CONSEIL DE L'EUROPE_____

_____COUNCIL OF EUROPE

TRIBUNAL ADMINISTRATIF
ADMINISTRATIVE TRIBUNAL

Appeal No. 623/2019
(Nigel SMITH v. Secretary General of the Council of Europe)

The Administrative Tribunal, composed of:

Ms Nina VAJIĆ, Chair,
Ms Françoise TULKENS,
Mr Christos VASSILOPOULOS, Judges**,**

assisted by:

Mr Sergio SANSOTTA, Registrar,
Ms Eva HUBALKOVA, Deputy Registrar,

has delivered the following decision after due deliberation.

PROCEEDINGS

1. The appellant, Mr Nigel Smith, lodged his appeal on 10 September 2019. The appeal was registered the same day under No. 623/2019.

2. On 30 October 2019, the appellant filed further pleadings.

3. On 4 December 2019, the Secretary General forwarded her observations on the appeal.

4. On 13 January 2020, the appellant submitted observations in reply.

5. The public hearing in the present appeal took place in the court room of the Administrative Tribunal in Strasbourg on 29 January 2020. The appellant was represented by Me Carine Cohen Solal, a barrister practising in Strasbourg, while the Secretary General was represented by Ms Sania Ivedi, legal officer in the Directorate of Legal Advice and Public International Law, assisted by Ms Léa Boucard, an assistant lawyer in the same department.

THE FACTS

I. CIRCUMSTANCES OF THE CASE

6. The appellant is a Council of Europe staff member. He works in the Directorate of Communication where he holds the position of administrative assistant, grade B4 step 7.

7. The appellant used to be married. His former wife is also a Council of Europe staff member and holds the grade B3.

8. The couple have two children and the household allowance along with the dependent child allowance were paid to the wife pursuant to Article 4, paragraph 5, of Appendix IV ("Regulations governing staff salaries and allowances") to the Staff Regulations (paragraph 44 below). The wife's basic salary combined with the expatriation allowance was greater than the basic salary of the husband who was not drawing the expatriation allowance.

9. In 2015, the couple began divorce proceedings.

10. On 5 February 2016, the family judge at the *Tribunal de grande instance* of Strasbourg issued a non-conciliation order in which the judge authorised the couple to live apart and stipulated that the two children were to live with each parent alternately, for a week at a time. The judge did not make any decision regarding the allowances paid by the employer.

11. From March 2016, the couple embarked on this alternating residence arrangement, with each parent having the children for half of the time, and providing for them financially.

12. Following the said order, the appellant's wife continued to draw the household allowance and dependent child allowance every month.

13. After the couple came to an agreement in March 2016, the wife began to pay the appellant a certain amount per month.

14. In March 2017, the appellant's wife stopped the payments.

15. In August 2017, the appellant contacted the Directorate of Human Resources to complain that the allowances should be shared equally by the employer.

16. On 26 September 2017, the Directorate of Human Resources replied, saying that the Staff Regulations did not provide for the possibility of sharing allowances.

17. The same day, the appellant told the Directorate that he was not satisfied and that he needed to consider "all [his] options in this matter". He did not make an administrative request or lodge an administrative complaint, however.

18. On 15 February 2018, the appellant sought a divorce.

19. On 6 August 2018, the lawyer acting for the appellant in the divorce proceedings wrote to the Director of Human Resources, stating that the appellant's wife was refusing to pay the appellant half of the allowances and inquiring as to why the allowances could not be split between the spouses.

20. On 20 December 2018, the appellant asked the Directorate of Human Resources to pay him the allowances in question because he fell into one of the categories (legally separated staff member) provided for in Article 4, paragraph 2 ii., of Appendix IV to the Staff Regulations (see paragraph 44 below).

21. On 21 December 2018, the Directorate of Human Resources replied, saying that the situation had not changed in relation to September 2017, since the Directorate had not been notified of any change in marital status.

22. On 1 January 2019, the appellant replied, saying that only the basic salary – i.e. excluding the expatriation allowance - should be taken into account and, accordingly, asked the Directorate of Human Resources to reconsider its position.

