the Secretary General to cancel his decisions to repeat the preparatory measures and to apply the assessment procedure to applicants for the post in question.

13. On 15 January 1996, in a memorandum from the Director of Administration, the Secretary General dismissed the appellant's administrative complaint.

B. Appeal No. 218/1996

14. On 24 November 1995 the appellant requested the Secretary General to reinstate him in the duties which he had been performing in the Office of the Clerk of the Assembly before 14 December 1994. He pointed out that at the time he had been Head of the Environment, Regional Planning and Local Authorities Section and, in that capacity, had been responsible for the smooth running of the work of the Committee on the Environment, Regional Planning and Local Authorities and the Committee on Agriculture and Rural Development and for the work of those committees' secretaries.

15. The Secretary General had not answered that request when, on 5 December 1995, the appellant took cognisance of a memorandum from the Clerk of the Assembly to staff in his office stating:

“following the Administrative Tribunal's decision of 23 November 1995 annulling Mr A.'s appointment, Mr C. has temporarily been put in charge of the Committee on the Environment, Regional Planning and Local Authorities and the Committee on Agriculture and Rural Development”.

Mr C. is a grade A6 official in the Clerk's Office.

16. On 6 December 1995 the appellant lodged an administrative complaint with the Secretary General. He asked the Secretary General to cancel the decision announced by the Clerk of the Assembly on 5 December 1995 and to reinstate him in the duties which he had been performing before 14 December 1994.

17. On 5 January 1996, in a memorandum from the Director of Administration, the Secretary General rejected the appellant's administrative complaint.

C. Appeal No. 221/1996

18. Following the decision of 23 November 1995, the Secretary General resumed the promotion procedure to fill the post of Head of Division in the Office of the Clerk of the Assembly.

On 19 March 1996, on the recommendation of the Transfers and Promotions Panel, the Secretary General again appointed Mr A. to the post.

19. On 25 March 1996 the appellant lodged an administrative complaint with the Secretary General, asking him to annul the appointment in issue.

20. The Secretary General dismissed the appellant's administrative complaint on 22 April 1996.

THE LAW

21. Through these three appeals the appellant is seeking:

- a) the annulment of two preparatory measures decided by the Secretary General to fill the post of Head of Division, advertised for competition in Vacancy Notice No. 140/94, as part of the execution of the Tribunal's decision of 23 November 1995 (appeal No. 216/1996);
- b) his reinstatement in the duties he had been performing before Mr A.'s first appointment, which had been changed following that appointment (appeal No. 218/1996);
- c) the annulment of the new decision to appoint Mr A. to the post of Head of Division (appeal No. 221/1996).

The Secretary General maintains that the appeals are unfounded.

22. The Administrative Tribunal has ordered the joinder of the three appeals, as being closely related, in accordance with Rule 14 of its Rules of Procedure.

A. Appeal No. 216/1996

23. The appellant challenges the Secretary General's decision to invite him for a further interview with the Head of the Department to which the appointment was being made and to make him subject to the assessment procedure for promotion purposes. The assessment procedure in question was the one introduced by the Secretary General, following the decision of 23 November 1995, on a provisional basis pending the implementation of a new assessment system in accordance with Appendix III to the Staff Regulations.

As to the appeal's admissibility, the appellant argues that the impugned measures were indeed decisions that adversely affected him. Relying on the case-law of the international tribunals, he points out that he does not challenge the resumption of the promotion procedure, but the "way" in which the Secretary General had interpreted the annulment decision of 23 November 1995. To be precise, he challenges the lawfulness of the decision to reperform certain preparatory measures carried out before 14 December 1994 (the date of the decision which the Tribunal had held to be flawed in its decision of 23 November 1995).

On the substantive issues the appellant contends that the impugned preparatory measures were unlawful on account of the unjustified repetition of some preparatory measures and three illegalities in the application of the Regulations on the Assessment of Staff after Confirmation in Post (Appendix III to the Staff Regulations). On the first point, the appellant notes that under the precise terms of the decision of 23 November 1995 the measures which he alleges were arbitrarily reperformed should have been left as they stood. As to the second point, the appellant argues that the Regulations in question were selectively applied, that the period over which the applicants were to be assessed was not that immediately preceding the date of drafting of the assessment report, and, lastly, that two applicants were assessed according to an improper procedure.

24. Lastly, the appellant expressed regret that the Secretary General had cast doubt on his good faith. On dismissing the administrative complaint the Secretary General had wondered: “whether [the appellant’s] complaints are genuinely promoted by legitimate concern for [his] rights or whether they do not stem from a wish to obstruct the procedure and from misuse of the right of appeal.”

