

## **Decision on how the European Commission (PMO) divided benefits derived from child allowances between two divorced EU staff members (case 1528/2021/FA)**

Decision

**Case 1528/2021/FA - Opened on 10/11/2021 - Decision on 02/06/2022 - Institution concerned** European Commission ( No further inquiries justified ) |

The case concerned the decision by the European Commission's Paymaster Office (PMO) to divide benefits derived from the child allowance between two divorced EU staff members. The complainant claimed that she should receive all derived benefits because she bears the majority of the costs for raising the child.

The Ombudsman finds the approach adopted by the PMO to decide on the division of derived benefits reasonable and in line with EU case-law. However, the Ombudsman finds that the PMO gave incoherent explanations to the complainant in its reply to her administrative complaint on the matter. However, with new internal administrative rules having been adopted that cover this area, the Ombudsman trusts that the PMO will ensure consistency in how the rules are applied and clarity in the information it gives to EU staff members.

The Ombudsman considered that no further inquiries were justified in this case and closed the inquiry.

## **Background to the complaint**

1. The complainant is a permanent staff member of an EU institution. She was married to an EU staff member with whom she has a child. They divorced in 2012 and the European Commission's Paymaster Office (PMO) decided to pay the complainant all benefits derived from the dependent child allowance. In 2020, the PMO informed the complainant that, following the recruitment of her ex-spouse by another EU agency, it had decided to divide the derived benefits between both ex-spouses [1] .

2. The complainant made administrative complaints [2] against the decision of the PMO. The complaint was eventually rejected and the PMO confirmed its initial decision.

3. Dissatisfied with the PMO's decision, the complainant turned to the Ombudsman in August



2021.

## The inquiry

4. The Ombudsman opened an inquiry into how the PMO divided benefits derived from child allowance between two divorced EU staff members.

5. In the course of the inquiry, the Ombudsman's inquiry team organised a meeting with the European Commission to obtain further clarification on its decision. The meeting report was shared with the complainant for comments.

## Arguments presented to the Ombudsman

6. The complainant claimed that she should receive all derived benefits because, as stated by the national court judgement on her divorce, she bears the majority of the costs for raising the child, and, as such, her ex-spouse did not contribute “substantially” to the maintenance of their child.

7. The complainant argued that, under the applicable rules, when a child does not live with an EU staff member on a permanent basis (or for a substantial amount of time), in order to receive the benefits derived from the child allowance, the staff member must provide *proof* that they contribute both *actually and substantially* to the maintenance of the child. [3] She claimed that the PMO failed to show that her ex-spouse contributed substantially to the maintenance of their child. It did not ask for supporting documents and did not take into account decisions of the national courts, as well as an agreement between both ex-spouses referring to the allowances received. The complainant further argued that, in its reply to the administrative complaint, the Commission relied on incorrect data to determine the substantial contribution of the ex-spouse to the maintenance of their child.

8. The complainant took further issue with the timing of the decision, claiming that she received contradictory information from the PMO. She also contended that there was no proof that the PMO had consulted her employer before adopting its decision. [4]

9. In the reply to the administrative complaint, the Commission explained that, based on EU case-law, entitlement to *benefits* deriving from allowances is determined in the same way as for entitlement to the allowance itself, which is based on the responsibility for the maintenance of the child in question [5]. The Commission added that, the concept of “*actual maintenance of a child*” [6] entails providing for all or parts of a child's basic needs, including housing, food, clothing, education, care and medical expenses. [7] Hence, when deciding on the division of benefits, it took into account national judgments, but also the factual circumstances of the case. The Commission then analysed the *substantial* nature of the contribution of the complainant's ex-spouse to the maintenance of their child, in light of the factual elements provided by the complainant, and considered that the ex-spouse contribution was “*in no way ... derisory .... and*



*[he] should be considered as substantially contributing to the essential needs of his child”.*

**10.** The Commission further explained that it had made a mistake when, following the divorce, it had allocated all benefits to the complainant. It referred to EU case-law [8] , and stated that, in such circumstances, the administration is entitled to adopt a new decision in line with the applicable rules.

**11.** In the meeting with the Ombudsman inquiry team, the PMO stated that, in cases of divorce between two EU staff members, the benefits derived from the child allowance are divided between the two staff members equally, as there is a general presumption of maintenance of the child. It is not the role of the PMO to determine what should be regarded as a sufficient contribution from a parent to the maintenance of a child, nor to analyse in detail the data provided regarding the costs for maintaining a child. This is for the national courts to decide on. In this case, the PMO considered that the ex-spouse contributes to the maintenance of the child as he provides child support to the complainant.

## **The Ombudsman's assessment**

**12.** The PMO based its decision to divide the derived benefits on the internal administrative rules in force at the time [9] . Under these rules, if a child does not live with an EU staff member on a permanent basis (or for a substantial amount of time), the administration is required to carry out checks, relying on factual information provided by staff members, proving the maintenance of the child. [10]

**13.** While the internal administrative rules refer to the criterion of ‘ *actual and substantial* ’ maintenance of the child, the EU Staff Regulations only refer to the criterion of ‘ *actual maintenance of the child* ’ [11] . According to EU case-law [ 12] , in order to decide on the division of the derived benefits, it is sufficient to prove that the EU staff member *actually* contributes to the maintenance of the child. An *actual* contribution to the maintenance occurs where a parent provides for all or part of the child’s basic needs [13] .

