

Decision on how the European Commission dealt with a request to extend the deadline for a retired staff member to request the ‘resettlement allowance’ (complaint 1428/2021/FA)

Decision

Case 1428/2021/FA - Opened on 02/06/2022 - Decision on 07/11/2022 - Institution concerned European Commission (No maladministration found) |

The case concerns the European Commission’s refusal to extend the time limit for a retired staff member to request the resettlement allowance in the context of the COVID-19 pandemic. The complainant argued that due to the outbreak of the pandemic, she was not able to organise her resettlement to her place of origin within the prescribed time limit and asked the Commission to grant her an extension.

The Ombudsman found that the decision of the Commission is in line with the Staff Regulations and EU case-law. The Ombudsman therefore closed the inquiry with a finding of no maladministration.

Background to the complaint

1. The complainant is a former staff member of the European Commission who retired in June 2019. Under the EU Staff Regulations, the complainant was entitled to a ‘resettlement allowance’ and to the reimbursement of her travel and removal expenses if she resettled to her place of origin within three years, that is, before 1 June 2022. Due to the difficulties she encountered organising the resettlement during the COVID-19 pandemic, she asked the Commission to extend this time limit to the end of 2023.
2. The Commission’s Paymaster Office (PMO) recognised the exceptional nature of the situation, and therefore extended the time limit within which the complainant could request the reimbursement of her removal expenses under the Staff Regulations. The PMO refused to do the same for the resettlement allowance and the reimbursement of travel expenses because the Staff Regulations do not explicitly allow such flexibility.
3. The complainant made an administrative complaint against this decision. [1] The Commission rejected the complaint and confirmed the initial decision by the PMO.



4. Dissatisfied with the Commission's decision, the complainant turned to the Ombudsman in August 2021.

The inquiry

5. The Ombudsman opened an inquiry into the Commission's refusal to extend the time limit for the complainant to request the resettlement allowance in the context of the COVID-19 pandemic.

6. In the course of the inquiry, the Ombudsman asked the Commission to reconsider its position. The Ombudsman received the reply of the Commission, which maintained its initial position, and subsequently, the comments of the complainant in response to the Commission's reply.

Arguments presented to the Ombudsman

By the complainant

7. The complainant argued that the outbreak of the COVID-19 pandemic made it impossible to organise her resettlement from her place of employment, Belgium, to her place of origin, Portugal. Both countries adopted measures to prevent the spread of COVID-19, including travel restrictions and lockdowns. Although the intensity of these measures varied at different stages of the pandemic, the uncertainty regarding the evolving situation and the potential health risks meant the complainant could not organise her resettlement.

8. The complainant further argued that the fact that the Commission recognised the exceptional nature of the pandemic, by agreeing to extend the time limit for her to claim the removal expenses, but not for the resettlement allowance, is contradictory. She claimed the Commission applied the rules without taking into account the circumstances.

By the Commission

9. The Commission explained that, while the Staff Regulations allow, under exceptional circumstances, for the extension of the deadline for requesting the reimbursement of removal expenses [2] , no such exception is foreseen for the resettlement allowance [3] . The Commission makes staff members aware of this difference and its consequences on the relevant section of its intranet.

10. The Commission argued that, in line with EU case-law [4] , the provisions in the Staff Regulations concerning financial benefits for staff members should be interpreted strictly, and



should not be paid in any other cases than those where they are explicitly provided for . Therefore, granting an extension of the deadline to request the resettlement allowance would be in breach of the Staff Regulations.

11. The Commission stated that it could only deviate from these rules in case of 'force majeure' [5] , as defined by EU case-law [6] . The Commission considered that, in this case, the complainant failed to demonstrate that the situation amounted to force majeure. She did not prove that she had experienced concrete difficulties or health problems that prevented her from traveling. The Commission found that, although the pandemic made resettlement more difficult, it did not mean that individuals could not move or resettle. In addition, resettling became progressively less difficult over the course of 2021.

The Ombudsman's assessment

12. The Commission was correct in stating that the Staff Regulations only allow, under exceptional circumstances, for the extension of the deadline for requesting the reimbursement of removal expenses. There is no statutory extension possible for requesting the reimbursement of travel expenses and the resettlement allowance. While it is true that these allowances serve the same purpose, which is to compensate EU staff members for different expenses incurred in the context of a change of residence, the legislator decided not to apply the same exception for the latter two entitlements. On this basis, the Commission's decision as regards the resettlement allowance is in line with the Staff Regulations.