25. The Secretary General contends that the appeal is inadmissible as the assessment report on the appellant and his interview with the Head of the Department to which the appointment was being made were not in themselves matters which could be regarded as adversely affecting him. Moreover, the appellant having complained that the repetition of the impugned measures might have affected the Transfers and Promotions Panel’s objectivity, the Secretary General considers that the administrative complaint was premature as it was lodged before the panel met again.

On the substantive issues the Secretary General contends that, on the basis of the Tribunal’s decision in the Bouillon (II) appeal No. 212/1995 (ATCE, decision of 29 March 1996, paragraphs 29 and 30), he was entitled to have the applicants reassessed and to invite them to further interviews with the Head of the Department to which the appointment was being made. Therefore, the repetition of certain preparatory measures in executing the decision of 23 November 1995 was in no way improper.

In reply to the arguments on the alleged illegalities in the application of the Regulations on the Assessment of Staff, the Secretary General states that he applied the procedure which he had introduced after the Tribunal’s decision of 24 February 1995 on the first Bouillon appeal. It follows that any reference to the Regulations on the Assessment of Staff is irrelevant as although the procedure introduced after the “first Bouillon decision” (decision of 24 February 1995) was based as far as possible on the procedure provided for in the Regulations on the Assessment of Staff, it necessarily had to exclude any reference to parts of the latter procedure which would have delayed its implementation.

Moreover, on the subject of the period covered by the report, the Secretary General maintains that his decision was in conformity with the Tribunal’s decision in the “second Bouillon appeal” (previously cited decision of 29 March 1996).

As to the manner in which two other staff members were assessed, the Secretary General contends that the appellant had no interest entitling him to bring proceedings; in addition, since when he lodged his administrative complaint he did not know whether that assessment might be damaging to him, at the time when the complaint was lodged the ground of appeal was premature and thus inadmissible. In any event, as these applicants were not promoted, the argument - in any case unfounded - is now redundant.

26. The Tribunal immediately points out, in response to the doubts raised by the Secretary General, that, in lodging his appeals, the appellant exercised rights accruing to him under the Staff Regulations and the manner in which he did so does not qualify as a misuse of the right of appeal. Moreover, it did not obstruct or delay the proceedings. The Secretary General’s charges therefore cannot be accepted.

27. On the subject of this appeal's admissibility, the Tribunal notes that the appellant is justified in complaining that the impugned measures adversely affect him. Moreover, since the appellant challenges the lawfulness of the Secretary General's decision to repeat them and not the way in which they were conducted or the manner in which they were actually regarded by the Transfers and Promotions Panel, which had not yet met when the administrative complaint was lodged, the appeal cannot be regarded as premature. On the other hand, the Secretary General's arguments are relevant to the examination of the substance of the grounds of appeal.

28. As to the merits of the grounds of appeal, the Tribunal notes that it has already considered the issue of repetition of measures in a promotion procedure following an annulment decision (ATCE, decision of 29 March 1996 on appeal No. 212/1995, Bouillon (II) v. Secretary General - interpretation request). The Tribunal held that repetition of certain measures as part of the execution of an earlier decision was not unlawful, on account of the margin of discretion enjoyed by the Secretary General.

29. The instant case differs from that which gave rise to the previously cited decision of 29 March 1996 in that, here, the Secretary General did not have to deal with the case of a staff member whose application had been rejected and in that he went back to a less advanced stage in the procedure as he also repeated the interview with the Head of the Department to which the appointment was being made. However, the Tribunal does not find therein any legal ground to depart from its position in the interpretation decision of 29 March 1996.

As to the way in which two other staff members were assessed, the Tribunal considers that this part of the appeal is now redundant.

30. The grounds of appeal must therefore be dismissed.

B. Appeal No. 218/1996

31. The appellant considers that the Secretary General's decision not to reinstate him in the duties he had been performing before Mr A.'s subsequently annulled appointment, was a breach of the regulations and disregarded general legal principles. Furthermore, no reasons were given for the decision not to reinstate him in his duties.

The appellant relies on Article 60 para. 6 of the Staff Regulations, which reads: "Decisions of the Administrative Tribunal shall be binding on the parties as soon as they are delivered." In the appellant's submission, the Secretary General was required to execute the Tribunal's decisions in good faith. An international tribunal's annulment of an administrative measure must, in all logic, have retroactive effect. The decision of 23 November 1995 therefore also created an obligation on the Secretary General to re-establish the situation which would, in all probability, have existed if the annulled measure had not been carried out. According to the appellant, it is clear that if Mr A. had not been appointed he would have retained his duties.

