

## **Decision of the European Ombudsman closing his inquiry into complaint 2028/2009/VL against the European Commission**

Decision

**Case 2028/2009/VL - Opened on 05/10/2009 - Decision on 19/11/2010**

### **The background to the complaint**

1. The complainant started working for the Commission on 1 January 2009. Prior to his employment with the Commission, he had been posted at the Permanent Representation of [a Member State] (the "Member State") to the EU in Brussels (the "Permanent Representation"). His first posting was from 18 August 2003 until June 2007, on behalf of the Ministry of Foreign Affairs, and his second posting was from June 2007 until 30 December 2008, on behalf of the Member State's Parliament.
2. Upon commencement of his work, the complainant learnt that, since he, his spouse and his children had been living in Brussels (the eldest child had left Brussels to study in a different country), the Commission determined his place of recruitment and his place of origin as being in Brussels. Nevertheless, the Commission informed the complainant that he could ask for a reconsideration of its decision concerning his place of origin. As a result of the aforementioned decision, the complainant did not receive an installation allowance, the daily subsistence allowance or the reimbursement of travel and removal expenses.
3. In the ensuing correspondence, the complainant insisted that the Commission should have decided that his place of recruitment was in the Member State. The Commission replied that its decision was made on the basis of his declaration that he had been posted to Brussels until 31 December 2008. In spite of the fact that (i) his posting was of a diplomatic nature and (ii) he had property and other family members in the Member State, the Commission considered that his principal family ties had been in Brussels for some time. The Commission pointed out that a distinction needed to be made between the complainant's 'place of recruitment' and his 'centre of interests'. According to the Commission, the former was the place of his habitual residence, which appeared to have been in Brussels since 2003. As regards the latter, that is, his centre of interests, the Commission submitted that it was likely to be in the Member State.

The relevant legal provisions



4. The legal provisions concerning the allowances and reimbursements claimed by the complainant can be found in Articles 5, 7, 9 and 10 of Annex VII to the Staff Regulations.

Article 5(1) of Annex VII to the Staff Regulations provides:

*" 1. An installation allowance equal to two months' basic salary in the case of an official who is entitled to the household allowance, and equal to one month's basic salary in other cases shall be paid to an established official who furnishes evidence that a change in the place of residence was required in order to satisfy the requirements [of residing within a distance compatible with proper performance of his or her duties] ... "*

Article 7(1) of Annex VII to the Staff Regulations provides:

*" 1. An official shall be entitled to reimbursement of travel expenses for himself, his spouse and his dependants actually living in his household: (a) on taking up his appointment, from the place where he was recruited to the place where he is employed; ... "*

Article 9(1) of Annex VII to the Staff Regulations provides:

*" 1. The expenses incurred in respect of removal of furniture and personal effects ..., shall be reimbursed to an official who is obliged to change his place of residence in order to comply with [the requirement to reside within a distance compatible with proper performance of his or her duties] and who has not been reimbursed in respect of the same expenses from another source... "*

Article 10(1) of Annex VII to the Staff Regulations provides:

*" 1. Where an official furnishes evidence that a change in the place of residence is required in order to comply with [the requirement to reside within a distance compatible with proper performance of his or her duties] , such official shall be entitled ... to a subsistence allowance... "*

Appeal pursuant to Article 90(2) of the Staff Regulations

5. On 29 April 2009, the complainant lodged a complaint under Article 90(2) of the Staff Regulations. He requested the Commission to revise its decision on his place of recruitment, place of origin and centre of interests, as a result of which he was ineligible for the installation allowance, the daily subsistence allowance or the reimbursement of removal expenses and travel costs.

