

# Joined Cases T-6/92 and T-52/92

Andreas Hans Reinarz

v

Commission of the European Communities

(Officials — Act adversely affecting an official — Reimbursement of nursing attendance costs — Reduction of reimbursements)

Judgment of the Court of First Instance (Fourth Chamber), 26 October  
1993 ..... II - 1052

## Summary of the Judgment

1. *Officials — Actions — Act adversely affecting an official — Meaning — Notice containing administrative information — Excluded*  
(Staff Regulations, Art. 91)
2. *Officials — Actions — Action, in the absence of an act adversely affecting the official, for review of the validity of a legislative provision — Inadmissible*  
(Staff Regulations, Art. 91)
3. *Objection of illegality — Scope — Acts which may be alleged to be unlawful — Rules on sickness insurance for officials of the European Communities*  
(EEC Treaty, Art. 184)

4. *Officials — Social security — Sickness insurance — Rules on sickness insurance for officials of the European Communities — Adoption of a joint agreement by the institutions — Permissible — Conditions*  
(Staff Regulations, Art. 72(1))
  
5. *Officials — Social security — Sickness insurance — Medical expenses — Nursing attendance costs — Reimbursement ceilings — Permissible — Conditions*  
(Staff Regulations, Art. 72(1); Rules on sickness insurance for officials of the European Communities, Annex I, Section X)
  
6. *Officials — Social security — Sickness insurance — Medical expenses — Nursing attendance costs — Amendment of the rules, resulting in a lower rate of reimbursement — Breach of the principles of protection of acquired rights and legitimate expectations — None*  
(Staff Regulations, Art. 72(1); Rules on sickness insurance for officials of the European Communities, Annex I, Section X)
  
7. *Officials — Administration's duty to provide assistance — Scope*  
(Staff Regulations, Art. 24)
  
8. *Officials — Actions — Prior administrative complaint — Same subject-matter and grounds — Pleas in law and arguments set out in the complaint only in the form of references to other documents — Whether admissible*  
(Staff Regulations, Arts 90 and 91)
  
9. *Officials — Equal treatment — Serving officials and retired officials — Same rate of reimbursement of medical expenses — No discrimination*  
(Staff Regulations, Art. 72(1); Rules on sickness insurance for officials of the European Communities, Annex I, Section X)
  
10. *Officials — Social security — Sickness insurance — Medical expenses — Procedures for and rates of reimbursement — Control of costs and requirements of the principle of proportionality*  
(Staff Regulations, Art. 72(1); Rules on sickness insurance for officials of the European Communities, Annex I, Section X)

1. Only acts capable of directly affecting the legal position of an official are acts adversely affecting him, within the meaning of Article 91(1) of the Staff Regulations, and mere letters containing only administrative information, such as a memorandum doing no more than informing the addressee of the entry into force and content of new rules on sickness insurance for officials of the European Communities, do not fall within that category.

The Rules on sickness insurance for officials of the European Communities, adopted in implementation of Article 72(1) of the Staff Regulations essentially cover the reimbursement of the various sickness expenses and are of a general nature, in that they apply to situations that are determined objectively and have legal effects with regard to categories of persons referred to in a general and abstract manner. Consequently, although they do not take the form of a regulation, those rules may be the subject of an objection of illegality.

2. In an action under Article 91 of the Staff Regulations, the Court of First Instance has jurisdiction only to review the lawfulness of an act adversely affecting an official and cannot, in the absence of an individual implementing measure, rule in the abstract on the legality of rules of a general nature, such as the Rules on sickness insurance for officials of the European Communities.

The scope of an objection of illegality must, however, be limited to what is necessary for determination of the dispute. Thus, the general measure claimed to be illegal must be applicable, directly or indirectly, to the issue with which the action is concerned and there must be a direct legal connection between the contested individual decision and the general measure in question.

3. Article 184 of the Treaty gives expression to a general principle conferring upon any party to proceedings the right to challenge, for the purpose of obtaining the annulment of a decision of direct and individual concern to that party, the validity of previous acts of the institutions which form the legal basis of the decision which is being contested. Consequently, such objections cannot be limited to measures in the form of a regulation, the only kind mentioned in Article 184 of the Treaty, but must be interpreted broadly as including all measures of general application.

