

Decision of the European Ombudsman on complaint 1752/2006/ID against the European Commission

Decision

Case 1752/2006/ID - Opened on 31/08/2006 - Decision on 10/09/2007

Strasbourg, 10 September 2007

Dear Mr Y,

On 7 June 2006, you submitted a complaint to the European Ombudsman concerning the failure of the European Commission's Office for administration and payment of individual entitlements ("PMO") to notify you in a proper, reasonable and timely manner of your entitlement to receive a portion of the family allowances that were being paid in full to your ex-wife.

On 31 August 2006, I forwarded the complaint to the President of the Commission. The Commission sent its opinion on 23 November 2006. I forwarded it to you with an invitation to make observations, which you sent on 25 January 2007.

I am writing now to let you know the results of the inquiries that have been made.

THE COMPLAINT AND ITS BACKGROUND

On 8 February 2006, the complainant submitted a complaint to the European Ombudsman (complaint 257/2006/(KW)ID), in which he alleged, *inter alia*, that the Office for administration and payment of individual entitlements of the European Commission ("PMO") had failed to inform him of his entitlement to receive a portion of the family allowances received by his ex-wife (Ms X, a Commission official), although the Commission was aware that he and his ex-wife had been legally separated since November 2002. By letter dated 9 March 2006, the Ombudsman informed the complainant of his decision not to open an inquiry into the above-mentioned allegation, because it had not been preceded by appropriate administrative approaches to the Commission, as required by Article 2(4) (1) of the Statute of the European Ombudsman. The Ombudsman also suggested that the complainant contact the Commission, if he wished to pursue his allegation further.

On 25 April 2006 the complainant sent an e-mail to the PMO in which he stated:



" on 10th June 2004 your PMO department (Marie Tzirani, Head of Unit) sent a letter notifying me of my entitlement to receive a portion of the Family Allowances paid to my ex wife [Ms X] (Commission Official). This entitlement was applicable as from 1st December 2002. "

Furthermore, the complainant asked the following question: " Can you please explain why the PMO department only notified me of this entitlement more than 18 months later in June 2004? "

The Commission replied on 2 May 2006, confirming that the PMO notified the complainant of his entitlement only in June 2004 " because it was at that time that the Commission itself was notified of the judgment of your divorce ". The Commission added that, although PMO was belatedly notified about the judgment, the complainant's rights were nevertheless correctly awarded with effect from 1 December 2002.

The complainant replied to the Commission on 10 May 2006 asking when the Commission first became aware that Ms X and he were legally separated. Since the Commission did not answer this question, the complainant wrote again to it on 22 May 2006.

In an e-mail dated 24 May 2006, the Commission stated that the divorce judgment of 7 November 2002 was sent to the Commission's Directorate-General for Administration ("DG ADMIN") by Ms X on 21 November 2002 and was registered by DG ADMIN in the database on 25 November 2002. It further stated that

" [f]or some reason due mainly to our internal reorganisation (the PMO.1 was created in January 2003 and took over part of ADMIN's work) the PMO.1 was notified belatedly [of] the judgment, your rights were nevertheless correctly awarded with effect from 01.12.2002 ".

On 7 June 2006, the complainant sent to the Ombudsman an e-mail, in which he attached the above correspondence with the Commission. He indicated that the appropriate administrative approaches, as suggested by the Ombudsman, had been taken and that he had received an unsatisfactory response from the Commission.

The complainant made the following allegation, which the Ombudsman took up for inquiry: the Commission failed to notify the complainant in a proper, reasonable and timely manner of his entitlement to receive a portion of the family allowances that were being paid in full to his ex-wife.

THE INQUIRY

The Commission's opinion

In its opinion on the complaint, the Commission made the following comments. The complainant and his ex-wife, a Commission official, were separated by (a first) judgment of a Belgian Court of 7 November 2002. By note of 21 November 2001, the complainant's ex-wife submitted a copy of this judgment to the Commission's service responsible for the determination and payment of allowances, namely, at the relevant time, DG ADMIN. Several other judgments followed, but did not change the custody arrangements of equally shared custody of the couple's two children.



Divorce judgments, even though they primarily concern the parties involved, may also be addressed to an employer, who is bound by them. Given that the Commission is in general not party to divorce proceedings, the ex-spouses should make all the necessary arrangements to comply with the judgment in all its aspects, including financial arrangements (sharing of allowances, alimony, and so on).