6. In this complaint, the complainant pointed out the following: (i) he had lived in the same flat in the capital of the Member State since 1974, for which he had paid rent and utility bills during his secondments; (ii) in 2006, he bought a new flat on the outskirts of the aforementioned capital, which was being renovated at that time and for which he also paid utility bills and mortgage instalments (while keeping his old rented flat in the capital); (iii) the rent and utility



charges for the apartment in Brussels were paid by the Member State; (iv) apart from his spouse and children, his closest family members all lived in the Member State and he regularly visited them on weekends and public holidays; (v) he and his family were all registered in the Member State, not Brussels; (vi) his spouse's employment status was registered in the Member State as non-active; (vii) the pension and social security contributions were paid in the Member State; (viii) neither of the two flats in the Member State were ever sublet or rented out; (ix) whenever possible, his spouse and children spent the school holidays the Member State, so that the children could keep in touch with their relatives and friends; (x) the information received from the Commission made him believe that he was entitled to the reimbursement of travel expenses; (xi) he left for the Member State at some point in November 2008 to finalise his duties with his previous employer and returned to Brussels in December of that year; and (xii) the Commission sent its correspondence concerning his employment to his address in the Member State in November 2008.

7. With regard to his place of recruitment, the complainant suggested that, since he was granted the expatriation allowance under Article 4 of Annex VII to the Staff Regulations [1] , it followed that he was not habitually resident in Belgium. In order to support his claim to have his place of recruitment recognised as being in the capital of the Member State, he also referred to the judgment of the Civil Service Tribunal in *Borbély v Commission* [2] .

8. Regarding his place of origin and his centre of interests, the complainant argued that these should have been considered as being in the Member State, since his closest relatives lived in the Member State, he had property there and his family made use of their voting rights in the Member State. With regard to the installation allowance and the daily subsistence allowance, the complainant pointed to the reasoning of the Civil Service Tribunal in *Borbély v Commission* [3] and argued that he was in a similarly precarious situation to Mrs Borbély because he maintained two flats in the Member State and rented a third in Brussels. The complainant added that, if his probationary period were successfully completed, his permanent establishment in Brussels would have substantial costs as a consequence.

9. With regard to the reimbursement of travel and removal costs, the complainant argued that, upon taking up his duties, he and one of his children travelled to Brussels by plane, whereas the other family members arrived from the Member State capital by car. He stated that he would need to move " *some furniture, piano and similar things* ", and that the furniture he used now was either bought at IKEA or borrowed.

10. The complainant referred to supporting evidence in his complaint, such as copies of letters concerning the commencement of his employment (which the Commission sent to his address in the Member State), national documents certifying that he was registered at his address in the Member State in 2008, two attestations from the Permanent Representation concerning the period of time during which he was posted to Brussels, bank statements certifying that the costs relating to his Brussels rent and utility bills were reimbursed by the Member State, utility bills for the flat he rented in the Member State capital, mobile telephone bills for his spouse issued in the Member State (sent to the address of the rented flat in the Member State capital), and a letter relating to the annual land tax for 2008 concerning the apartment he purchased (sent to



the address of the rented flat in the Member State capital).

The background of the dispute and the findings of the Civil Service Tribunal in *Borbély v Commission*

**11.** Prior to her entry into the Commission's service on 1 March 2005, Mrs Borbély was employed by the Hungarian Ministry of Foreign Affairs and posted to the Permanent Representation of Hungary to the EU in Brussels from January 2002 onwards. She lived in a furnished apartment, provided to her free of charge by the Hungarian state, which she left upon her recruitment at the Commission. The Commission took the view that her place of recruitment was Brussels. Consequently, the Commission refused to pay her the daily subsistence allowance, the installation allowance and to reimburse her travel expenses.

**12.** The Civil Service Tribunal stated that the word 'residence', used in the provisions setting out the conditions for the grant of the installation allowance and the daily subsistence allowance, had to be construed as referring to the centre of interests of the official concerned [4] . Furthermore, it followed from the case-law that the said notion referred to " *the place where the interested party has established and intends to maintain the permanent or habitual centre of his or her interests* " and that " *it also implies, irrespective of the purely quantitative element of the time spent by the person concerned in a particular country, not only the actual fact of living in a given place, but also the intention of thereby achieving the continuity which stems from a stable way of life and from the course of normal social relations.* " [5]