23. On 15 January 2019, the Directorate of Human Resources replied as follows:

> "*Our longstanding administrative practice is to take into account the most favourable situation for the household and the child/ren.*
> *As a matter of fact, taking into account your basic salary will have an impact on the amount of the household allowance.*
> *Should you wish to favour this option, we need a common agreement between you and your wife*."

24. On 23 January 2019, the appellant expressed surprise at the "longstanding administrative practice" and asked for it to be discontinued and the rules applied instead. At the same time, he said that, unlike his wife, he was willing to share the allowances in question and requested that, as from that same month, half of the sum be paid to him and half to his wife.

25. On 30 January 2019, the Directorate of Human Resources replied, saying that the allowances could be paid only to one person. It asked to be provided with a copy of the divorce decree, once issued, and ended by stating that the fact that the appellant's wife had decided not to share the allowances was not a matter in which it would be appropriate for the Organisation to intervene and that it should be referred to the national authorities which decided child custody arrangements.

26. In the meantime, in his last submissions in the divorce proceedings, dated 18 January 2019, the appellant requested, inter alia, that his wife be required to "pay him half of the expatriated child supplement and half of the dependent child supplement" and "in the alternative, that the court order any non-reimbursed school, extracurricular, leisure and medical expenses to be shared equally between the parents after deducting the expatriated child supplement, the dependent child supplement and any future education allowances".

27. On 25 March 2019, the appellant submitted an administrative request (Article 59, paragraph 1, of the Staff Regulations) to the then Secretary General, asking to be awarded the allowances from March 2016, together with compensation for the non-pecuniary and pecuniary damage suffered. He assessed this damage at 500 euros per month as from March 2016.

28. On 22 May 2019, the Director of Human Resources replied, on behalf of the Secretary General, partially granting the request: she agreed to grant him the benefit of the two allowances but denied his request for retroactive payment and compensation.

29. The Director noted that the appellant objected to the longstanding administrative practice regarding the payment of allowances to couples where both spouses worked at the Organisation and that he was aware that strict application of the rules would produce a less favourable outcome for the couple. That being so, and because he insisted, she agreed to pay him the allowances from 1 June 2019 and to inform his wife accordingly.

30. The refusal to grant the appellant's other requests was worded as follows:

> "*As for your requests for a retroactive payment and for compensation, all payments due by the Council of Europe to your family have been made in full. The Council of Europe may not be held responsible for any disagreement you may have with your wife with regard to the distribution of family allowances between you. This is a private matter and shall be settled as such*."

31. On 19 June 2019, the appellant lodged an administrative complaint with the Secretary General under Article 59, paragraph 2, of the Staff Regulations. In it, he challenged the decision denying him retroactive payment of the allowances and compensation for damage suffered as a result of the Organisation's persistent refusal to apply the internal rules. He did not quantify this damage, however.

32. On 25 June 2019, the family judge of the *Tribunal de grande instance* of Strasbourg granted the couple a divorce.

33. In ruling on property issues relating to the court-ordered division of assets, the family judge held that:

> "**On the dissolution of the matrimonial property regime**:
> (…)
> This means that, as of 1 January 2016, the divorce judge is no longer required to order the liquidation and division of the spouses' property interests.
>
> (…)
>
> **On requests for full ownership to be assigned and for a balancing payment to be determined:**
>
> (…)
> Jurisdiction in this matter is exclusively vested in the *tribunal d'instance* [district court].
>
> Accordingly, it will be for either spouse to apply to this court, to the exclusion of the family judge of the *Tribunal de Grande Instance*."

34. With regard to family benefits, the family judge ruled as follows:

> "**ON FAMILY SUPPLEMENTS:**
>
> It is not within the jurisdiction of the family judge to designate the beneficiaries of family allowances or family benefits, this being a matter for the social security court in the event of a disagreement between the parents.
>
> The same applies to any benefits or supplements paid by the employer in respect of children. Such payment depends on the social legislation in force or collective agreements or even on the assessment of individual circumstances made by the said employer, over whom the family court has no power of constraint.
>
> The family judge can merely certify any agreement the parties may reach on this point.
>
> In the present case, [the appellant] ??? that the supplements paid by the Council of Europe to [the appellant's wife], namely the expatriated family supplement and the dependent child supplement, should be divided in half and that consequently [the appellant's wife] should pay half of them to him, or that, in the alternative, these sums should be deducted from the amount of the costs incurred by and for the children.
>
> [The appellant's wife] objects to this request.
>
> As there is no possibility of reaching an agreement on this point, the [appellant's] request will be declared inadmissible."