On the subject of the nature of his duties, the appellant, relying on the Tribunal's case-law, notes that his situation constituted not a *de facto*, but a *de lege* state of affairs. He concludes from this that, in the instant case, the administrative power wielded by the Secretary General must be assessed not in absolute terms but with reference to general legal principles concerning

res judicata and *restitutio in integrum*, with the result that the Secretary General did not have the latitude which he enjoyed in the exercise of his discretionary power.

As to the failure to give reasons, the appellant points out that the Secretary General did not reply to his memorandum of 24 November 1995 and that the Clerk of the Assembly's memorandum of 5 December 1995 did not contain a statement of reasons. Therefore, no reasons had been given during the procedure before the proceedings were brought. As to the reasons given in the course of the proceedings, they seem inconsistent.

Lastly, the appellant states that the impugned decision was damaging to him in two respects. Firstly, the Transfers and Promotions Panel - which when it met again was faced with a situation different from that obtaining before 14 December 1994 - could have fuelled suspicion about the real reason why the Secretary General decided not to reinstate the appellant in his duties. Secondly, the impugned decision deprived him of an opportunity to continue to acquire significant experience in the fields in which he had been working before 14 December 1994, experience which he would have been able to put forward in a transfer or promotion procedure relating to a post for which the Vacancy Notice required qualifications in those fields.

32. The Secretary General notes that the dissolution of the Environment, Regional Planning and Local Authorities Section was not a result of Mr A.'s appointment as such, but of the setting up of a division whose head would have charge of the relevant committee. The Secretary General added that the section would have been dissolved in any case and if the change in the appellant's duties coincided with Mr A.'s taking up his duties, this was for obvious reasons of continuity. The Secretary General considers it is his prerogative to redefine the responsibilities of staff within a given department. Moreover, the Staff Regulations do not recognise staff's entitlement to perform and retain a particular set of duties. Therefore the execution of the decision of 23 November 1995 was bound to be confined to measures affecting Mr A. and could not concern the appellant - who in February 1995 had not complained about the change in his duties - nor the organisation of the Clerk's Office, a matter which had not been referred to the Tribunal.

33. The Secretary General regards the reasons he gave for dismissing the administrative complaint as more than adequate since he answered the appellant's grounds of complaint.

34. The Tribunal first notes that the present dispute must be perceived in the context of the execution of the decision of 23 November 1995. The Secretary General's powers in respect of the organisation of secretariat departments must accordingly be assessed in the light of the previously cited decision.

It would seem from information provided by the Secretary General that the post to be filled had been newly set up and the duties it entailed overlapped with those previously performed by the appellant. It also seems that, at the time of the Tribunal's decision, the change in the organisation of the Clerk's Office following the setting up of the new head-of-division post was operational.

The Tribunal considers that the Secretary General can redeploy staff within a department according to that department's needs and, in the instant case, the Tribunal's decision of 23 November 1995 does not place any explicit or implicit restrictions on his authority to do so.

Since the appellant's reinstatement in his former duties would have necessitated a temporary change in the organisation of the Clerk's Office, in the light of the decision of 23 November 1995 and bearing in mind the need to consider both the department's interests and the appellant's interests, the Tribunal holds that the Secretary General's decision was not disproportionate.

35. Moreover, after having inspected the Transfers and Promotions Panel's record, the Tribunal notes that the failure to reinstate the appellant in his former duties did not adversely affect him.

As to the other damage alleged by the appellant, viz his inability to continue amassing experience in a specific field, the Tribunal is of the opinion that, in the light of its finding on redeployment of staff, the claim of damage cannot be upheld.

36. These grounds of appeal must therefore also be dismissed.

C. Appeal No. 221/1996

37. In this appeal, the appellant contends that Mr A.'s second appointment to the post in question was flawed by substantive defects. He alleges a breach of the regulations and disregard of general principles of law. He maintains that the Administration did not take account of all the relevant evidence and that erroneous conclusions were drawn from the file, in particular since, in the appellant's contention, the applicant selected did not satisfy a number of the conditions laid down in the Vacancy Notice.

According to the appellant, Mr A. did not possess either "knowledge of the workings and procedures of a parliamentary assembly", or "extensive knowledge of interparliamentary co-operation" or "extensive knowledge of international political issues".