**13.** The Civil Service Tribunal considered that the following points were relevant in that case: (i) Mrs Borbély, although seconded to Brussels, maintained a rented apartment in Budapest until October 2003, when she acquired an apartment of her own in Budapest. Throughout her posting in Brussels, she thus kept a dwelling in Budapest and incurred expenses for it, for which she provided evidence) [6] ; (ii) she did not only have the right to make use of those apartments in her capacity as the tenant or property owner, but she also regularly stayed in them, which was supported by a summary of regular journeys between Brussels and Budapest until the end of 2004 [7] ; (iii) the frequent nature of her trips to Budapest demonstrated that, within the limits of the constraints imposed by her work, her personal life took place in Budapest, rather than Brussels [8] ; (iv) she did not make a similar acquisition in Brussels, but lived there in a furnished apartment provided by the Hungarian Government [9] ; (v) during her posting to Brussels from January 2002 until August 2003, she received a cohabitation allowance for her husband, which was later discontinued because their married life took place primarily in Budapest and Hanover, where her husband was employed [10] .

**14.** The Civil Service Tribunal thus concluded that Mrs Borbély's residence, prior to starting work for the Commission, was in Budapest. Since she had to change this residence in order to be able to work for the Commission, the Civil Service Tribunal held that she was entitled to the installation allowance and the daily subsistence allowance.

**15.** As regards Mrs Borbély's claim for the reimbursement of travel expenses pursuant to Article 7(1)(a) of Annex VII to the Staff Regulations, this benefit was intended to cover the expenses



arising from the need to travel, upon taking up an appointment, from the place of recruitment to the place of employment. The Civil Service Tribunal pointed to case-law defining an official's place of recruitment as “ *the place where the official was habitually resident at the time of recruitment* ”. In the court's view, this was not necessarily the same as the term *residence* that was relevant in relation to the installation allowance and the daily subsistence allowance. The reimbursement of travel expenses was intended to cover costs incurred in reaching the future posting. However, a person could not incur such expenses if, regardless of the centre of his or her interests in the context of the installation and daily subsistence allowance, she was already at the place of the future posting when taking up the appointment [11] .

16. The Civil Service Tribunal pointed out that, whilst the term *habitual residence* was often synonymous with the term *residence* referred to in relation to the installation allowance and the daily subsistence allowance, the concept of 'centre of interests' could be interpreted differently depending on the type of allowance provided in the Staff Regulations [12] . Bearing in mind the objective of Articles 7(1)(a) of Annex VII to the Staff Regulations, actual residence needed to be given particular importance when interpreting an official's centre of interests with regard to the reimbursement of travel expenses. Short periods of absence prior to taking up employment, such as for instance annual leave entitlements, could not change that assessment [13] . The Tribunal thus found that the Commission had rightly refused to grant Mrs Borbély that benefit.

The Commission's decision on the complainant's appeal

17. By decision of 9 June 2009, the Commission rejected the complainant's Article 90(2) complaint. The Commission pointed out that its decision focused on his place of recruitment and the entitlements based on this location. Its decision did not focus on his place of origin, his family ties and property ownership in the Member State because these were not considered relevant with regard to his place of recruitment.

18. The Commission explained that, when determining his place of recruitment, it had relied on the definition given in Article 2(2), first indent [14] of the General implementing provisions for giving effect to Article 7(3) of Annex VII ('GIP') [15] . In this context, it pointed out that the Union courts have interpreted the term 'habitual residence' as denoting the place where a person has established, and intends to maintain, the permanent or habitual centre of his or her interests. Apart from the amount of time spent in a particular country, what has to be considered is not only the actual fact of living in a place, but also the intention to achieve a continuity stemming from a stable way of life and the course of normal social relations.

19. According to the Commission, it was clear that, from 2003 until January 2009, when the complainant entered into its service, his habitual place of residence was Brussels. It submitted that the complainant's arguments were inconsistent with regard to (1) whether there had been an interruption in his stay in Brussels between his two secondments to the Permanent Representation, (2) when he and/or his family left Brussels at the end of 2008 and went to the Member State capital, and (3) when they moved out of his old flat in Brussels in December 2008. Given that the complainant signed the contract for the apartment he rented in Brussels on 5 November 2008, the Commission considered that he had resided in Brussels without



interruption from August 2003 until his entry into its service.

**20.** The Commission added that the fact that the complainant stayed in the Member State capital during the Christmas break in 2008/2009 was not decisive. In accordance with Article 2(2) of the GIP, temporary absences such as holidays could not affect its assessment that, from August 2003 until his entry into its service, the complainant and his family were resident in Brussels.