35. On 11 July 2019, the Secretary General rejected the administrative complaint on the ground that it was inadmissible and/or unfounded.

36. On 5 August 2019, after the divorce was finalised, a meeting took place between the appellant, his former wife and a representative of the Directorate of Human Resources to explore the various options for paying family allowances, since Article 4, paragraph 5, of the Regulations was no longer applicable to their case.

37. In a memorandum dated the same day, the said representative noted the disagreement between the appellant and his former wife over the arrangements for the payment of family allowances and the only possible solution, namely to share the allowances between them. Under the terms of this arrangement, the appellant receives half of the household and dependent child allowances and his former wife receives the other half of the allowances, as well as a supplement for expatriated children under Article 6 *bis*, paragraph 2, (ii) of the Regulations.

38. On 3 September 2019, the appellant lodged a further administrative complaint against that decision insofar as it determined how the family allowances were to be shared between the appellant and his former wife. The Secretary General dismissed this complaint on 3 October 2019. The appellant did not lodge an appeal with the Tribunal.

39. In the meantime, on 10 September 2019, the appellant had lodged the present appeal against the decision to reject his complaint dated 19 June 2019.

II. APPLICABLE LAW

40. Under Article 59 (administrative complaint), paragraphs 1 and 2, of the Staff Regulations:

Article 59 – Administrative complaint

> "1. Staff members may submit to the Secretary General a request inviting him or her to take a decision or measure which s/he is required to take relating to them. If the Secretary General has not replied within sixty days to the staff member's request, such silence shall be deemed an implicit decision rejecting the request. The request must be made in writing and lodged via the Director of Human Resources. The sixty-day period shall run from the date of receipt of the request by the Secretariat, which shall acknowledge receipt thereof.
>
> 2. Staff members who have a direct and existing interest in so doing may submit to the Secretary General a complaint against an administrative act adversely affecting them, other than a matter relating to an external recruitment procedure. The expression "administrative act" shall mean any individual or general decision or measure taken by the Secretary General or any official acting by delegation from the Secretary General."

41. Matters relating to the payment of household and dependent child allowances are governed by Appendix IV ("Regulations governing staff salaries and allowances") to the Staff Regulations. The relevant provisions read as follows:

Article 1 – Scope

"These regulations, issued in accordance with Article 41 of the Staff Regulations, specify the salaries and allowances of staff members and the procedures for their granting and payment."

Article 4 – Household allowance

"(…)
2. The following shall be entitled to the household allowance:
i. married staff;
ii. widowed, divorced, legally separated or unmarried staff who have one or more dependent children as defined in Article 5 or, if applicable, Article 12;
(…).
5. Where, in accordance with the above provisions, a husband and wife employed by the Council or by the Council and another Co-ordinated Organisation, are both entitled to the household allowance, the allowance shall be paid only to the person whose basic salary is the higher."

Article 5 – Allowance in respect of dependent children or other dependants

1. i. A monthly allowance shall be paid in respect of each dependent child under 18 years of age, in accordance with the appended scale.
(…)
vi. In the case of two staff members employed by the Council or by the Council and another Co-ordinated Organisation, the allowance in respect of dependent children shall be paid to the official who receives the household allowance."

42. Article 15 of the same Appendix concerns the limitation period for claims and reads as follows:

Article 15 – Limitation period for claims

"1. Claims against the Organisation for payment of salary, indemnities, allowances, benefits or other sums resulting from the application of the Staff Regulations, Rules and Instructions shall lapse two years after the date on which the payment would have been due.
2. The limitation period shall be interrupted by a claim in writing submitted before its expiry.
3. The right of the Organisation to recover a payment made unduly shall lapse two years following that payment.
4. The limitation period laid down in paragraph 3 shall be increased to 10 years if the staff member intentionally provided information which was incorrect or neglected to provide relevant information to the Organisation.
5. Recovery shall be made by deductions from the monthly or other payments due to the person concerned, taking into account his or her social and financial situation."

