ORDER OF THE COURT (Second Chamber)
25 May 1998 *

In Case C-361/97,

REFERENCE to the Court under Article 177 of the EC Treaty by the ASVG-Landesberufungskommission für das Burgenland (Austria) for a preliminary ruling in the proceedings pending before that tribunal between

Rouhollah Nour

and

Burgenländische Gebietskrankenkasse,

on the general principles which form part of Community law,

THE COURT (Second Chamber),

composed of: R. Schintgen, President of the Chamber, G. F. Mancini and G. Hirsch (Rapporteur), Judges,

Advocate General: G. Cosmas,
Registrar: R. Grass,

after hearing the Opinion of the Advocate General,

* Language of the case: German.

makes the following

Order

1 By decision of 18 September 1997, received at the Court on 21 October 1997, the ASVG-Landesberufungskommission für das Burgenland (Social Security Appeals Board for Burgenland, hereinafter 'the Appeals Board') referred to the Court for a preliminary ruling under Article 177 of the EC Treaty four questions on the interpretation of the general principles which form part of Community law.

2 Those questions were raised in proceedings brought by Dr Nour, a doctor of medicine, against the Burgenländische Gebietskrankenkasse (Regional Sickness Insurance Fund for Burgenland) for a declaration that certain contractual arrangements with that institution, concerning the reduction of his fees, were void.

3 The Appeals Board is a permanent institution established under social security legislation which decides, as the tribunal of final instance, on disputes between doctors and the social security institutions with which they have concluded collective and individual agreements. It appears from the documents in the case that the Appeals Board is composed of two representatives of the doctors, two representatives of the social security institutions, and a professional judge as president.

4 The Appeals Board, sitting in private on 18 September 1997, decided to stay the proceedings and refer the following four questions to the Court of Justice for a preliminary ruling:

'1. In its case-law the Court of Justice of the European Communities has developed and applied numerous general principles of law. These general principles of law include principles which apply in a State governed by the rule of law, such as the principle of proportionality (see Case 122/78 *Buitoni* v *FORMA* [1979] ECR 677, at p. 684), the principle of legal certainty (see Case 265/78 *Ferwerda* v *Produktschap voor Vee en Vlies* [1980] ECR 617, at p. 630), etc. There is, however, no comprehensive catalogue of fundamental rights in Community law. Reference is made to Recommendation R(94) 12, adopted by the Committee of Ministers of the Council of Europe on 13 October 1994, on the independence, effectiveness and role of judges, which provides *inter alia* that the term of office and salary of judges must be guaranteed by law.

The Court of Justice is asked whether that Recommendation is also to be regarded as part of European Community law, as one of the general principles of law.

2. Must the principle of the protection of legitimate expectations (Case C-5/89 *Commission* v *Germany* [1990] ECR I-3437, Case C-177/90 *Kühn* v *Landwirtschaftskammer Weser-Ems* [1992] ECR I-35, etc.), in the form of the prohibition of retrospective effect (Case 98/78 *Racke* v *Hauptzollamt Mainz* [1979] ECR 69, Case C-368/89 *Crispoltoni* v *Fattoria Autonoma Tabacchi* [1991] ECR I-3695, etc.), also be understood as meaning that an administrative authority is not permitted to reduce the remuneration of a judge, determined *a priori* by an act of the State as a flat rate per case, solely because the administrative authority considers that that remuneration conflicts with what it itself regards as appropriate?

3. Is legal certainty still present if an institution set up by law to provide a legal remedy, which consists of two levels of jurisdiction, *de facto* consists of one level only because the lower instance is systematically inactive, so that only the second and last instance has to act, by means of applications for proceedings to be transferred to it?

4. Is it permissible for an administrative authority to prescribe to a court or quasi-judicial decision-making body when or under what conditions that court or quasi-judicial decision-making body must join sets of judicial proceedings, or does that constitute an interference with judicial autonomy?'

5 It appears from the decision making the reference and the documents in the main proceedings that the Appeals Board's questions refer essentially to two aspects of its functioning: first, the method of calculating the remuneration of the President of the Board (Questions 1, 2 and 4) and, second, the relationship between the Paritätische Schiedskommission (Joint Arbitration Committee) as first-instance institution and the Appeals Board as appellate body (Question 3).

6 As regards the first aspect, it appears from the case-file that proceedings between the President of the Appeals Board and the Ministry of Justice, concerning the sum due to the President in respect of 36 social security cases dealt with by the Board in the first half of 1996, are currently pending before the Verwaltungsgerichtshof (Administrative Court).

7 Questions 1 and 2 must be seen in the context of that dispute, in which the President of the Appeals Board complains, more specifically, that the Ministry of Justice has by a mere administrative decision retrospectively altered the method of calculating his remuneration.

8 Question 4 has been put because of recent action by the Ministry of Justice to encourage all the Appeals Boards to join cases which are identical or similar. The aim is to ensure that the remunerations of the Presidents of those Boards, which are calculated on the basis of a flat-rate sum per case handled, are not too high.