**21.** The Commission further took the view that the complainant's reliance on the *Borbély* judgment was inappropriate because the factual situation in that case was "*entirely different*". It underlined that, since 2003, the complainant had been living in Brussels with his spouse and children, who were (or had been) attending a school there. It was therefore not easy for the Commission to understand how the complainant could argue that almost all of his family's social and family activities took place in the Member State.

**22.** The complainant's request for the installation allowance and the daily subsistence allowance was rejected because, on the basis of the criterion of habitual residence laid down in the GIP for determining his place of recruitment, he could not be considered to have changed his place of residence upon taking up his duties at the Commission.

**23.** The Commission rejected the request for the reimbursement of travel expenses on the same grounds. The fact that the complainant spent Christmas in the Member State could not put into question the finding that his habitual place of residence was Brussels.

Complaint to the European Ombudsman

**24.** On 30 July 2009, the complainant submitted a complaint to the European Ombudsman.

## **The subject matter of the inquiry**

**25.** The complainant effectively put forward the following allegation and claim:

### **Allegation**

When deciding on his complaint pursuant to Article 90(2) of the Staff Regulations, the Commission failed properly to consider all the relevant elements of his complaint, in particular in relation to the case-law of the Community courts, as regards his (i) centre of interest, (ii) place of origin, (iii) place of recruitment, (iv) installation allowance, (v) daily subsistence allowance, (vi) travel expenses and (vii) removal costs.

### **Claim**



The Commission should grant him the above-mentioned allowances and reimburse the travel expenses and removal costs.

**26.** With regard to the first aspect of the allegation, the Commission informed the complainant that, within one year of commencing his duties, he could ask it to reconsider the decision on his place of origin. It appeared however, that the complainant did not make use of this possibility. Given that he had not exhausted the internal administrative procedures under Article 90(1) and (2) of the Staff Regulations, the Ombudsman decided that this aspect of the complaint was inadmissible pursuant to Article 2(8) of his Statute.

**27.** Furthermore, the Ombudsman noted that the second aspect of the allegation concerned the 'centre of interests', a concept that appeared to have been used in determining the 'place of recruitment'. Given that no specific and separate decision appeared to have been taken to determine this 'centre of interests', the Ombudsman took the view that it was not necessary to examine this issue separately.

## The inquiry

**28.** On 5 October 2009, the Ombudsman asked the Commission for its opinion on the present complaint. In his opening letter, the Ombudsman invited the Commission to explain in what way it considered the complainant's situation to be factually different from that of the applicant in Case F-126/05 *Borbély v Commission* .

**29.** On 23 December 2009, the Commission provided its opinion on the present complaint, which was forwarded to the complainant. On 3 March 2010, the Ombudsman received the complainant's observations.

## The Ombudsman's analysis and conclusions

### A. The complainant's allegation and the related claim

#### Arguments presented to the Ombudsman

**30.** The **Commission** took the view that the complainant's complaint was unfounded. As regards his place of recruitment, it submitted that, in the absence of an express definition in the Staff Regulations, the relevant provision in Article 2(2), first bullet point, of the GIP needed to be considered. The GIP only serves as an interpretation and clarification of Article 7(3) of Annex VII to the Staff Regulations, which determines an official's place of origin in the context of his or her entitlement to the reimbursement of annual travel costs and travel costs on termination of service [16] . Article 2(2), first bullet point, of the GIP refers to the relevance of the habitual residence when defining the place of recruitment.





**31.** The Commission pointed out that the Union Courts have consistently interpreted the concept of 'habitual residence' as meaning the place where the person concerned has established, and intends to maintain, the permanent or habitual centre of his or her interests [17] . This implies, irrespective of the purely quantitative element of the time spent by the person concerned in a particular country, not only the actual fact of living in a given place, but also the intention of thereby achieving the continuity which stems from a stable way of life and from the course of normal social relations [18] . All the relevant factual elements needed to be taken into account in this context. However, it was up to the official concerned to produce the relevant elements in this respect.