The appellant observes that, under the Tribunal's case-law, these requirements are objective in nature (see the decision of 22 September 1992 on appeal No. 170/1992, para. 22) and contends that, logically, the knowledge at issue could be acquired only through professional experience. Mr A., he alleges, lacked such experience.

After examining the scope of each requirement, the appellant analyses Mr A.'s alleged knowledge in that area.

Lastly, after stating that the Transfers and Promotions Panel's recommendation was the result of an arbitrary appraisal of all the criteria, the appellant concludes that there was a breach of Articles 8 para. 1 and 14 para. 5 of the Regulations on Appointments. The former provides: "Applications shall be admissible only if they comply with the conditions set out in the Vacancy Notice", and the latter: "Where a number of applicants satisfy the conditions, they shall be listed in order of merit."

38. The Secretary General argues that the question whether the knowledge required was an objective or subjective matter is of no importance, as he has discretionary authority in either case. He refers to the Tribunal's Sixto decision (ATCE, decision of 26 April 1996 in appeal No. 210/1995, paragraphs 25 to 27). He nevertheless considers that, contrary to the appellant's

contention, the qualifications in question were not objective in nature but were part of the qualifications which left scope for the administrative authority to exercise discretion.

Taking the view that Mr A. had the knowledge which the Vacancy Notice required, the Secretary General observes that he in no way exercised his discretion arbitrarily.

39. The Secretary General also points out that the post in question by nature required managerial skills; qualifications in addition to those cited by the appellant were therefore also important.

40. In conclusion, the Secretary General asks the Tribunal to dismiss the appeal as the appellant has not proved any breach of the Staff Regulations.

41. The Administrative Tribunal points out that in staff management matters the Secretary General, who holds the authority to make appointments (Article 36 c of the Statute of the Council of Europe and Article 11 of the Staff Regulations), has wide ranging discretionary powers under which he is qualified to ascertain and assess the Organization's operational needs and the staff's professional abilities. However those discretionary powers must always be lawfully exercised. It nevertheless has a duty to verify whether the disputed decision was taken in accordance with the Organization's regulations and with general principles of law, to which the legal systems of international organizations are subject. Indeed, it is for the Tribunal to which an appeal against an administrative decision taken under discretionary powers is made, to examine, not only whether the decision was taken by a competent body and meets the formal requirements but also whether the procedure was correctly followed and, from the standpoint of the Organization's own rules, whether the administrative authority's appraisal took into account all the relevant facts, whether any incorrect conclusions were drawn from the file and whether there was any misuse of powers (see, most recently, ATCE decision No. 210/1995, Sixto v. Secretary General of 26 April 1996).

42. The Tribunal first notes that there is a difference of opinion between the parties as to the nature of the qualifications at issue in the present case. In the appellant's submission they are objective in nature, whereas the Secretary General implies that they call for subjective assessment.

43. The Tribunal observes that in assessing objective qualifications the competent authority naturally makes less use of discretionary power than in assessing subjective qualifications.

In addition, assessing each applicant's qualifications is a different matter from taking the final decision on which applicant to select. Moreover, the stage of considering the admissibility of each application, which is and must remain a preliminary one, by nature allows the Secretary General less latitude for discretion than the assessment of each staff member's qualifications and capabilities.

44. However, as can also be seen from the record of the panel's meeting, in comparing the applications the panel did consider the applicants' respective capabilities from the point of view of the requirements of the Vacancy Notice.

45. Although the appellant disputes whether Mr A. had the necessary qualifications, the panel reached the opposite conclusion. In doing so, it did not exceed the inherent limits of an assessment of that kind.

46. Furthermore, the Tribunal points out that there is nothing in the evidence to suggest that the panel's deliberations were based on circumstances which were not relevant to the case, or that its recommendation was the result of an arbitrary assessment of all the criteria.

47. The Tribunal notes that the panel considered that Mr A.'s merits outweighed the appellant's. It has itself found no evidence such as to prove that the impugned decision was based on clearly erroneous conclusions. Since it is not for the Tribunal to substitute its own assessment of the candidates' qualifications and merits for that of the Secretary General, it concludes that the Secretary General's decision to appoint Mr A. was in no way arbitrary.

48. These grounds of appeal must therefore also be dismissed.

49. In conclusion, no appeal is founded.

50. For these reasons, the Administrative Tribunal:

Orders the joinder of appeals Nos. 216/1996, 218/1996 and 221/1996;

Declares appeal No. 216/1996 admissible;

Declares the three appeals unfounded;

Dismisses them;

Orders that each party bear its own costs;

Delivered at Strasbourg on 27 January 1997, the French text of the decision being authentic.

