Reports of Cases

JUDGMENT OF THE EUROPEAN UNION CIVIL SERVICE TRIBUNAL
(Second Chamber)
16 May 2013

Case F-104/10

Mario Alberto de Pretis Cagnodo

Serena Trampuz de Pretis Cagnodo
v
European Commission

(Civil service — Social security — Serious illness — Concept — Hospitalisation — Direct billing — Direct payment by the settlements office — Absence of a maximum amount for accommodation costs in the General Implementing Provisions — Obligation to inform the official in advance where the invoice is excessive)

Application: under Article 270 TFEU, applicable to the EAEC Treaty pursuant to Article 106a thereof, in which Mr de Pretis Cagnodo and his wife, Mrs Trampuz de Pretis Cagnodo, seek annulment of the decisions of the settlements office, Ispra (Italy) ('the settlements office') of the Joint Sickness Insurance Scheme ('the JSIS'), as contained in Payment Slip No 10 of 1 October 2009, refusing reimbursement at 100% of the costs of the applicant's hospitalisation incurred between 13 February 2009 and 25 March 2009, and leaving the applicant liable for the sum of EUR 28 800 for what were considered to be the excessive accommodation costs incurred during hospitalisation.

Held: The decision of the settlements office, Ispra (Italy), as contained in Payment Slip No 10 of 1 October 2009, to hold Mr de Pretis Cagnodo liable for the sum of EUR 28 800 for the accommodation costs of Mrs Trampuz de Pretis Cagnodo that were deemed excessive is annulled. The action is dismissed as to the remainder. The European Commission is to bear all of its own costs and is ordered to pay all of the costs incurred by Mr de Pretis Cagnodo and Mrs Trampuz de Pretis Cagnodo.

Summary

1. Actions brought by officials — Locus standi — Persons covered by the Staff Regulations — Concept — Spouse of a former official — Included
(Staff Regulations, Arts 72(1), first subpara., and 90)

2. Judicial proceedings — Application initiating proceedings — Formal requirements — Clear and precise summary of the pleas in law on which the application is based — Flexible interpretation
(Statute of the Court of Justice, Art. 19, third para., and Annex I, Art. 7(1); Rules of Procedure of the Civil Service Tribunal, Art. 35(1)(e))

3. Officials — Social security — Sickness insurance — Illnesses recognised as being of comparable seriousness to the illnesses expressly listed in Article 72 of the Staff Regulations — Criteria laid down by the Commission — Cumulative nature
(Staff Regulations, Art. 72)

4. Officials — Social security — Sickness insurance — Serious illness — Refusal to recognise — Judicial review — Limit — Challenging properly issued medical assessments
(Staff Regulations, Arts 72(1), 73 and 78)

5. Officials — Social security — Sickness insurance — Medical expenses — Repayment — Direct billing of hospitalisation costs — Obligation to attach to the request for direct billing an estimate of the expenses payable — None
(Rules on Sickness Insurance, Art. 52)

6. Officials — Social security — Sickness insurance — Medical expenses — Repayment — Obligations of the institutions — Respect for the principle of sound administration and the duty to have regard for the welfare of officials where the invoice is excessive — Scope
(Staff Regulations, Art. 72; Rules on Sickness Insurance, Arts 43 and 52; Council Regulation No 1605/2002, Art. 27)

1. An institution cannot validly claim that the spouse of a former official has no interest in acting in order to submit, himself or herself, in knowledge of the facts, comments on a decision not to repay that spouse's hospitalisation costs, or indeed to lodge a complaint against that decision. It follows from the first subparagraph of Article 72(1) of the Staff Regulations that the spouse of a former official is covered against the risk of sickness. It follows that that spouse is a 'person to whom the Staff Regulations apply' within the meaning of Article 90 of those regulations and may submit to the appointing authority either a request that it take a decision relating to him or her or a complaint against an act adversely affecting him or her.

(see paras 51, 56)

2. Pursuant to Article 35(1)(e) of the Rules of Procedure of the Civil Service Tribunal, the application is to state the subject-matter of the proceedings and the pleas in law and the arguments of fact and law relied on. Such matters must be sufficiently clear and precise to enable the defendant to prepare its defence and the Tribunal to adjudicate on the action, if need be without further information.

In so far as the use of the model application that appears on Curia, the Internet site of the Court of Justice of the European Union, in the part devoted to the Tribunal, under the heading '… useful information', is not mandatory for parties, when the Tribunal considers whether the conditions laid down in Article 35(1)(e) of the Rules of Procedure are satisfied, and provided that the pleas in law and the arguments of fact and of law relied on can be identified, it must give that provision a sufficiently flexible interpretation in order to respect the right, conferred on applicants by the fourth paragraph of Article 19 of the Statute of the Court of Justice, applicable to the procedure before the Tribunal pursuant to Article 7(1) of Annex I to that Statute, to choose their lawyer freely, independently of the State in which that lawyer is authorised to practise.

(see paras 57, 59)

See:

1 December 2010, F-89/09 *Gagalis* v *Council*, paras 36 to 37

3. As regards recognition of a serious illness, the criteria listed in point 1 of Chapter 5 of Title III of the General Implementing Provisions concerning the reimbursement of medical expenses, adopted by the Commission, namely, a shortened life expectancy, an illness which is likely to be drawn-out, the need for aggressive diagnostic and/or therapeutic procedures and the presence or risk of a serious handicap are cumulative. Thus, the fact that just one of those criteria is not met justifies the adoption of a decision refusing to recognise the existence of a serious illness.