**32.** In the Commission's view, it was clear that the complainant's habitual residence or his centre of interests was in Brussels and had been in Brussels since 2003, up until his entry into service on 1 January 2009, that is, for over five and a half years. The attestations provided by the Permanent Representation indicated an uninterrupted period of secondment from August 2003 until one day before his entry into service with the Commission on 1 January 2009. He himself stated that his spouse and children moved to Brussels with him " *to allow the family to stay together* ". There were no indications that his spouse or children had left Brussels, except for the eldest child, who commenced university studies in a different country in September 2008.

**33.** The Commission further stated that, contrary to the complainant's submissions, his situation did in fact differ from that of Mrs Borbely. Unlike the latter, he did not provide any evidence showing that he frequently travelled to the Member State. Nor did he ever rent or live in a furnished house in Brussels. Furthermore, the Commission underlined that the notion of 'centre of interests' used in the context of determining an official's place of origin, as set out in Article 2(2), second bullet point, of the GIP, was broader than the concept of the 'centre of interests' used for defining the place of recruitment [19] .

**34.** As regards the payment of the installation allowance and the daily subsistence allowance, the Commission pointed out that, in order to be eligible for these allowances, the official concerned must have been required to change the place of his or her residence. The notion of 'residence' in that context was consistently interpreted as meaning 'habitually resident' and having one's centre of interests in a given place. Given that the complainant's habitual residence was in Brussels at the time of his recruitment, he could not be considered to have changed his place of residence upon entry into service with the Commission. Therefore, he was not entitled to the installation allowance and the daily subsistence allowance.

**35.** The same conclusion applied in relation to the reimbursement of travel expenses provided for in Article 7(1) of Annex VII to the Staff Regulations, which refers to expenses incurred when travelling from the place of recruitment to the place of employment. In the complainant's case, both places were Brussels. The fact that he was spending the Christmas holidays with his family in the Member State capital was irrelevant in this respect. His habitual place of residence was, and had been, Brussels and a short period of holidays did not change that finding.

**36.** With regard to the payment of the removal costs, the Commission pointed out that, in





accordance with Article 9(1) of Annex VII to the Staff Regulations, such a payment required a change of residence in order to comply with Article 20 of the Staff Regulations. The notion of residence in that context has been consistently interpreted as meaning 'habitually resident' and having one's centre of interests in a given place. This is the place where a person is habitually resident at the time of his or her recruitment, which is the same criterion as that used in the GIP to determine the place of recruitment for the installation allowance and the daily subsistence allowance. Given that the complainant's habitual residence was in Brussels at the time of recruitment, he was thus not entitled to the payment of removal costs.

**37.** The **complainant** considered that there was common ground between him and the Commission on the following points: (i) the attestation provided by the Permanent Representation confirmed he was on an uninterrupted secondment from August 2003 until the end of December 2008, that is, directly prior to his entry into the Commission's service, (ii) the concept of 'habitual residence' was used in the present case to determine the place of recruitment; (iii) this concept has been consistently interpreted as the place where a person has established and intends to maintain the permanent or habitual centre of his or her interests; (iv) the latter concept implied that, irrespective of the purely quantitative element of the time spent by the person concerned in a particular country, it was not only the actual fact of living in a given place, but also the intention of thereby achieving the continuity stemming from a stable way of life and from the course of normal social relations.

**38.** Given the temporary nature of his secondment to the Permanent Representation, the complainant took the view that he had maintained his habitual centre of interest in the Member State. In support of this assertion, he referred to the factual elements he had already put forward in his complaint under Article 90(2) of the Staff Regulations.

## **The Ombudsman's assessment**

### **Preliminary observations**

**39.** At the outset, it is useful to note that the complainant and the Commission appear to agree that the complainant was posted to Brussels for an uninterrupted period, from August 2003 until the end of December 2008, immediately after which he joined the Commission's services. They also agree that the concept of habitual residence should be used to determine the place of the complainant's recruitment, and that this concept denotes the place where the person concerned has established, and intends to maintain, the permanent or habitual centre of his or her interests. Irrespective of the purely quantitative element of the time spent by the person concerned in a particular country, this implies not only the actual fact of living in a given place, but also the intention of thereby achieving the continuity stemming from a stable way of life and from the course of normal social relations.

