

Decision in case 1377/2019/PL on how the European Commission dealt with a transfer of pension rights from the national Greek system into the EU pension system

Decision

Case 1377/2019/PL - Opened on 17/02/2020 - Decision on 17/02/2020 - Institution concerned European Commission (No maladministration found) |

Dear Ms X,

In July 2019, you submitted a complaint to the European Ombudsman. The Ombudsman has asked me to deal with the case and reply on her behalf. I am sorry for not reverting to you earlier.

You complain about how the European Commission dealt with the transfer of your pension rights from the national Greek system into the EU pension system. Following the Court of Justice judgement in case in *Tuerck v Commission* [1] you asked the Commission to review the calculation of the transfers that had already taken place and take a decision as regards the last pending transfer. The Commission dealt with your request as an Article 90(2) complaint under the Staff Regulations. It dismissed your request as it was outside the statutory deadline of three months.

Based on the information you provided us, **the Ombudsman finds no maladministration by the Commission.** [2]

As the Commission rightly explained, at the time of your request to review the transfers, the decisions had already been adopted, thus their review was challengeable under Article 90(2) of the Staff Regulations. Unfortunately, as you point out yourself, your request was outside the statutory deadline of three months for all the transfers. The fact that the last transfer was still pending does not change the deadline to lodge an Article 90(2) complaint as regards the previous transfers. In view of this, I have found no indication that the Commission erroneously classified your request for review as an Article 90(2) complaint.

You are of the opinion that the Commission should have taken measures on its own initiative to rectify the calculation of the transfers that had already taken place in line with the judgement in *Tuerck v Commission* . However, it is established case-law that a judgment annulling a measure



cannot apply to the situation of persons who were not parties to the proceedings, even when other situations may have been vitiated with the same illegality. [3] The Commission's explanation on this point was therefore also correct, it could not apply the *Tuerck* judgement retroactively to decisions that had already been adopted and had not been challenged on time.

In staff related matters, the Ombudsman looks into procedural problems or systemic issues that are likely to have a general impact. She may also decide to look into the substantive outcome of staff complaints if the complaint to her Office clearly suggests that the institution in question has committed manifest errors of assessment. In your case, there is no evidence or indication of such manifest errors.

I realise that this decision will disappoint you, but I hope that the above information and explanations are nevertheless helpful.

The Ombudsman closes the case.

Yours sincerely,

Peter Dyrberg Administrator advising the Secretary General on inquiry matters

Strasbourg, 17/02/2020

[1] Judgment of the General Court of 5 December 2017, *Sabine Tuerck v European Commission*, T-728/16. See also Judgment of the Court of Justice of 15 May 2019, *European Commission v Sabine Tuerck*, C-132/18 P.

[2] Information on the review procedure can be found on the Ombudsman's [website \[Link\]](http://www.ombudsman.europa.eu/en/resources/otherdocument.faces/en/70669/html.bookmark): <http://www.ombudsman.europa.eu/en/resources/otherdocument.faces/en/70669/html.bookmark> [Link]

[3] Judgment of the Court of Justice of 14 September 1999, *AssiDomän Kraft Products and Others v Commission*, C-310/97 P, paragraph 55.