

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

*Registry's translation,  
the French text alone  
being authoritative.*

**G.**

**v.**

**Eurocontrol**

**140th Session**

**Judgment No. 5032**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms H. G. against the European Organisation for the Safety of Air Navigation (Eurocontrol) on 4 February 2023, Eurocontrol's reply of 8 May 2023, the complainant's rejoinder of 12 July 2023 and Eurocontrol's surrejoinder of 15 September 2023;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

Considering that the facts of the case may be summed up as follows:

The complainant challenges the decision to place a time limit on the reimbursement of sums deducted from the family allowances paid by the Organisation on account of sums received from a national social welfare scheme.

The complainant, a Belgian national, joined Eurocontrol on 1 May 1997. She holds the post of assistant at grade AST6 in the Staff Administration and Support Unit. Her daughter C. was born on 8 November 1998.

In view of her family situation, the complainant received dependent child family allowances from the Organisation, in accordance with Article 62 of the Staff Regulations governing officials of the Eurocontrol

Agency in the version applicable at the material time. Under Article 67(2) of the Staff Regulations in the version applicable at the material time, staff members receiving such allowances were required to “declare allowances of like nature paid from other sources; such latter allowances shall be deducted from those paid [by Eurocontrol]”. The complainant also received dependent child family allowances paid by a Belgian family allowance agency. In accordance with aforementioned Article 67(2), the amount corresponding to those allowances was therefore deducted from the family allowances paid by Eurocontrol.

On 17 November 2002 the complainant’s husband, who was C.’s father, died. From that date, the complainant received a monthly supplement from the same Belgian family allowance agency, known as “orphan’s family allowances”, on account of her daughter’s status as an orphaned child, reflected in an increase in the basic amount of dependent child family allowances. Moreover, in addition to the dependent child allowance, Eurocontrol paid the complainant a monthly “orphan’s pension”, in accordance with Article 80 of the Staff Regulations in the version applicable at the material time.

On 2 February 2005 the Head of Human Resources and Staff Administration informed the complainant that an amount equivalent to the “orphan[’s] allowance”<sup>\*</sup> paid by the Belgian agency should also be deducted from the family allowances paid monthly by the Organisation. That additional amount was therefore deducted from the complainant’s pay every month.

On 30 October 2019 the complainant informed the Administration of changes to her family situation, which led to an update of her entitlements to family allowances. Subsequently, on 8 January 2020 she was informed by the Head of Compensation and Benefits that a correction of the amounts deducted on account of the allowances paid by the Belgian family allowance agency would be made from 1 October 2019 and that a “[s]tandard scale” applied to her situation from that date. After that correction, the amount of the orphan’s family allowances paid by the Belgian family allowance agency was no longer deducted from

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<sup>\*</sup> Registry’s translation.

the complainant's pay and only the amount equivalent to the basic family allowances was deducted.

On 24 April 2020 the complainant, taking the view that the Organisation had "for years"\* wrongly deducted from her pay the amount equivalent to the "increased orphan's [family] allowance"\* paid by the Belgian family allowance agency, asked the Administration for clarification as to whether that deduction was justified.

By an email of 30 April 2020, Eurocontrol acknowledged that "more than the standard Belgian dependent child allowance, in particular the increase for an orphaned child"\* had been deducted from her salary. However, Eurocontrol explained that what could be deducted "remained rather vague"\* and that the deduction could not be said to be incorrect. The Organisation further noted that the complainant had "received"\* and "accepted"\* the decisions reflecting the deductions on her pay slips and that a "rectification"\* was therefore no longer possible for the past.

In her email reply of 7 May 2020, the complainant argued, *inter alia*, that the "increased orphan's [family] allowance"\* paid by the Belgian family allowance agency should not be confused with the "spousal orphan's pension"\* paid by Eurocontrol and that she did not receive "any orphan's [family] allowance from Eurocontrol"\*. The Organisation replied on the same day and informed the complainant that the relevant specialist units would be contacted to determine whether additional reimbursement for the deductions in question would be possible.

By an email of 6 July 2020, the complainant confirmed her disagreement with the decision to deduct all the allowances paid by the Belgian family allowance agency and asked whether she needed to submit an internal complaint to challenge that decision. In its email reply of 15 July 2020, the Administration told the complainant that it was not necessary to initiate further proceedings "at this stage"\*.