Those criteria do not appear to be manifestly inappropriate or misconceived in the light of the objective pursued, namely to identify illnesses of 'comparable seriousness' to those expressly mentioned in Article 72 of the Staff Regulations. The four illnesses expressly mentioned in Article 72 of the Staff Regulations are liable in a number of cases to have particularly serious physical or mental consequences, are likely to be drawn out and need aggressive therapeutic procedures; the prior diagnosis must therefore be clear, which in turn requires special analyses or investigations. Such illnesses are also liable to expose the person concerned to the risk of a serious handicap. Moreover, it is apparent from the very wording of Article 72(1) of the Staff Regulations that, even if it involves one of the four illnesses expressly listed in that article, only a case that is particularly serious may be classified as a case of serious illness and thus enable the person concerned to benefit from the more favourable arrangements applicable in the event of recognition of such an illness.

(see paras 75-78)

See:

28 September 2011, F-23/10 *Allen* v *Commission*, paras 49-51

4. As regards a decision refusing to recognise the seriousness of the illness of the spouse of a former official, it is for the Civil Service Tribunal to consider whether the appointing authority assessed the facts correctly and applied the relevant legal provisions accurately. It is therefore for the Tribunal, in the context of the limited review which it is required to carry out in medical matters, to consider whether, by refusing to classify the illness that required the hospitalisation of the person concerned as a 'serious illness', that authority made a manifest error in inferring from the medical findings brought to its knowledge, on which the Tribunal cannot rule unless the administration distorted their scope, that those criteria were not cumulatively satisfied.

In that regard, by comparison with the medical assessments properly so-called formulated by a medical committee, or indeed by an invalidity committee, whose operating rules provide guarantees of fairness between the parties and objectivity, opinions expressed unilaterally by medical officers of the institutions do not present the same level of guarantee in relation to fairness between the parties.

Consequently, it is for the Tribunal, when it rules on a refusal to recognise the existence of a serious illness, to carry out a more thorough review than that which it carries out of decisions adopted on the basis of Article 73 or Article 78 of the Staff Regulations, following the intervention of the medical committee or the invalidity committee. None the less, it is clear that the Tribunal does not have the necessary competence in medical matters to enable it to endorse or invalidate a medical assessment, or to arbitrate among several conflicting medical assessments.

However, although its review does not extend to strictly medical assessments such as those concerning the seriousness of an illness, the Tribunal — where an applicant disputes the administration's assessment of his situation by challenging the medical opinion on which it is based — must satisfy

itself that the medical officer carried out a specific and detailed examination of the situation laid before him. It should be noted in this connection that it is for the administration to establish that an assessment of this nature has been made.

(see paras 79-81, 84-85, 87)

See:

19 January 1988, 2/87 *Biedermann* v *Court of Auditors*, para. 8

16 March 1993, T-33/89 and T-74/89 *Blackman* v *Parliament*, para. 44; 7 November 2002, T-199/01 *G* v *Commission*, para. 59; 12 May 2004, T-191/01 *Hecq* v *Commission*, para. 63

18 September 2007, F-10/07 *Botos* v *Commission*, para. 41; *Allen* v *Commission*, paras 68 to 71 and 76

5. In the case of a request for direct billing for hospitalisation costs under the General Implementing Provisions adopted by the Commission in accordance with Article 52 of the Joint Rules on Sickness Insurance for Officials, the person concerned cannot be criticised for not having provided a written document having probative value concerning the accommodation costs he would incur. Although it is desirable for members to be able to have such a document, there is no provision either in the Joint Rules or in the General Implementing Provisions requiring them to obtain an official estimate and to send it to the settlements office with the request for direct billing.

(see para. 108)

6. Under the principle of sound administration, the Commission and, by extension, the Joint Sickness Insurance Scheme (JSIS) settlements offices, the setting-up of which is among the administrative tasks of the Commission and control of which, as regards compliance with the principles of sound financial management, is carried out by the central office, must be vigilant in order not to use the funds of the JSIS in order to pay hospitalisation invoices the amounts of which are prima facie disproportionate by comparison with the average costs of similar services in the country where the costs were incurred. Moreover, according to Article 27 of Regulation No 1605/2002 relating to the Financial Regulation applicable to the general budget of the European Communities, which, pursuant to Article 43 of the Joint Rules on Sickness Insurance for Officials, is applicable to the management of the JSIS, the Commission must ensure that revenue and expenditure are dealt with in accordance with the principle of sound financial management, in accordance with the principles of economy, efficiency and effectiveness.

In the context of direct billing for hospitalisation costs, the Commission, moreover, is bound by the duty to have regard for the welfare of the staff of the institutions of the European Union, who are the beneficiaries of the JSIS. That duty to have regard for the welfare of its staff obliges the Commission and, by extension, the JSIS settlements offices, where they receive an invoice in a very high sum in which, although the medical services are itemised and described, accommodation is simply invoiced at a certain amount per day, without any details of the type of room or the additional services that might justify such a high amount, not to pay such an invoice immediately, even where direct billing has been requested, but to obtain information in writing from the hospital that issued the invoice and also to inform the member to whom the settlements office will in most cases ultimately charge at least a percentage of the hospitalisation costs invoiced and possibly, as in this case, all the costs deemed excessive.

(see paras 111-114)