4. Since the Staff Regulations do not contain all the rules applicable to social security for officials, the Community institutions are empowered by Article 72(1) of the Staff Regulations to adopt, by agreement, provisions operating in conjunction with the Staff Regulations. That power is in conformity with the principles of the Treaty. There is no transfer to the other institutions of the Council's legislative competence properly so called since the adoption of the rules presupposes agreement between the institutions, including, therefore, that of the Council, which granted that power.

Article 72(1) of the Staff Regulations leaves it to the authors of the Rules on sickness insurance for officials of the European Communities to define the scope of the insurance cover in question by laying down additional provisions, in keeping with the Staff Regulations and the objectives which they pursue.

5. Since Article 72 of the Staff Regulations contains no specific rules on the reimbursement of nursing attendance costs, it is obvious that the Rules on sickness insurance for officials of the European Communities must contain specific provisions in that regard.

Article 72 does not confer on the persons covered by the Rules on sickness insurance the right to obtain, in the various cases covered, reimbursement of the costs incurred at the rate of 80%, 85% or 100%. Those rates determine the maximum level of reimbursements and do not impose on the institutions the obligation to reimburse the persons covered at those rates in every case.

The setting by the implementing provisions of ceilings for reimbursement, in order to safeguard the financial equilibrium of the sickness insurance scheme, does not constitute an infringement of Article 72 of the Staff Regulations, provided that, in setting those ceilings, the Community institutions observe the principle of social insurance cover which underlies that article.

6. Since neither Article 72(1) of the Staff Regulations nor the Rules on sickness

insurance for officials of the European Communities provide for fixed reimbursement rates for nursing attendance costs but only for maximum rates, the mere fact that that article has been applied by the Community institutions for a certain time in a manner that was particularly favourable to those concerned is not such as to confer on them a vested right. Moreover, since the reimbursement of expenses associated with illness is one of those areas in which the applicable rules need constant adjustment in order to take account of the available resources and the need to maintain financial equilibrium, a reduction, as regards the future, in the rate of reimbursement for certain kinds of treatment is not in breach of the principle of the protection of legitimate expectations.

7. The administration's duty to provide assistance, laid down in Article 24 of the Staff Regulations, is concerned with the defence of officials by the Community institutions against acts of third parties, not against acts of the institutions themselves, the review of which is governed by other provisions of the Staff Regulations.
8. The aim of the requirement that the charges contained in a complaint must correspond with the pleas put forward in an application is to permit and encourage the amicable settlement of differences which have arisen between officials and the administration. In order to comply with that requirement, it is essential that the administration is in a position to ascertain with a sufficient degree of certainty the complaints or wishes of the persons concerned. That requirement is met where charges not expressly contained in the complaint are set out in earlier complaints to which it refers.

9. Discrimination consists in treating in an identical manner situations which are different or treating in a different manner situations which are identical.

As far as sickness insurance is concerned, retired officials cannot be regarded as a separate category of insured persons which, merely because it comprises former officials, is particularly susceptible to the risk of incurring nursing attendance expenses. That is a general risk inherent in life, which can befall any official, whether active or retired. While it is true that officials are liable, at a more advanced age, to incur higher expenses resulting from long illnesses, it is reasonable to expect them, in due time, to have taken proper financial precautions. In view of the wording of Article 72(1) of the Staff Regulations, which lays down only maximum rates of reimbursement, the adoption of such precautionary measures was and continues to be advisable since a reduction in the rate of reimbursement is possible at any time. Failure to take such measures cannot, in those circumstances, be imputed, in the form of an allegation of discrimination, either to the authors of the Staff Regulations or to those of the Rules on sickness

insurance for officials of the European Communities.

10. By virtue of the principle of proportionality, the acts of Community institutions must not exceed what is appropriate and necessary to attain the objective pursued, on the understanding that, where there is a choice between several appropriate measures, the least onerous measure must be used.

That principle, applied to the provisions for determination of the rates and procedures for reimbursement of expenses associated with illness under the Rules on sickness insurance for officials of the European Communities, is not, in view of the complexity of the problems involved in safeguarding the requisite financial balance of the joint scheme, as a result of which the Community institutions are allowed considerable latitude, liable to give rise to a finding that measures reducing rates of reimbursement are illegal unless they are found to be manifestly inappropriate, either as a matter of principle or by virtue of their results, having regard to the aim which underlies them, namely to achieve economies.