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\* Registry's translation.

On 18 December 2020 the Head of Compensation and Benefits informed the complainant of the decision to backdate the correction for allowances received elsewhere which had been deducted from her remuneration by an additional three months and that, as a result, the “[s]tandard Belgian scale”<sup>\*</sup> was applied to her from 1 July 2019.

On 12 March 2021 the complainant lodged an internal complaint against this decision with the Director General pursuant to Article 92(2) of the Staff Regulations.

On 26 March 2021 the Head of Human Resources and Services acknowledged receipt of the internal complaint and informed the complainant that it had been forwarded to the Joint Committee for Disputes. Having advised the complainant that there could be a “moderate delay”<sup>\*</sup> in examining her internal complaint due to the Covid-19 pandemic, she stated firstly that, in accordance with Judgment 3889 of the Tribunal, the forwarding of the internal complaint interrupted the 60-day time limit resulting in an implied decision of rejection that could be impugned before the Tribunal and, secondly, that she should therefore await the Director General’s final decision on her internal complaint before filing a complaint with the Tribunal, in accordance with Article VII of its Statute.

By a letter of 30 March 2022, the complainant asked the Director General to take a final decision without delay and to inform her of any opinion the Joint Committee for Disputes might have delivered on her internal complaint. She did not receive a reply to that letter.

The Joint Committee for Disputes met on 15 July 2021. In its opinion, sent to the Director General on 2 February 2022, the Committee unanimously agreed that the internal complaint was receivable, concluded by three votes to one that it was well-founded and unanimously recommended, in any event, that the Organisation find an amicable solution to the dispute with the complainant.

On 15 December 2022 the Director General informed the complainant of his decision not to follow the opinion of the Joint Committee for Disputes and not to grant her internal complaint. In the first place, he

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<sup>\*</sup> Registry’s translation.

considered that the internal complaint was irreceivable because the complainant was contesting a decision notified to her in 2005, contrary to the provisions of Article 92(2) of the Staff Regulations which provide for a period of three months in which to submit an internal complaint. Consequently, in his view, the complainant's request for the reimbursement of sums deducted by the Organisation "from January 2005"\* was time-barred. The Director General emphasised that the pay slips subsequently sent to the complainant did not constitute new decisions as they merely confirmed the initial decision. In the second place, the Director General stated that the internal complaint was in any event unfounded. In that respect, he first pointed out that Eurocontrol had corrected its error as soon as possible after it had been brought to its attention. Secondly, he considered that even if the deduction of the "orphan's allowance"\* paid by the Belgian agency was indeed the result of an error by the Administration, that error had clearly been reflected in the complainant's pay slips since January 2005. Under the Tribunal's case law, it was for her to check that her pay and pay slips had been correctly calculated. The Director General also considered that the argument that the complainant had not been previously aware of the details of the deduction could not account for her failure to challenge it before 2019. Referring to the Tribunal's case law, the Director General stated that the refusal to grant the reimbursement, even if the deductions had been made in error, could not be considered a breach by the Organisation of its duty of care. Lastly, the Director General took the view that, contrary to what the complainant alleged, the Organisation had not "seized"\* the amount of the "orphan's allowance"\* paid by the Belgian family allowance agency. According to him, all that had been done throughout the period in question was "[to deduct] from the amount of family allowances paid by [Eurocontrol] for [her] dependent child an amount [equivalent to] family allowances [of the same kind] paid by the Belgian authorities"\* . That is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision and to order the Organisation to repay to her all the sums wrongly deducted from her pay, equivalent to an amount she assesses

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\* Registry's translation.

at 41,210.53 euros, together with interest for late payment at the rate of 8 per cent per annum. She also claims compensation of 5,000 euros for the moral injury she considers she has suffered and punitive damages, which she assesses at 25,000 euros. Lastly, she seeks payment of 3,000 euros for the costs incurred in the internal appeal proceedings and 6,000 euros for the costs of the present proceedings.

Eurocontrol asks the Tribunal to dismiss all the complainant's claims as unfounded.

#### CONSIDERATIONS

1. The complainant asks the Tribunal, in particular, to set aside the decision of 15 December 2022 to reject her internal complaint challenging the refusal to repay to her, with full retroactive effect, all the sums equivalent to the increase in the basic amount of dependent child allowances received from a Belgian family allowance agency on account of the fact that her daughter was a paternal orphan.