43. Article 38 of the Staff Regulations refers to recovery of overpayments and reads as follows:

Article 38 – Recovery of overpayments

"1. Any sum overpaid shall be recovered if the recipient was aware, or should have been aware, that there was no due reason for the payment.
2. The Secretary General may waive recovery of all or part of the amount on social grounds."

THE LAW

44. The appellant challenges the decision to deny him retroactive payment of the household and dependent child allowances and asks the Tribunal to award him a sum for arrears in respect of both allowances for the period from March 2016 to May 2019.

He also asks to be awarded a sum in compensation for the damage suffered and to be reimbursed for the costs incurred in connection with the appeal.

45. For her part, the Secretary General asks the Tribunal to declare the appeal inadmissible or, alternatively, to declare the appeal unfounded and dismiss it.

46. As to the merits, she considers that, having failed to prove any violation of the applicable regulatory and statutory provisions, the appellant cannot legitimately claim to have suffered any kind of damage and that his claim for compensation in respect of alleged non-pecuniary damage must also be rejected.

I. SUBMISSIONS OF THE PARTIES

A. As to the admissibility of the appeal

1. *The Secretary General*

47. The Secretary General submits that the present appeal is incompatible ratione personae with the relevant provisions of the Staff Regulations.

48. She contends that the situation of which the appellant complains is not the result of a decision or measure taken by the Organisation and which adversely affects him, but is in actual fact the result of a disagreement between himself and his former wife. In the view of the Secretary General, the prejudice complained of arose from the difficulties encountered by the appellant and his former wife over the distribution of family allowances during the divorce proceedings and not from the Organisation's decision to pay the family allowances to his former wife. This last decision, moreover, was based on an interpretation that was favourable to the staff members, bearing in mind the interests of the children, and generated higher sums for the household.

49. In the Secretary General's view, this is evidenced by the fact that the appellant only began to complain about the family allowances being paid to his former wife when, according to the appellant, she stopped paying him half of the allowances.

50. The appellant's grievances therefore relate to the former wife's failure to share the allowances with him. In the view of the Secretary General, who considers that she acted in compliance with the applicable regulations by interpreting them in a manner favourable to the staff members and bearing in mind the interests of the children, she cannot be held responsible for the acts or omissions of staff members which are a purely private matter.

51. The Secretary General infers from this that neither the Organisation nor the Tribunal is called upon to settle purely private disputes between staff members and that the Tribunal cannot be asked to rule on appeals which are in reality directed against the acts or omissions of a staff member.

52. The Secretary General concludes that the merits of the present dispute fall within the competence of the competent French courts and not within that of the Tribunal. Indeed, as stated in the divorce judgment of 25 June 2019 (paragraphs 32-34 above), the dissolution of the matrimonial property regime through the court-ordered division of assets, in view of the disagreements between the spouses, falls within the exclusive jurisdiction of the *tribunal d'instance* [district court]. In the Secretary General's view, until such time as the divorce became final, the Organisation had no authority to intervene in a matter that related to the family and private life of the staff members concerned.

2. *The appellant*

53. According to the appellant, the Secretary General is wrong to present this dispute as a private one between himself and his former wife, which arose from her refusal to share the allowances paid to her by the Organisation.

54. He asserts that the sole purpose of his actions prior to the present proceedings was to find an amicable and non-contentious solution to this situation which, he contends, the Administration created by continuing to pay his former wife allowances that were rightfully his.

55. In his view, the present dispute does in fact fall within the jurisdiction of the Tribunal in that he is asking the Administration to apply and abide by the regulations in force, namely Articles 4 and 5 of Appendix IV to the Staff Regulations.

56. It is the Administration's failure to comply with these regulations that is at issue here, and which led to his former wife drawing allowances which by rights should have been paid to him.

57. With regard to the methods of calculation and payment of these allowances, however, the Administration relied on the existence of an administrative practice in paying the allowances directly to the former wife instead of the appellant.

58. The appellant points out that he is in no sense questioning the very existence of the administrative practice, which is indeed more advantageous, but that the conditions necessary for its application must also be met, specifically, there must be a single household.

