

Decision in case 41/2019/NH on the European Commission's decision to recover an overpaid amount of child allowances from a staff member

Decision

Case 41/2019/NH - Opened on 11/10/2019 - Decision on 11/10/2019 - Institution concerned European Commission (No maladministration found) |

The case concerned the European Commission's decision to recover from a staff member an overpaid amount of EU child allowances. The allowances had been paid for the children of the staff member's husband. The decision was based on the fact that national child allowances paid to the former wife of the staff member's husband had not been deducted from the EU allowances.

The Ombudsman found that the Commission was entitled to recover the amounts because the staff member should have realised that she was being paid too much. The Ombudsman therefore closed the case with a finding of no maladministration.

Background to the complaint

1. The complainant is an EU civil servant working for the European Commission since 2003. She is married with two children. The complainant's husband also has three children from a previous marriage. According to the divorce settlement, the husband has shared custody of the three children, which means that they sometimes live with him and the complainant.
2. The complainant receives family allowances from the EU administration for the three children of her husband, on the basis of the EU Staff Regulations [1] . In line with the Staff Regulations, any other allowance of like nature paid from other sources should be deducted from the allowances paid by the EU administration [2] .
3. When the complainant applied in 2008 to receive EU allowances for her husband's three children, she informed the Commission that the biological mother of the three children received family allowances from the Belgian authorities. However, she stated that she could not declare the exact amounts of the national allowances because her husband and the mother of his three children no longer communicated.



4. As of 2009, the complainant has received full EU allowances for the children of her husband. The national allowances received by the biological mother were not deducted from the EU allowances.

5. The Commission realised this mistake in 2018 and decided to recover [3] EUR 48.951,27 from the complainant, which was the amount of allowances overpaid for the period between 2013 and 2018 [4] .

6. The complainant made an administrative complaint [5] against the recovery decision. She argued that she had declared to the Commission that the biological mother was receiving national allowances, but that she could not know the exact amounts. She also argued that she assumed that the EU allowances paid by the Commission since 2009 were correct, since the Commission had all the necessary information about her situation.

7. The Commission rejected the complainant's administrative complaint. It argued that EU civil servants have a duty to check their salary slips and to report any mistake. The Commission also argued that the amount of the Belgian child allowance is public information, easily accessible online. The complainant could therefore have declared the amounts received by the biological mother.

8. Dissatisfied with the Commission's rejection of her administrative complaint, the complainant turned to the Ombudsman in January 2019, complaining that the Commission was wrong to recover the overpaid amount of child allowances. The complainant argued, among other things, that the Commission had used misleading vocabulary in several e-mails and even on its Intranet ("*allowances received from other sources*", emphasis added). By using the word "received", the Commission made the complainant believe that only those allowances that she received from other sources should be deducted, not allowances paid to third parties. She also argued that the calculation method for the national allowance is not easily accessible information, as it is just an online simulation tool. The Belgian authorities refuse to disclose the amount received by the biological mother for confidentiality reasons. The complainant considers that, by paying her the full allowances, the Commission gave her the legitimate expectation that she was entitled to it.

The European Ombudsman's findings

9. Family allowances paid from other sources shall be deducted from those paid by the EU administration. It is clear from the provision in the EU Staff Regulations that it is irrelevant who receives the allowance paid from other sources: "*[o]fficials in receipt of family allowances ... shall declare allowances of like nature paid from other sources; such latter allowances shall be deducted from those paid [by the EU administration]*" [6] . As the Commission argued, the rationale is that all children should be treated the same in terms of the total amount of child allowance. No child should obtain the same allowance both from the EU administration and from a Member State. The question to whom the allowance should be paid following a divorce settlement is a separate issue.



10. In this case, there was an overpayment of allowances from the EU administration, as the Belgian allowance received by the biological mother was not deducted from the EU allowance. The EU Staff Regulations state that any sum overpaid shall be recovered “ *if the recipient was aware that there was no due reason for the payment or if the fact of the overpayment was patently such that he could not have been unaware of it* ”. [7] Given the clear formulation of the rule in the Staff Regulations regarding family allowance deductions (see previous paragraph) and the fact that the complainant knew that the biological mother was receiving national allowances for the three children, the complainant could not have been unaware of the fact that she was receiving EU allowances that she was not entitled to. In this context, the fact that the complainant’s payslip did not refer to any deducted amount should have raised sufficient doubts for the complainant to verify the issue with the Commission. This conclusion is valid regardless of whether or not the complainant knew the exact amount of allowances received by the biological mother.

11. The finding that the Commission was entitled (and even obliged) to recover the overpaid amount is not altered by the fact that the Commission paid the full allowances by mistake and that it used the formulation “ *allowances received from other sources* ” in several e-mails and on the Intranet. There can be no legitimate expectation to receive an amount that is contrary to the rules, in this case the Staff Regulations.

12. The Ombudsman recognises the difficulties that may arise in a situation where information has to be obtained from a former spouse. However, this case is about the Commission’s recovery decision as such, not about the amounts that the Commission has decided to recover. There is no evidence in the complaint suggesting that the complainant challenged how the Commission calculated the overpaid amount.

Conclusion

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

There was no maladministration by the Commission in its decision to recover part of the family allowances paid to the complainant [8] .

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

Tina Nilsson

Head of Inquiries - Unit 4 Strasbourg, 11/10/2019



[1] 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]

[2] Article 67(2) of the Staff Regulations: “ *Officials in receipt of family allowances specified in this Article shall declare allowances of like nature paid from other sources; such latter allowances shall be deducted from those paid under Articles 1, 2 and 3 of Annex VII. (...)*”

[3] Under Article 85 of the Staff Regulations.

[4] According to Article 85 of the Staff Regulations, only the amounts overpaid for the last five years may be recovered, unless the recipient of the overpaid sum deliberately misled the administration.

[5] Under Article 90(2) of the Staff Regulations.

[6] Article 67 of the Staff Regulations.

[7] Article 85 of the Staff Regulations.

[8] This complaint has been dealt with under delegated case handling, in accordance with Article 11 of the [Decision of the European Ombudsman adopting Implementing Provisions](#) [Link]