The Registrar of the
Administrative Tribunal

The Chair of the
Administrative Tribunal

S. SANSOTTA

C RUSSO

Appendix

CHAIR'S ORDER OF 10 APRIL 1996 in the case of PALMIERI v. Secretary General

THE FACTS

1. The complainant, Mr G. PALMIERI, is a grade A4 Council of Europe official in the Office of the Clerk of the Parliamentary Assembly of the Council of Europe.
2. He applied for a grade A5 post of Head of Division in the Clerk's Office, advertised in Vacancy Notice 140/94 of 14 October 1994. On 19 December 1994 he was informed that the Secretary General had decided to appoint Mr A., an A4 official in the Directorate of Legal Affairs.
3. Mr Palmieri filed an appeal with the Administrative Tribunal (202/1995) challenging the appointment. By decision of 23 November 1995 the Tribunal annulled the appointment.

At the administrative-complaint stage, which precedes appeal to the Tribunal, the complainant had applied for a stay of execution of the appointment under Article 59 para.7 of the Staff Regulations. The Chair rejected the application in an order dated 1st February 1995.

4. On 25 March 1996 the complainant learnt that Mr A. had been appointed to the post under the procedure which the Secretary General adopted after the Tribunal's decision of 23 November 1995.
5. On the same date he submitted an administrative complaint to the Secretary General under Article 59 para. 1 of the Staff Regulations. In his complaint he asked the Secretary General to annulate the decision to appoint Mr A.'s.

He argued that the appointment contained both procedural and substantive defects. With regard to the procedural defects, which were the subject of two appeals 216/1996 and 218/1996 already lodged with the Administrative Tribunal, he referred to the supplementary memorials submitted to the Tribunal.

With regard to the substantive defects, he expressed the view that the Administration had not taken into account all the relevant evidence in the file and that erroneous conclusions had been drawn from the file. He contended that Articles 8 para. 1 and 14 para. 5 of the Regulations on Appointments had been contravened.

6. In a memorandum dated 25 March 1996 which reached the registry on 26 March 1996, he applied to the Chair of the Administrative Tribunal for a stay of execution of the contested decision.
7. On 26 March 1996 the Chair of the Tribunal invited the Secretary General to submit any comments on the application for a stay of execution.

8. The Secretary General submitted his observations in a letter dated 1 April 1996. They were communicated to the complainant on the same day. The complainant submitted his observations in reply on 4 April 1996.

THE LAW

9. Under Article 59, para.7 of the Staff Regulations application may be made for a stay of execution of an act of the Administration if such execution is likely to cause “grave prejudice difficult to redress”.

10. The complainant requests a stay of execution of the contested act. He believes that grave prejudice difficult to redress might result were Mr A., while serving in the Clerk’s Office, to acquire some at least of the qualifications which he does not currently possess. He points out that his complaint is partly based on the absence of those qualifications.

Having stated that it is open to the Secretary General to give him reassurances in this matter, and reiterating the declaration he made when submitting the request for a stay of execution which gave rise to the order dated 1 February 1995, he says that if the Secretary General gives him satisfaction on this point he will respond by withdrawing the request for a stay of execution.

11. In the Secretary General’s view, execution of the challenged act cannot cause the complainant grave prejudice difficult to redress and the application for a stay of execution is accordingly unfounded. He refers, *mutatis mutandis*, to the arguments set out in connection with the request for a stay of execution which resulted in the order of 1st February 1996.

The Secretary General reiterates the statement which he made on that occasion.

In conclusion the Secretary General requests that no stay of execution be granted.

12. In his observations in reply to the Secretary General’s, the complainant, in view of the assurance given, withdraws his request for a stay of execution.

However he expresses surprise that the Secretary General did not apply the provision contained in Article 59 para.7 *in fine* and kept Mr A. on in the post concerned after the application for a stay of execution had been made.

13. The Chair notes that the complainant withdraws the application for a stay of execution in view of the Secretary General’s declaration.

I, CHAIR OF THE ADMINISTRATIVE TRIBUNAL,

Note

- the application for a stay of execution has been withdrawn.

Done at Savone on 10 April 1996.

The Deputy Registrar of the
Administrative Tribunal

C. WESTERDIEK

The Chair of the
Administrative Tribunal

C RUSSO