2. The Tribunal notes at the outset that the parties agree that the Organisation made a mistake in deducting the sums mentioned above from the family allowances it paid to the complainant. In these circumstances, the Tribunal, which has not been asked to determine whether the deductions initially made in this respect were justified, will not decide on the matter.

3. In the complaint form and the claims presented at the end of the complaint, the complainant identifies the impugned decision as the Director General's decision of 15 December 2022 rejecting her internal complaint against the decision of 18 December 2020, insofar as the latter decision limited the reimbursement of the sums in question to the period after 1 July 2019.

4. The Tribunal observes that the Staff Regulations governing officials of the Eurocontrol Agency do not set out any specific rules regarding the conditions, particularly as to time, on which Eurocontrol would be required to repay amounts wrongly deducted from a staff member's pay with retroactive effect.

5. The only explicit provision dealing with the question of the recovery of sums only concerns the recovery of sums wrongly paid by the Organisation to a member of staff. This is Article 87 of the Staff Regulations, under which:

“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.

The request for recovery must be made [by Eurocontrol] no later than five years from the date on which the sum was paid. Where the Agency is able to establish that the recipient deliberately misled the administration with a view to obtaining the sum concerned, the request for recovery shall not be invalidated even if this period has elapsed.”

6. The complainant argues that, in the absence of an applicable rule on the matter, the Organisation is obliged, by a general legal principle, to refund all the sums that were unlawfully deducted from her pay. She submits that the “orphan[’s] allowance [paid by the Belgian agency] was illegally deducted and must therefore be repaid to [her] in full [...] from the start of the deductions being made”<sup>\*</sup>.

However, the Tribunal’s case law does not recognise the existence of a general legal principle that, in the absence of a rule, would require amounts wrongly deducted from an international civil servant’s pay to be repaid in full and without time restrictions.

7. The complainant also argues that, in any event, the unlawfulness of which she considers herself to be a victim constitutes an ongoing breach of her terms of appointment, reflected in her monthly pay slips. It follows that, in her view, her claim in 2020 for full reimbursement of the sums deducted from her pay under the decision of 2 February 2005 was still receivable, since the fact that she had not challenged that decision, or the successive pay slips issued since then, could not be held against her.

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<sup>\*</sup> Registry’s translation.

The Tribunal notes that the decision of 2 February 2005 was duly notified to the complainant at the time, as the complainant herself acknowledges in her written submissions. However, the complainant did not challenge that decision within the three-month time limit for appeal available to her under Article 92(2) of the Staff Regulations. It is clear from the file that she only contested the decision for the first time by an email of 24 April 2020, well after the time limit had expired.

8. In an attempt to challenge the time bar, the complainant argues that she did not notice Eurocontrol's "unlawful deduction of the orphan[']s allowance"\* in February 2005 because she was very upset by her husband's death. She also maintains that it was only following a conversation with a colleague in the same position that she became aware that the deduction was unlawful.

9. According to the Tribunal's case law, time limits, which as a general rule run from the moment at which a decision is conveyed, are an objective matter of fact and strict adherence to them is necessary to ensure the stability of the parties' legal relations (see, to this effect, Judgments 4973, consideration 3, 4673, consideration 15, 4160, consideration 9, and 1466, consideration 5). As the Tribunal recalled, for example, in Judgment 4910, consideration 5, an exception may be made to the rule of strict adherence to the relevant time limit only in very limited circumstances, namely: "where the complainant has been prevented by *vis major* from learning of the impugned decision in good time", "where the organisation, by misleading the complainant or concealing some paper from him or her so as to do him or her harm, has deprived that person of the possibility of exercising his or her right of appeal, in breach of the principle of good faith" (see also Judgments 4824, consideration 5, 4059, consideration 2, 3687, consideration 10, 3651, consideration 5, 3647, consideration 4(b), 3405, consideration 17, 2722, consideration 3, and 1466, consideration 5), "where some new and unforeseeable fact of decisive importance has occurred since the decision was taken" or "where [the staff member

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\* Registry's translation.

concerned by that decision] is relying on facts or evidence of decisive importance of which he or she was not and could not have been aware before the decision was taken” (see Judgments 4973, consideration 4, 4824, consideration 5, 4426, consideration 10, 3903, consideration 6, 3140, consideration 4, and 2722, consideration 2).

