

FAD – Fathers Against Discrimination a.s.b.l.
“Both Parents for All Children”
29, Boulevard Prince Henri
L-1724 Luxembourg
Luxembourg

10 April 2023, Luxembourg

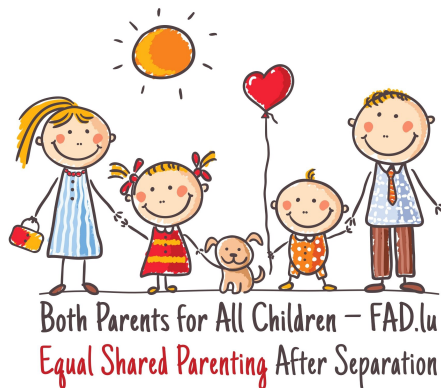
Ministre de la Famille et de l'Intégration
L'honorable Corinne CAHEN
13c, rue de Bitbourg
L-1273 Luxembourg-Hamm
Luxembourg

Dear Minister CAHEN,

Thank you for your letter dated 28 March 2023 sent to us as a reply to our correspondence from 6 March 2023. The views presented have been consulted with our legal advisors and an institution specialized in reviewing EU state laws with respect to equal treatment and discriminatory practices imbedded into national laws and social regulations of the EU members.

Social equality is a state of affairs in which all individuals within a specific society have equal rights, liberties, and status, freedom of expression, autonomy, and equal access to certain public goods and social services. Social equality believe in equality before the law for all individuals regardless of sex, gender, ethnicity, age, sexual orientation, origin, caste or class, income or property, language, religion, convictions, opinions, health, or disability. Social equality is also related to equal opportunity.

In your letter you refer to points raised in our correspondence and the claim exposing institutional discriminatory practices of the Luxembourg state against a “non-residential parent”, father or mother who is denied family allocation for children living after separation or divorce equal amount time between two households but are officially registered only under the address of the other, “residential parent”.



Your correspondence mentions different laws and regulations quoting articles and paragraphs confirming that by design, family allocation after separation is only available to a parent with the address where children are officially registered.

We are also advised that on 23 December 2022 an amendment to Article 273 of the Luxembourg “Code de la Sécurité Sociale” was introduced adding the following sentence to point (3):

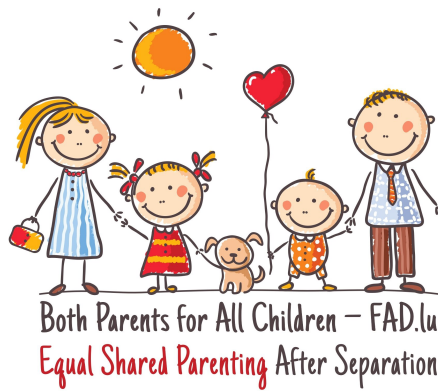
« Sur demande conjointe des parents, le paiement de l'allocation familiale peut être partagé par moitié entre les deux parents. », which reads: “At the joint request of the parents, the payment of the family allowance may be divided equally between the two parents.”

You are of an opinion that the above-mentioned amendment largely responds to our observations and claims. You are convinced that the added sentence resolves the problem of discrimination because it gives an option for family allowances from Zukunftskeess to be divided. **Yet, you omit the fact, that Article 273, with or without the added sentence, does not guarantee equal treatment as it is only contingent on both parents agreeing and jointly submitting such request.** This means, that if the “residential parent”, the recipient of family allocation, refuses to consent the family allocation cannot be divided between parents.

In addition, the Luxembourg Higher Court of Justice with its decision from 23 January 2020 - CSJ, 1er ch. (Numéro CAL-2020-00288 due rôle), decided that it is outside the Family Court’s jurisdiction to decide how family allowances should be distributed between parents.

Family allocation is received on behalf of children and is meant to be spent on children. If parents agree that allocated allowances should be divided, they do not need permission from state authorities if they can or cannot divide the funds or to be told how they should do it. What is needed and expected, is for the Luxembourg government to introduce laws and regulations that assure equal treatment without promoting any form of discrimination. The Article 273 fails in doing that and the amendment further solidifies discriminatory treatment making equality a subject of one of the parents’ approval. The Regulation violates numerous international instruments, conventions, including the principle of non-discrimination and unless adjusted it opens an avenue for legal actions against the Luxembourg state.

The principle of non-discrimination prohibits treating in an identical manner situations which are different or treating in a different manner situations which are identical. When children are being raised by both parents, family allocation should be, either proportionally or equally (Résidence Alternée) distributed between parents.



We would like to thank you for responding to our letter unfortunately, in view of the presented facts and arguments, we cannot agree with your conclusions.

Considering the above we kindly like to ask you as a Minister of Family Affairs and Social Integration to take appropriate measures to advocate changes in the Article 273 in view of reaching equality between parents and protecting the interest of the Luxembourg children.

We remain available to meet to further discuss the matter in question and present other issues reported to us by the Luxembourg residents, parents, and families.

Most respectfully,

Patryk P. RYBIŃSKI
President
FAD - Fathers Against Discrimination a.s.b.l.

