

## Decision in case 1346/2018/LM on the European Parliament's refusal to pay a staff member household allowance for a limited period

Decision

**Case** 1346/2018/LM - **Opened on** 07/09/2018 - **Decision on** 25/02/2019 - **Institutions concerned** European Parliament ( No maladministration found ) | European Parliament ( Settled by the institution ) |

The complainant, a staff member of the European Parliament, divorced in 1992. Realising that Parliament had incorrectly entered her divorce date in her personal file, she had it changed in 2018. She also requested additional household allowance for a period in 1992. Parliament provided explanations for not paying the complainant the allowance, which the Ombudsman found convincing. She closed the inquiry with a finding of no maladministration.

### Background to the complaint

1. The complainant, a staff member of the European Parliament, divorced in September 1992 and Parliament discontinued her household allowance on 1 September of that year.
2. In 2018, the complainant realised that the date of her divorce in her personal file was the date of the judgement (23 September 1992) and not the date the judgement became final (11 December 1992). This would have been in line with the Court of Justice's *Vienne* [1] judgement. In her view, Parliament should have discontinued the allowance from 31 December 1992.
3. The complainant considered that Parliament made two mistakes. First, at the time of divorce, the institution had indicated that it would discontinue the allowance *after* September 1992 and yet it did so before then. Second, by not paying the allowance for October-December 1992, Parliament did not comply with the judgement in the *Vienne* case.
4. Parliament changed the date of divorce in the complainant's file to 11 December 1992 but said it would not pay the allowance for September-December 1992 because so much time had passed. The complainant made an administrative complaint [2] against this decision, which Parliament rejected in July 2018. The complainant then turned to the Ombudsman on 25 July 2018.



## The inquiry

5. The Ombudsman opened an inquiry into the complainant's position that Parliament should pay her the household allowance for September-December 1992.

6. The Ombudsman received Parliament's reply regarding the complaint and the complainant's comments on Parliament's reply.

## Arguments presented to the Ombudsman

7. Parliament argued that, according to established EU case law, staff must request payments within a *reasonable time* to protect, among other things, the principle of legal certainty [3] . The EU Staff Regulations [4] , the EU Financial Regulation [5] , and the Statute of the Court of Justice of the EU [6] all have a five-year time limit for claiming payment of amounts due. The complainant made her request after 25 years.

8. The complainant argued that Parliament should recognise the financial implications of rectifying her date of divorce in her file. She referred to the judgement in the *Zink* [7] case on an administrative error the Commission had made. In that case, the EU General Court ordered the Commission to pay sums due, even though the claimant made the request for payment more than five years after the Commission had made the mistake.

9. Parliament argued that, in the *Zink* case, the Commission recognised that the claimant had a right to be paid an allowance, and that it had failed to do so because of a technical mistake. For the Court, the request for payment was valid because the Commission had made a *legal and budgetary commitment* to pay the allowance. In the complainant's case, there was no such commitment for October to December 1992. Parliament added that it paid the complainant the household allowance for September 1992 with her March 1993 salary.

10. Parliament reported that as a matter of practice in 1992, it stopped paying household allowance on the date of the divorce judgement and not when the judgement came into force. The institution changed its practice only after the judgement in the *Vienne* case, in 2012. It argued that only new facts could justify reconsideration of a decision that is no longer open to challenge [8] . The correction of the complainant's date of divorce in her file was not the result of a new fact. Therefore, the judgement in the *Vienne* case cannot be considered a new fact in respect of someone who is not a party to the case or is not directly concerned by that judgement [9] .

## The Ombudsman's assessment

11. The EU Staff Regulations require that the household allowance be paid up to the last day of the month in which the entitlement ceases [10] . In Parliament's practice before 2012, the date



of the divorce judgement determined the end of payment of entitlement. The complainant is thus right that she was entitled to the allowance for September 1992, which Parliament says it paid her. The complainant has not disputed Parliament's statement.

**12.** Based on the principles of legal certainty, Parliament comprehensively and convincingly explains why it did not pay the complainant allowance for October-December 1992. It also convincingly explains why the *Zink* case is not relevant to the complainant's situation: Parliament had made no legal and budgetary commitment to pay the complainant the allowance for that period. Additionally, the institution started basing itself on the date the divorce judgement comes into force only in 2012.

**13.** In light of the above, the Ombudsman finds no maladministration by the European Parliament.

## Conclusions

Based on the inquiry, the Ombudsman closes this case with the following conclusions :

**There was no maladministration by the European Parliament for not paying the complainant the household allowance for the months October-December 1992 with retroactive effect.**

The complainant and the European Parliament will be informed of this decision.

Emily O'Reilly

European Ombudsman

Strasbourg, 25/02/2019

[1] Judgement of the Civil Service Tribunal of 11 December 2012, *Philippe Vienne v. European Parliament* , F-97/11.

[2] On the basis of Article 90(2) of the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community:  
<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01962R0031-20140501> [Link]

[3] See Judgement of the General Court of 14 December 2011, *Allen* , T-433/10P.



[4] Article 85 of the Staff Regulations.

[5] Article 81 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002.

[6] Article 46 of the Statute of the Court of Justice, Protocol (No 3) to the Treaty on the European Union.

[7] Judgement of the General Court of 27 February 2018, *Richard Zinck v. European Commission*, T-338/16P.

[8] Judgement of 13 November 1986, *Becker v. Commission*, C-232/85, paragraph 8.

[9] Order of the General Court of 11 december 2001, *Stods v. Council*, T-99/97, paragraphs 41-42.

[10] Article 16(3) of Annex VII to the Staff Regulations.