The Commission informs the ex-spouses, irrespective of whether one or both of them are employed by the Commission, about the entitlements to family allowances by a note that is addressed to both parties.

The PMO was created in January 2003 and took over part of DG ADMIN's functions, including the determination and payment of allowances. It appears that due to this change in organisation and due to the transfer of files from DG ADMIN to the PMO, the Commission did not, as is currently the practice, inform the complainant about his entitlements to family allowances pursuant to the transmission of the first separation judgment by the complainant's ex-wife. The Commission apologised for this oversight.

By note of 17 May 2004, the complainant's ex-wife belatedly informed the PMO about the (final) separation judgment of 26 June 2003. After that, the PMO immediately sent a note informing her of the obligation to pay the family allowances according to the custody arrangements, that is, by transferring 50% thereof to her ex-husband, the complainant. This note of 10 June 2004 clearly stated that this obligation was applicable as of 1 December 2002. The complainant received a copy of this note, as is the usual practice.

The Commission regretted that the complainant was informed only in June 2004 that he was entitled to 50% of the allowances as of 1 December 2002, that is, once the PMO had been notified of the final separation judgment and not in November 2002, after the transmission of the first separation judgment by his ex-wife.

The Commission reiterated that this delay was due to organisational mishaps linked to the start-up phase of the PMO and apologised for this oversight.

The complainant's observations

The complainant made the following observations:

The Commission's suggestion that it "*informs the ex-spouses (...) about the entitlements to family allowances by a note that is addressed to both parties*" is not correct, as there is a difference between what the Commission "*does*" and how it "*reacts*". The Commission "*reacted*" to an e-mail enquiry from the complainant that was sent on 10 May 2004 about the education allowances. The "*reaction*" caused the Commission to send a letter about the family allowance entitlements to both parties on 10 June 2004. The Commission's failure to inform both parties was not the a result of its own internal automatic processes, as is suggested in its opinion, but its response was prompted by an enquiry made by the complainant.

The complainant also noted that the Commission admits that he was "*not properly informed in*



a timely manner of his entitlements to receive a portion of the family allowances " due to its own internal " organisational mishaps " .

The complainant stated that the Commission caused him to suffer " *unfair pain* ", due to its " *organisational mishaps* ". He added that, due to a judgment by an appeal court in Brussels issued on 10 January 2006, he suddenly became liable to pay to his ex-wife EUR 7 853 in backdated child support payments stretching from November 2002 to January 2006. The complainant attached the appeal court judgment to his observations. The complainant further stated that the appeal court's decision to reverse all previous court judgments in respect of the financial obligations of both former spouses was a direct result of the Commission's own " *organisational mishaps* ", namely, its failure to inform him, in a timely manner, about his entitlement to receive a portion of the family allowances. The Commission should have informed him immediately about his entitlement to receive a portion of the family allowances after it received a note from his ex-wife on 21 November 2002 about equal custody of the children. Had the Commission acted in this manner, there would have been no impact on the complainant's entitlement to receive 50% of the family allowances in the event of an appeal court hearing similar to the one that was concluded on 10 January 2006. The complainant noted that this development was entirely the fault of the Commission, and not his. The complainant stated that it was precisely because of this that he became a " *victim* " of the Commission's own " *organisational mishaps* " .

The complainant stated that it is fair and reasonable for the Commission to take responsibility for the pain and suffering caused to him and to pay compensation for all " *stress, anxiety, pressure, burdens, financial difficulties and character condemnations* " caused by its " *organisational mishaps* ". These "mishaps" caused him to

" incur legal costs directly related to the matter at hand; become unfairly and unreasonably burdened with extremely difficult financial problems; become liable to pay 7853 EUR in backdated child support payments to his former spouse; become burdened with very difficult stress and negative pressure; be forced into spending huge amounts of time, efforts and costs dealing with this matter. "

The complainant also requested that the Commission formally apologise directly to him for all the pain he has suffered as a result of its own organisational mishaps and to explain what it has done in order to prevent such situations from occurring again.

THE DECISION

1 Allegation that the Commission failed to notify the complainant in a proper, reasonable and timely manner of his entitlement to receive a portion of the family allowances that were being paid in full to his ex-wife

1.1 In his complaint to the European Ombudsman, the complainant alleged that the European Commission failed to notify him in a proper, reasonable and timely manner of his entitlement to receive a portion of the family allowances that were being paid in full to his ex-wife (Ms X, a Commission official). The complainant emphasised that, although the Commission knew about



his legal separation since 21 November 2002, it did not do anything to inform him of his entitlement to receive a portion of the relevant allowances until he contacted it on 10 May 2004.