**40.** Before proceeding with his assessment, the Ombudsman points out that it is not for him to substitute the Commission's assessment with his own. Instead, he has to verify whether the



Commission's decision was correct or, if there were more than one possible interpretation of the relevant rules, whether the Commission put forward a reasonable explanation for the choice that it made.

**41.** In his complaint pursuant to Article 90(2) of the Staff Regulations, the complainant argued that information received from the Commission led him to believe that he was entitled to the reimbursement of travel expenses. He relied on the fact that he received an expatriation allowance. As regards the first of these arguments, the Ombudsman notes that the complainant did not support it by any concrete evidence. As regards the second argument, it emerges from the wording of Article 4(1) of Annex VII to the Staff Regulations that the granting of the expatriation allowance is subject to specific conditions [20] . One of these conditions is that the person concerned must have not been habitually resident in the country of employment for a certain period of time. However, the said provision also stipulates that a habitual residence in the country of employment is not to be taken into account if it is due to "*circumstances arising from work done for another State*", such as, for instance, a diplomatic posting in the country of future employment. In these circumstances, the fact that the Commission granted the complainant the expatriation allowance does not mean that he necessarily also fulfilled the conditions for the benefits at issue in the present case.

**42.** Finally, and in order to clarify possible misconceptions, the fact that a person's employment with the Commission was preceded by a diplomatic posting to Brussels does not automatically lead to the presumption that the person concerned has maintained his or her habitual residence in the country of origin in so far as the allowances and reimbursements at issue in the present case are concerned. It should be recalled that the Civil Service Tribunal, in its judgment in the *Borbély* case invoked by the complainant, carefully analysed a number of factual elements in arriving at its findings. This was despite the fact that Mrs Borbély had been posted to Brussels by her Member State before taking up employment at the Commission.

## On the substance of the case

**43.** As regards the substance of the issue of 'habitual residence', certain parallels can clearly be established between Mrs Borbély and the complainant. Both the complainant and Mrs Borbély were seconded to Brussels by their respective Member States before they began working for the Commission, even though Mrs Borbély's posting there lasted only three years, whereas that of the complainant extended to five and a half years. Second, they both rented and/or owned flats or houses in their respective Member States, for which they incurred expenses and which they did not rent out or sublet. Third, the rent for their flats in Brussels was covered by their employer. Fourth, both Mrs Borbély and the complainant had or have family in their respective Member States and spent some time there during their secondment to Brussels.

**44.** On the other hand, the Commission correctly observed that there were differences between Mrs Borbély and the complainant. First, the complainant lived in a flat that he furnished himself, whereas Mrs Borbély had moved into a furnished flat. Second, the complainant had moved to Brussels with his spouse and children, whereas Mrs Borbély's husband did not live with her in



Brussels, and their married life took place outside of Brussels, notably in Budapest and Hanover. Third, Mrs Borbély provided documentary evidence in support of her statement that she frequently travelled to her country of origin, whereas the complainant, in the Commission's view, did not provide such evidence.

**45.** In the Ombudsman's view, the fact that the complainant lived in a flat furnished by himself could indicate his intention to settle down in a particular place in a more permanent way. However, the complainant explained that at least some of the furniture was borrowed and suggested that the remainder of the furniture had been bought cheaply. In these circumstances, the Ombudsman takes the view that this difference between the situation of the complainant and that of Mrs Borbély is not conclusive in itself.

**46.** However, a different conclusion applies as regards the second and the third of the differences highlighted by the Commission. The fact that the complainant lived with his immediate family in Brussels, where his children went to school, is clearly of significance when determining the location of the complainant's habitual residence. In this respect, the complainant's situation differs markedly from that of Mrs Borbély, whose spouse did not live in Brussels. Furthermore, and based on the elements at the Ombudsman's disposal, the complainant indeed appears not to have put forward documentary evidence of the type and amount submitted by Mrs Borbély to establish that he frequently travelled to his city of origin. In this context, it is also useful to note that the complainant did not support with any concrete evidence his assertion that *all* the family's social activities took place in the Member State.