59. In his view, the dispute arose from the fact that the Administration adhered to this administrative practice with regard to his ex-wife by continuing to pay her all the allowances even though the couple no longer formed a single household.

60. The appellant submits that, from the moment the Administration learned that an order of non-conciliation issued by the *Tribunal de Grande Instance* of Strasbourg had ruled that the couple's children were to live with each parent alternately, it should have sought to ascertain which of the spouses had the higher basic salary in accordance with Article 4, paragraph 5, of Appendix IV to the Staff Regulations.

61. Accordingly, the dispute did in fact arise from the Organisation's actions in continuing to pay allowances, wrongly, to the former wife.

62. The appellant submits that this dispute is all the more incomprehensible given that the Administration acknowledged his entitlement in its decision of 22 May 2019 by granting him the benefit of the allowances in full, yet refused to apply this right retrospectively, purely for financial reasons.

63. The dispute arose because the Administration deliberately made an assessment about a de facto situation that was not within its purview.

64. Accordingly, after lengthy administrative procedures, the appellant was finally recognised as having the right to draw the full allowances, but only from June 2019, since the Administration refused to apply its decision retroactively, even though the couple’s legal situation had been the same from March 2016 to June 2019.

65. Therein lies the substance of the appellant’s complaint. The dispute is in no sense a private one, therefore.

66. In conclusion, the appellant askes the Tribunal to find the appeal admissible.

B. As to the merits of the appeal

1. *The appellant*

67. The appellant submits three pleas.

A. Lack of legal basis for the refusal to pay Mr SMITH family allowances retroactively from March 2016

68. According to the appellant, the situation changed when the couple initiated divorce proceedings, in particular when the *Tribunal de Grande Instance* of Strasbourg issued a non-conciliation order on 5 February 2016 in which the judge stipulated that the two children were to live with each parent alternately for a week at a time.

69. His wife, however, was not willing to share the family allowances 50/50. It was in that context that he contacted the Directorate of Human Resources to ask for the allowances to be paid to him.

70. Incomprehensibly, however, his request was turned down by the said Directorate, on the ground that paying the allowances to his wife was more advantageous because she received an expatriation allowance.

71. In the view of the appellant, the Directorate of Human Resources should not have made a subjective judgment about the situation of the couple or the family once the separation was official; contrary to what the Directorate maintained, this was in no way a private arrangement, but an official one established by a court decision which it was not open to the Organisation to ignore.

72. As a result, he was forced to lodge a formal administrative complaint. Although the Directorate of Human Resources recognised the merits of his claim by awarding him the family allowances, it refused to backdate them, on the ground that it had already paid the allowances in question. This position is highly questionable.

73. The appellant is of the opinion that, in accordance with the provisions of Appendix IV, he is unquestionably the sole person entitled to receive the family allowances.

74. The Directorate of Human Resources cannot seriously dispute this position, insofar as it itself vindicated it when it granted him the benefit of the family allowances from June 2019, even though the Administration's decision had just confirmed a situation that had existed since March 2016 (non-conciliation order).

75. In the view of the appellant, the Directorate of Human Resources should have drawn the legal consequences that apply to a de facto situation which it has itself recognised, as there is no justification for not backdating the payments to March 2016.

76. According to the appellant, the Directorate took the position it did solely for reasons of expediency, specifically to avoid having to recover an overpayment from the appellant's former wife.

77. Such an argument can hardly be raised against the appellant, however, who has rights under the Staff Regulations.

78. The appellant concludes that the decision of 22 May 2019 is thus not in conformity with Appendix IV to the Staff Regulations.

B. Infringement of the principle of equal treatment between staff members or even discrimination between women in their capacity as mothers and men in their capacity as fathers

79. According to the appellant, the Directorate of Human Resources treated him differently in that it sought to favour his wife on account of the fact that she was a mother. Since it was stated in the decision of 22 May 2019 that the allowances were addressed to "the mother", the appellant considers that this amounts to discrimination against him in his capacity as a father. The fact is that he should have been treated in the same way.