**14.** The PMO’s explanation to the Ombudsman inquiry team on how it divides derived benefits between EU staff members appears to be in line with EU case-law and the Staff Regulations. The ex-spouse actually contributes to the maintenance of the child as, based on the decision of the national court, he provides child support to the complainant.

**15.** The Ombudsman considers reasonable the PMO’s position that it is not its role to determine what should be regarded as a sufficient contribution from a parent to the maintenance of a child. The Ombudsman further notes that the newly-adopted internal administrative rules no longer refer to the *substantial* nature of the contribution [14] , and are, as such, in line with EU case-law and the PMO’s approach.

**16.** Based on the above, the Ombudsman finds no manifest error in the PMO’s finding that the derived benefits should be divided between the ex-spouses. The administration is entitled to



correct a previous erroneous decision.

17. Nevertheless, the Ombudsman considers that the information provided to the complainant in the reply to her administrative complaint was not coherent. In particular, the PMO's reply led the complainant to believe that the PMO is responsible for determining whether the contribution to the maintenance provided by the ex-husband is substantial, based on the particular circumstances of the case, such as the actual costs of maintenance. The Ombudsman trusts that the PMO will ensure consistency in applying the new internal administrative rules and ensure it provides EU staff members clear information about these rules.

18. On the basis of the above, the Ombudsman finds that, despite the inconsistencies in how the PMO handled this case, the outcome of the administrative procedure is in line with the applicable rules as established by EU case-law and, as such, no further inquiries are justified in this case.

## Conclusion

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

**There are no further inquiries justified in this case.**

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

Tina Nilsson Head of the Case-handling Unit

Strasbourg, 02/06/2022

[1] The decision was based on Conclusion n° 220/04 of the heads of administration of 19 February 2004. These benefits include the tax abatement, the increase on the expatriation allowance and the annual travel expenses of the child.

[2] The complainant made two administrative complaints based on Article 90(2) of the Staff Regulations.

[3] Based on Conclusion n° 220/04 and Conclusion no 274/15 of the heads of administration on Concept of actual maintenance of a dependent child of an official/staff member within the meaning of the Staff Regulations (Article 2(2) of Annex VII to the Staff Regulations) of 25 February 2016.

[4] In accordance with conclusion n° 220/04, if the parents are employed by two different



institutions, their administrations shall first consult with each other.

[5] Case T-271/01, Judgment of the Court of First Instance of 12 November 2002, *José Manuel López Cejudo v Commission of the European Communities*, para. 35:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62001TJ0271> [Link]

[6] As established in Article 2 (2) Annex VII of the Staff Regulations:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01962R0031-20220101> [Link].

[7] The Commission referred to EU case-law: case T-134/99, Judgment of the Court of First Instance of 11 July 2000, *Anna Skrzypek v Commission of the European Communities*, para. 69

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61999TJ0134> [Link]

[8] Case T-236/97, Judgment of the Court of First Instance of 2 July 1998, *Giovanni Ouzounoff Popoff v Commission of the European Communities*, para. 51:

[https://eur-lex.europa.eu/search.html?lang=fr&SUBDOM\\_INIT=ALL\\_ALL&DTS\\_DOM=ALL&DN=61997T%3F0236&](https://eur-lex.europa.eu/search.html?lang=fr&SUBDOM_INIT=ALL_ALL&DTS_DOM=ALL&DN=61997T%3F0236&)  
[Link]

[9] Conclusion no 220/04 and Conclusion no 274/15

[10] Conclusion no 274/15

[11] Article 2(2) of Annex VII to the Staff Regulations:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01962R0031-20220101> [Link].

[12] Case T-271/01, Judgment of the Court of 23 October 2001, *José Manuel López Cejudo v Commission of the European Communities*, para 36:

[https://curia.europa.eu/juris/document/document\\_print.jsf;jsessionid=9ea7d2dc30dbc75dac69da2949619f78e14f320](https://curia.europa.eu/juris/document/document_print.jsf;jsessionid=9ea7d2dc30dbc75dac69da2949619f78e14f320)  
[Link]; Case T-354/03, Judgment of the General Court of 16 February 2005 *Gemma Reggimenti*

*v European Parliament*, para 71:

<https://curia.europa.eu/juris/document/document.jsf;jsessionid=2AA3DDAEFCB3EC20CBC61A782FE1FF23?text=8>  
[Link]; Case T-87/04, Judgment of the Court of First Instance of 10 October 2006, *Milagros*

*Irène Arranz Benitez v European Parliament*, para 39:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62004TJ0087> [Link]

[13] Case T-134/99, Judgment of the Court of First Instance of 11 July 2000, *Anna Skrzypek v Commission of the European Communities*, para. 69:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61999TJ0134> [Link]

[14] Conclusion no 283/20, Determination and payment of financial entitlements under the Staff Regulations in the event of dissolution of a marriage or partnership, or termination of a de facto relationship, of 24 March 2021.