10. In the present case, the Tribunal considers that the circumstances referred to by the complainant cannot be regarded as falling within the scope of the exceptions provided for in that case law.

In this respect, it should be recalled that the fact that a complainant may not have discovered the irregularity on which she or he purports to rely until after the expiry of the time limit is not in itself a reason to deem her or his complaint receivable (see, to this effect, Judgments 4973, consideration 3, 4374, consideration 7, 3829, consideration 7, 3758, consideration 11, 3687, consideration 11, 3406, consideration 12, 3002, consideration 13, and 2821, consideration 8). Moreover, a response to a request to clarify a decision does not trigger a new deadline for submitting an appeal challenging the initial decision, since the recognition of such a principle would render ineffective the purpose for which the time limit was established (see, to this effect, Judgments 4973, consideration 3, 4103, consideration 3, and 430, considerations 4 and 5). This is also the case for a reply to requests for reconsideration made after a final decision has been taken (see, to this effect, Judgments 4918, consideration 5, 3735, consideration 4, 2818, consideration 9, 2011, consideration 18, 1986, consideration 7, 1528, consideration 12, and 430, considerations 4 and 5).

11. The Tribunal considers that it cannot be accepted in the present case that, as the complainant submits, Eurocontrol misled her by “slyly”<sup>\*</sup> presenting the deduction with the intention of harming her, which had the effect of depriving her of the possibility of effectively exercising her right of internal appeal in breach of the principle of good faith and the Organisation’s duty of care (see, for example,

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<sup>\*</sup> Registry’s translation.

Judgment 4973, consideration 9). The decision of 2 February 2005 shows that there was no ambiguity in this respect.

12. Lastly, although the complainant maintains that her failure to submit an internal complaint against each of her pay slips does not make her request for full reimbursement of the sums unlawfully deducted from her pay since the adoption of the decision of 2 February 2005 time-barred, it is evident from the Tribunal's case law that, since those pay slips merely confirmed the initial decision to make the deductions at issue, they did not reopen the time limit for bringing an appeal against that decision (see, on this point, Judgments 4973, consideration 12, 4121, consideration 3, and 3614, considerations 7 to 15).

13. It follows from the foregoing that the claim seeking the setting aside of the Director General's decision of 15 December 2022 insofar as it confirmed that the retroactive repayment of the sums in question would be limited to a period of six months, must be rejected as irreceivable.

14. In view of the complainant's arguments in her written submissions, it appears that she also seeks the setting aside of the decision of 2 February 2005 to apply the disputed deductions.

15. However, as already stated above, that decision was not challenged within the applicable time limit. It follows that the complaint is irreceivable insofar as it is directed against that decision on the grounds of failure to comply with the requirement to exhaust internal means of redress set out in Article VII, paragraph 1, of the Statute of the Tribunal. According to the Tribunal's case law, for a complaint to be receivable under that provision, the complainant must not only have exhausted the internal means of redress but must also have done so in accordance with the conditions and time limits prescribed in the applicable rules of the organisation concerned (see, in particular, Judgments 4973, consideration 3, 4573, consideration 3, 4103, consideration 1, 3947, consideration 4, and 3936, consideration 3).

16. Lastly, the complainant submits that Eurocontrol's handling of requests for repayment of sums wrongly deducted from staff members' pay creates a situation which is "particularly imbalanced against officials"\* in view of the provisions of Article 87 of the Staff Regulations in the opposite case of recovery of sums wrongly paid by the Organisation.

The Tribunal considers that this plea must be dismissed in any event, since the difference in treatment between the Organisation and the staff members in the situations singled out by the complainant, which is explained by the inherent nature of the situations in question, cannot be regarded as unlawful (see, for example, Judgment 2847, consideration 18).

17. It follows from all the foregoing that the present complaint is wholly irreceivable and must therefore be dismissed in its entirety.

#### DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 27 May 2025, Mr Patrick Frydman, President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, René M. Vargas M., Registrar.

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\* Registry's translation.

Delivered on 3 July 2025 by video recording posted on the Tribunal's Internet page.

*(Signed)*

PATRICK FRYDMAN    JACQUES JAUMOTTE    CLEMENT GASCON

RENÉ M. VARGAS M.