13. The Commission can only deviate from the statutory rules in case of force majeure. Force majeure has been strictly defined by the EU case-law referred to by the Commission. It applies to situations of “ *abnormal difficulties, independent of the will of the applicant and which appear to be inevitable, even if all due care had been taken. [...] In particular, the person concerned must [...] act diligently in order to comply with the prescribed time limits. Thus, the concept of force majeure does not apply to a situation in which a diligent and prudent person would objectively have been able to take the necessary steps before the expiry of the period [concerned].*” [7] The concept of force majeure is nevertheless not limited to cases of absolute impossibility. [8]

14. The time limit of three years to request the resettlement allowance does not correspond to the time needed by a staff member to resettle, but to the period of time during which a staff member has to resettle in order to obtain the allowance. This means that, even if it were not possible for a staff member to organise the resettlement during part of that three-year period, for example due to the pandemic, the staff member could not invoke force majeure if they were still able to move at times during that period and before the expiry of the time limit.

15. At the time the Ombudsman opened this inquiry, there were still many uncertainties linked to the pandemic. However, since then, the situation has improved significantly, and it is difficult to argue that it would not have been possible to organise for resettlement before June 2022. Moreover, if the complainant still experienced serious difficulties in arranging her move at the



time restrictions were eased, she could have provided concrete evidence of these difficulties, as well as proof that she at least tried to comply with the prescribed time limit.

16. On this basis, the Ombudsman finds no maladministration as regards the Commission's decision not to extend the time limit.

Conclusion

Based on the inquiry, the Ombudsman closes this case with the following conclusion [9] :

There was no maladministration by the European Commission in refusing to extend the time limit for a retired staff member to request the resettlement allowance.

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

Tina Nilsson Head of the Case-handling Unit

Strasbourg, 07/11/2022

[1] In accordance with Article 90(2) of the EU Staff Regulations:
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01962R0031-20140501> [Link]

[2] Article 9(3) of Annex VII provides: “ *On termination of service, removal shall be effected within three years as provided in the second subparagraph of Article 6(4). Removals effected after the expiry of the time limits set out in this paragraph shall be reimbursed only in exceptional cases and by special decision of the appointing authority.* ”

[3] Article 6(4) of Annex VII states: “ ... *Resettlement of an official or of the family of a deceased official shall take place within three years of the date of termination of his service.* ... ”.

[4] Case F134/ 06, Judgment of the Civil Service Tribunal of 8 April 2008, Giovanni Bordini v European Commission, paragraph 90 -
<https://curia.europa.eu/juris/liste.jsf?language=en&num=F-134/06> [Link]; Case F145/ 07, Judgment of the Civil Service Tribunal of 25 November 2008, *Pierre Bosman v Council of the European Union* , paragraph 32 -
<https://curia.europa.eu/juris/liste.jsf?language=en&num=F-145/07> [Link].

[5] Force majeure is a legal concept, common in contracts, which frees a party of an obligation or liability due to an unforeseen event or circumstance beyond the control of the party, which typically includes epidemics or pandemics.



[6] Case T-617/18, Order of the General Court of 16 September 2019, *ZH v European Chemicals Agency*, paragraph 25 -

<https://curia.europa.eu/juris/liste.jsf?language=en&num=T-617/18> [Link]; Case T-18/19, Judgment of the General Court of 5 October 2020, *Colin Brown v European Commission*, paragraph 64:

<https://curia.europa.eu/juris/liste.jsf?jsessionid=D9AC77AAA1BE3396C8327995698787B7?num=T-18/19&language> [Link].

[7] Case T-617/18, Order of the General Court of 16 September 2019, *ZH v European Chemicals Agency*, paragraph 25; Case T-18/19, Judgment of the General Court of 5 October 2020, *Colin Brown v European Commission*, paragraph 64.

[8] Case C-3/74, Judgment of the Court of 28 May 1974, *Einfuhr- und Vorratsstelle für Getreide und Futtermittel contre Société Wilhelm Pfützenreuter*, paragraph 22.

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