C. As to the infringement of the principle of legitimate expectation

80. The appellant submits that, while this plea may seem somewhat redundant given the argument about the lack of legal basis, it is not for the Council of Europe to judge or assess what would be the most advantageous arrangement within a family.

81. Accordingly, the decision of 22 May 2019 also infringes the principle of legitimate expectation in that the Directorate of Human Resources made a subjective decision to refuse to apply the relevant regulations to the appellant, claiming that the existing practice was more "favourable".

2. *The Secretary General*

82. The Secretary General points out that the appellant's household benefited from a favourable reading of the applicable provisions and that, consequently, the allowances were paid to the former wife since, that way, the household received larger amounts. For example, the total amount paid to the former wife was 311.32 euros greater than the amount paid to the appellant for the months of June and July 2019, up to the date on which the divorce became final.

83. Insofar as the appellant contests this interpretation and claims that it amounts to an infringement of the principle of legitimate expectation from the date on which the non-

conciliation order was issued, as well as discrimination against him in his capacity as a father, the Secretary General notes the following.

84. Firstly, she asserts that this is a long-standing practice favourable to staff members (ATCE, appeal no. 198-199/1995, Régis Brillat and Anna Capello-Brillat v. Secretary General, decision of 23 May 1995), a practice from which the appellant's household has likewise benefited since the birth of their first child. The Secretary General notes that the appellant did not have any problem with the arrangement until more than a year after the non-conciliation order was issued, yet that is the date from which, supposedly, the Organisation should have applied a strict reading of the relevant provisions.

85. In the view of the Secretary General, the appellant's allegation that he has been discriminated against in his capacity as a father is not only unsubstantiated but also manifestly ill-founded.

86. In this connection, the Secretary General refers to the reasons she has already stated and which provide the basis for the Organisation's interpretation of the relevant provisions, which apply in exactly the same manner, whether the staff member drawing family allowances is the father or the mother. The gender of the staff member is completely irrelevant in determining which spouse has the higher salary and should be the recipient of the payments.

87. The Secretary General further draws the Tribunal’s attention to the fact that the Organisation's interpretation of the relevant provisions of the Regulations gives precedence to the interests of the children. The position taken by the appellant, however, in contesting this interpretation, runs counter to the interests of his children, despite repeated warnings about the adverse consequences for the household. In these circumstances, the Organisation cannot be blamed for having treated the interests of the children as paramount and as taking precedence over any difficulties that the appellant may have encountered with his wife during the divorce proceedings.

88. The Secretary General points out that the Organisation paid the appellant’s household the sums due in respect of family allowances for the entire period in question, and that the appellant has no grounds for complaint in this respect.

89. The Secretary General points out in this connection that the present appeal concerns the payment of family allowances at a time when the divorce had not yet been finalised.

90. In her view, therefore, there is no justification for a second payment of the family allowances which the household concerned has already claimed for the period in question. Any difficulties which the appellant may have encountered with his wife, at the time of the events, with regard to the distribution of family allowances during the divorce proceedings are a private matter, which should be settled as such between the two parties or, failing that,

by the competent domestic court upon the dissolution of the marriage, as part of the divorce settlement.

91. Since the Administration has paid the family allowances on the basis of an interpretation favourable to the staff members, bearing in mind the interests of the children, the Organisation's debt to the appellant's household can must be considered to have been settled in full. In effect, the Organisation has fully met its obligations under the Regulations. A second payment of family allowances for the period in question would amount to undue enrichment.

92. The Secretary General concludes that the impugned decision is well founded. There is no justification for granting the appellant's claim for retroactive payment of family allowances from March 2016 to 1 June 2019, when the sums in question were duly paid to his wife, and therefore to his household, for the entirety of the period in question.

93. It follows that, even supposing that the Tribunal were to find the present appeal admissible, it is in any case unfounded and, as such, should be dismissed.

II. TRIBUNAL'S ASSESSMENT

94. The Tribunal considers that, in the particular circumstances of the case, the objection raised by the Secretary General is so closely linked to the substance of the appellant's complaint that it must be joined to the merits.