1.2 In its opinion, the Commission stated that, as a matter of course, it informs ex-spouses, irrespective of whether one or both of them are employed by the Commission, about their entitlements to family allowances by a note that is addressed to both parties. It further referred to a change in its organisation regarding the determination and payment of allowances. It also stated that, as part of this organisational change, the Commission had, at the time when it was first notified of the relevant separation court judgment (November 2002), to transfer files from its Directorate-General for Administration ("DG ADMIN") to its Office for administration and payment of individual entitlements ("PMO"). A further consequence of this organisational change was that it appeared that the Commission did not, as is currently the practice, inform the complainant about his entitlements to family allowances pursuant to the transmission of the first separation judgment by his ex-wife. The Commission apologised, twice, for this oversight, which it attributed to organisational mishaps during the start-up phase of the PMO. It added that when, by note of 17 May 2004, the complainant's ex-wife belatedly informed the PMO about the (final) separation judgment of 26 June 2003, it immediately sent a note informing her of the obligation to pay the family allowances according to the custody arrangements, that is, by transferring 50% thereof to the complainant. This note of 10 June 2004 stated clearly that this obligation was applicable as of 1 December 2002. The Commission stated that, as is the usual practice, the complainant received a copy of this note.

1.3 The Ombudsman notes that, in its opinion, the Commission acknowledged its failure to provide the complainant with proper and timely information about his entitlement to receive a portion of the family allowances. This failure was contrary to the Commission's relevant practice, which would have required it to provide this information once it received, in November 2002, the court judgment concerning the separation of the complainant from Ms X. Moreover, the Commission remedied its failure to provide the above-mentioned information in June 2004, when, after having received the final separation judgment, it sent a note to Ms X, informing her of the obligation to pay 50% of the family allowances to the complainant, retroactively as from 1 December 2002. Furthermore, it communicated to the complainant a copy of this note. In light of the above, the Ombudsman finds that no further inquiry into, and consideration of, the complainant's allegation is justified.

1.4 Moreover, the Ombudsman remarks that, in its opinion, the Commission twice expressed its apologies for its above failure. In his observations, the complainant requested that the Commission formally apologise directly to him for the shortcoming at issue and its adverse impact on him. In this regard, it suffices to note that the Commission's opinion on a complaint to the Ombudsman constitutes a formal Commission document, which, as the Commission knows, is communicated to the complainant. Therefore, apologies expressed in such a document are destined for the complainant. Hence, no further consideration of the above claim is justified.

1.5 In his observations, the complainant also requested compensation for the material damage he incurred as well as the pain and suffering caused as a result of the Commission's above failure. However, this claim appears to have been made for the first time in the complainant's



observations and not to have been the subject of pertinent administrative approaches to the Commission, pursuant to Article 2(4) (2) of the Statute of the European Ombudsman. Apart from that, the complainant has not demonstrated that there was a sufficient causal link between the Commission's failure at issue and the damage he has invoked. This damage seems to be far more closely related to actions or omissions on the part of his ex-wife, in her capacity as a private individual and party in the context of legal proceedings, which led to a court decision (concerning child support payments) apparently unfavourable to the complainant. Under these circumstances, the Ombudsman does not consider it appropriate to extend the scope of his present inquiry to the above claim made by the complainant.

1.6 Finally, in his observations, the complainant requested that the Commission explain what it has done in order to prevent situations like the one here concerned from occurring again. Taking into account that the Commission's failure at issue does not appear to be of a systemic nature, but rather reflects a shortcoming in the context of the operational start-up phase of the PMO, the Ombudsman does not consider it justified to make further inquiries concerning the matter. The complainant is, of course, free to submit to the Commission a request for the provision of the above information.

2 Conclusion

For the reasons indicated in point 1.3 of the present decision, the Ombudsman finds that no further inquiry into, and consideration of, the complainant's allegation is justified. The Ombudsman, therefore, closes the case.

The President of the Commission will also be informed of this decision.

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) " *A complaint (...) must be preceded by the appropriate administrative approaches to the institutions and bodies concerned.* "

(2) See note 1 above.