9 As regards the second aspect, it seems that the Appeals Board wishes, by Question 3, to draw the Court's attention to the fact that the first-instance body is unable because of its joint composition to resolve disputes between doctors and social security institutions, with the effect that in practice the Appeals Board decides at first and final instance.

10 It must be observed that the procedure provided for by Article 177 of the Treaty is an instrument of cooperation between the Court of Justice and the national courts, by means of which the Court provides the national courts with the points of interpretation of Community law which they need in order to decide the disputes before them (see *inter alia* Case C-83/91 *Meilicke* v *ADV/ORGA* [1992] ECR I-4871, paragraph 22, and the order of 9 August 1994 in Case C-378/93 *La Pyramide* [1994] ECR I-3999, paragraph 10).

11 In the context of such cooperation, the national court, which alone has direct knowledge of the facts of the case, is in the best position to assess whether a preliminary ruling is necessary to enable it to give judgment (*Meilicke*, paragraph 23). Consequently, the Court gives its ruling without, in principle, having to look into the circumstances in which a national court was prompted to submit the questions and envisages applying the provisions of Community law which it has asked the Court to interpret (Case C-85/95 *Reisdorf* v *Finanzamt Köln-West* [1996] ECR I-6257, paragraph 15).

12 It is settled case-law, however, that the Court cannot give a preliminary ruling where it is quite obvious that the interpretation of Community law sought by a national court bears no relation to the actual facts of the main action or to its purpose, or where the problem is hypothetical and the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see Case 126/80 *Salonia* v *Poidomani and Giglio* [1981] ECR 1563,

paragraph 6, Case C-415/93 *URBSFA and Others* v *Bosman and Others* [1995] ECR I-4921, paragraph 61, and Case C-291/96 *Grado and Bashir* [1997] ECR I-5531, paragraph 12).

13 That is so in the present case, where the questions have no relation to the purpose of the main action.

14 First, the answers sought by the Appeals Board would not help it resolve the dispute pending before it between Dr Nour and the Burgenländische Gebietskrankenkasse concerning his medical fees. The questions relating to the remuneration of the President, the joinder of cases and the relationship with the first-instance body are not at issue between the parties to the main proceedings and obviously lie outside the scope of the dispute between them; they refer in fact to the abovementioned dispute between the President of the Appeals Board and the Ministry of Justice.

15 According to the settled case-law, it must be held in such circumstances that the questions referred to the Court for a preliminary ruling do not involve an interpretation of Community law objectively required for the decision to be taken by the national tribunal (see *inter alia* the orders of 26 February 1990 in Case C-286/88 *Falciola* v *Comune di Pavia* [1990] ECR I-191, paragraph 9, and 16 May 1994 in Case C-428/93 *Monin Automobiles* [1994] ECR I-1707, paragraph 15, and also *Grado and Bashir*, paragraph 16).

16 Second, it appears from the documents in the case that, during the proceedings in the Verwaltungsgerichtshof concerning the functioning of the Paritätische Schiedskommission and the remuneration of the President of the Appeals Board, the latter, in his capacity as a party, unsuccessfully suggested that questions identical to those put in the present case should be referred to the Court.

17 If a national judge who, on an individual and private basis, is a party to a dispute with the Ministry of Justice were allowed to refer questions connected with that dispute for a preliminary ruling, via the tribunal which he presides over and on the occasion of other proceedings between different parties and with a different subject-matter, that would breach the rule that it is for the national court which has to decide a dispute, in this case the Verwaltungsgerichtshof, and not the parties to bring the matter before the Court and formulate the questions to be referred (see *inter alia* Case 5/72 *Grassi* v *Italian Finance Administration* [1972] ECR 443, paragraph 4, and Case 311/84 *CBEM* v *CLT and IPB* [1985] ECR 3261, paragraph 10).

18 Third, the decision making the reference does not show in what respect Community law could apply in the dispute between the doctor in question and the Burgenländische Gebietskrankenkasse. The national tribunal merely draws the Court's attention to the fact that, in future, doctors who are nationals of other Member States might perhaps be involved in similar disputes.

19 It is settled case-law that the Court may not rule on an alleged breach of the general principles of Community law in the case of a dispute which is not connected in any way with any of the situations contemplated by the Treaty provisions. A purely hypothetical prospect of exercising the freedoms under the Treaty does not establish a sufficient connection to justify the application of Community provisions (see, to that effect, Case 180/83 *Moser* v *Land Baden-Württemberg* [1984] ECR 2539, paragraph 18, and Case C-299/95 *Kremzow* v *Austria* [1997] ECR I-2629, paragraph 16).

20 In those circumstances, it must be held, on the basis of Article 92(1) of the Rules of Procedure, that the Court manifestly has no jurisdiction to answer the questions referred by the Appeals Board.

Costs

21 Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national tribunal, the decision on costs is a matter for that tribunal.

On those grounds,

THE COURT (Second Chamber)

hereby orders:

The Court has no jurisdiction to answer the questions referred by the ASVG-Landesberufungskommission für das Burgenland.

Luxembourg, 25 May 1998.

R. Grass

Registrar

R. Schintgen

President of the Second Chamber