95. It is not in dispute that, in the present case, the appellant had come to an agreement with his wife to share the family allowances. It has also been established that, initially, the appellant raised no objection to DHR's practice of paying, in the interests of the children, the allowances provided for in Articles 4 and 5 of Appendix IV to the Staff Regulations to the spouse whose basic salary was not the higher of the two. Combined with the application of other rules, this practice resulted in the Organisation paying more in allowances than the spouses would have been entitled to if the allowances had been paid to the staff member with the higher basic salary.

96. Nor is it in dispute that the appellant raised no objections as to the lawfulness of this administrative practice and that the Organisation paid the allowances in question to his former wife in keeping with that practice, allowances which, under the agreement reached by the spouses in March 2016 (paragraph 13 above), were to be shared.

97. In this connection, the Tribunal notes that the purpose of Article 4, paragraph 5, of Appendix IV mentioned above is to govern the payment of allowances where two staff members form a household and to provide them with a single household allowance. The provision is not meant, however, to cover crisis situations – whether temporary or definitive – that arise when the family breaks up, long before that break-up is formally confirmed by

the domestic courts and/or, as the events of August-September 2019 in this case prove, after the divorce has become final.

98. It was, moreover, because there were no specific provisions that the Directorate of Human Resources continued to apply this article even though the couple had begun separation proceedings and subsequently divorce proceedings. In the Tribunal's view, this is also evidenced by the fact that the Secretary General has alleged that the Organisation was following an established practice before the divorce and, after the divorce, tried to reach a negotiated agreement with the parties concerned.

99. With regard more specifically to the appellant's claim for retroactive payment of the allowances, the Tribunal notes that this claim relates to a period before the administrative request was submitted to the Secretary General and therefore to the retroactive nature of the decision taken.

100. From the outset, however, the appellant was aware of the way in which the Organisation was implementing the provisions relied upon in the present case. Instead of asking the Organisation to change its practice, he preferred to come to an agreement with his wife in order to retain the benefits of that choice. In essence, he accommodated himself to the situation. The question of who is entitled to the allowances for the retroactive period is a family dispute, therefore, and must be settled as such, taking into account the interests of both parties to the divorce proceedings.

101. Accordingly, even though the appellant acted laudably in seeking to settle the matter amicably, it is unseemly for him now to use the procedure provided for in Part VII of the Staff Regulations to make criticisms relating to breaches of the agreement which he entered into with his wife.

102. The Tribunal notes, moreover, from the information submitted to it by the appellant, that when the divorce was granted, the family judge did not rule on the property aspects of the divorce but indicated the French courts which are competent to rule, at the request of either party, on the settlement of any issues pertaining thereto.

103. Lastly, the Tribunal observes that the Organisation granted the appellant's request from the moment he formally submitted it and informed him of the financial consequences of his request, in that the amount of the allowances in question would be revised downwards.

104. On the basis of that finding, the Tribunal concludes that the appellant's first plea concerning retroactive payment of the allowances in question is unfounded and must be rejected.

105. With regard to the second plea alleging "infringement of the principle of equal treatment between staff members or even discrimination between women in their capacity

as mothers and men in their capacity as fathers", the Tribunal notes that the Organisation did not base its decision on a practice which favoured one sex over the other. The Directorate of Human Resources applied an objective criterion, namely basic salary. Consequently, this plea is also unfounded.

106. As regards the third plea alleging infringement of the principle of legitimate expectation, the Tribunal finds that the appellant's arguments overlap with those advanced in support of the first plea. The appellant has not put forward any argument specific to this complaint that might lead the Tribunal to uphold it. Consequently, this plea too must be declared unfounded and dismissed.

III. CONCLUSION

107. In conclusion, the appeal is unfounded and must be dismissed. Consequently, the appellant should not be awarded any sum in compensation for damage.

For these reasons,

The Administrative Tribunal:

Declares appeal No. 623/2019 unfounded and dismisses it;

Orders each party to bear its own costs.

Adopted by the Tribunal sitting via teleconference, on 16 March 2020, pursuant to Rule 42 of the Rules of Procedure of the Tribunal, and delivered in writing pursuant to Rule 35, paragraph 1, of the said Rules, on 6 April 2020, the French text being authentic.

The Registrar of the Administrative Tribunal	The Chair of the Administrative Tribunal
S. SANSOTTA	N. VAJIĆ