**47.** The determination of a habitual residence is an overall assessment which needs to take into account all relevant elements brought to an administration's attention. In the Ombudsman's view, the Commission's statement that the complainant's situation was entirely different from that of Mrs Borbély appears to be an exaggeration. Nevertheless, considering the key differences between the situation of Mrs Borbély and that of the complainant, the Ombudsman considers that the Commission could reasonably conclude that the complainant's habitual residence was in Brussels.

**48.** Besides, it follows from the well-established case-law of the Union courts that provisions of Union law which create rights to financial payments must be interpreted restrictively [21] .

**49.** In view of the above, the Ombudsman finds no maladministration as regards the Commission's decision to determine Brussels to be the place of the complainant's recruitment and its further decision that the complainant did not fulfil the conditions for the daily subsistence allowance, the installation allowance and of the reimbursement of travel and removal costs.

## B. Conclusions

On the basis of his inquiry into this complaint, the Ombudsman closes it with the following conclusion:



**No instance of maladministration has been established in the present case.**

The complainant and the Commission will be informed of this decision.

P. Nikiforos Diamandouros

Done in Strasbourg on 19 November 2010

[1] Article 4(1) of Annex VII to the Staff Regulation reads as follows:

" 1. *An expatriation allowance shall be paid, ...: (a) to officials:*

*– who are not and have never been nationals of the State in whose territory the place where they are employed is situated, and*

*– who during the five years ending six months before they entered the service did not habitually reside or carry on their main occupation within the European territory of that State. For the purposes of this provision, circumstances arising from work done for another State or for an international organisation shall not be taken into account; ... "*

[2] Case of the Civil Service Tribunal F-126/05 *Borbély v Commission* , judgment of 16 January 2007, not yet reported in the ECR.

[3] *"[The installation allowance] was to make up for the expenses associated with the situation of a duly established official who passes from a precarious status to a permanent status and must therefore enable himself to live in and become integrated into his place of employment in a permanent and lasting manner for an indeterminate but substantial period of time .... Consequently, having a temporary residence in Brussels, inter alia for professional purposes, does not necessarily conflict with the aim of the installation allowance, which reflects constraints to which persons whose centre of interests is in their place of posting are not normally subject. The same is true concerning the objective of the daily subsistence allowance, which is to compensate for the expenses and inconvenience occasioned by the precarious situation of a probationary official, in particular where he must retain his previous residence at the same time. "* Ibidem, paragraph 48.

[4] Ibidem, paragraph 32.

[5] Ibidem, paragraph 33.

[6] Ibidem, paragraph 55.

[7] Ibidem, paragraph 56.



[8] Ibidem, paragraph 57.

[9] Ibidem, paragraph 58.

[10] Ibidem, paragraph 59.

[11] Ibidem, paragraph 66.

[12] Ibidem, paragraph 67.

[13] Ibidem, paragraph 68.

[14] Article 2(1) and 2(2), first indent of the GIP provide:

*" 1. When officials take up their duties, their place of origin shall be assumed to be the place where they are recruited.*

*If officials so request within one year of taking up their duties, and on production of appropriate documentary evidence, their centre of interests shall be determined as their place of origin, if the centre of interests is not the same as their place of recruitment.*

*2. For the purposes of applying this Decision:*

*- 'place of recruitment' shall mean the place where an official was habitually resident at the time of the recruitment. Places of temporary residence, e.g. for purpose of study, military service, training periods or holidays, shall not be regarded as places of habitual residence... "*

[15] Administrative Notice, No. 57-2004 of 8 June 2004.

[16] Case T-44/89 *Gouvras-Laycock v Commission* [1990] ECR II-217, paragraph 25.

[17] Case T-63/91 *Benzler v Commission* [1992] ECR II-2095, paragraph 25 and Case T-28/98 *J v Commission* [1999] ECR-SC I-A-185 and II-973, paragraph 47.

[18] Case F-126/05 *Borbély v Commission* , paragraph 33.

[19] Case T-137/95 *Mozzaglia v Commission* [1996] ECR-SC I-A-619 and II-1657, paragraph 64.

[20] See footnote 1 above.

[21] Case T-221/02 *Lebedef v Commission* [2003] ECR I-A-211 and II-1037, paragraph 38, and Case T-384/02 *Valenzuela Marzo v Commission* [2004] ECR I-A-235 and II-1035, paragraph 104.