



Reports of Cases

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

16 May 2013*

(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)

In Case F-104/10,

ACTION brought under Article 270 TFEU, applicable to the EAEC Treaty pursuant to Article 106a thereof,

Mario Alberto de Pretis Cagnodo, a former official of the European Commission,

Serena Trampuz de Pretis Cagnodo, his wife,

residing together in Trieste (Italy), represented by C. Falagiani, lawyer,

applicants,

v

European Commission, represented by J. Currall and D. Martin, acting as Agents, and by A. Dal Ferro, lawyer,

defendant,

THE CIVIL SERVICE TRIBUNAL (Second Chamber)

composed of M.I. Rofes i Pujol (Rapporteur), President, I. Boruta and K. Bradley, Judges,

Registrar: J. Tomac, Administrator,

having regard to the written procedure and further to the hearing on 21 June 2012,

gives the following

Judgment

- 1 By application lodged at the Registry of the Tribunal on 21 October 2010, Mr de Pretis Cagnodo and his wife, Mrs Trampuz de Pretis Cagnodo, brought the present action for annulment of the decisions of the settlements office, Ispra (Italy) ('the settlements office') of the Joint Sickness Insurance Scheme

* Language of the case: Italian.

(‘the JSIS’), as contained in Payment Slip No 10 of 1 October 2009, refusing reimbursement at 100% of the costs of Mrs Trampuz de Pretis Cagnodo’s hospitalisation incurred between 13 February 2009 and 25 March 2009, and leaving Mr de Pretis Cagnodo liable for the sum of EUR 28 800 for what were considered to be the excessive accommodation costs incurred during his wife’s hospitalisation.

Legal context

- 2 Article 72 of the Staff Regulations of Officials of the European Union, in the version applicable to the proceedings (‘the Staff Regulations’), provides:

‘1. An official, his spouse, where such spouse is not eligible for benefits of the same nature and of the same level by virtue of any other legal provision or regulations, his children and other dependants within the meaning of Article 2 of Annex VII are insured against sickness up to 80% of the expenditure incurred subject to rules drawn up by agreement between the institutions of the [Union] after consulting the Staff Regulations Committee. This rate shall be increased to 85% for the following services: consultations and visits, surgical operations, hospitalisation, pharmaceutical products, radiology, analyses, laboratory tests and prostheses on medical prescription with the exception of dental prostheses. It shall be increased to 100% in cases of tuberculosis, poliomyelitis, cancer, mental illness and other illnesses recognised by the appointing authority as of comparable seriousness, and for early detection screening and in cases of confinement. However, reimbursement at 100% shall not apply in the case of occupational disease or accident having given rise to the application of Article 73.

...

2. An official who has remained in the service of the Communities until the age of 63 years or who is in receipt of an invalidity allowance shall be entitled to the benefits provided for in paragraph 1 after he has left the service. The amount of contribution shall be calculated by reference to the amount of pension or allowance.

...

2a. The following shall likewise be entitled to the benefits provided for in paragraph 1, on condition that they are not in gainful employment:

- (i) former officials entitled to retirement pensions who leave the service of the Communities before reaching the age of 63,

...’

- 3 Under Article 27 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 relating to the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 248, p. 1):

‘1. Budget appropriations shall be used in accordance with the principle of sound financial management, namely in accordance with the principles of economy, efficiency and effectiveness.

2. The principle of economy requires that the resources used by the institution for the pursuit of its activities shall be made available in due time, in appropriate quantity and quality and at the best price.

The principle of efficiency is concerned with the best relationship between resources employed and results achieved.

The principle of effectiveness is concerned with attaining the specific objectives set and achieving the intended results.

...’

4 Article 36 of the Rules of Procedure provides:

‘If an application does not comply with the requirements set out in Article 35(1)(a), (b), (c), (2) or (5), the Registrar shall prescribe a reasonable period within which the applicant is to comply with them by putting the application in order. If the applicant fails to put the application in order within the time prescribed, the Tribunal shall decide whether the noncompliance with these conditions renders the application formally inadmissible.’

5 Article 1(1) of the Joint Rules on Sickness Insurance for Officials of the European Union (‘the Joint Rules’) provided for in Article 72 of the Staff Regulations provides:

‘Under Article 72 of the Staff Regulations, a [JSIS] is hereby set up. Within the limits and on the conditions set forth in these Rules and under the general implementing provisions adopted on the basis of Article 52 thereof, the Scheme shall guarantee to the persons covered by it the reimbursement of expenses incurred as a result of illness, accident or confinement and the payment of an allowance towards funeral expenses.

The Scheme shall apply to its members and to persons covered under them.

...’

6 Article 2 of the Joint Rules provides:

‘...’

3. The following shall ... be members of the [JSIS]:

- former officials and temporary staff in receipt of a retirement pension,
- ...’.

7 Article 12 of the Joint Rules provides:

‘The following are covered by members’ insurance under the conditions set out in Articles 13 and 14:

- spouses, unless they are already full members of the Scheme,
- ...’.

8 Under Article 20 of the Joint Rules, which lays down the general reimbursement rules:

‘1. For the purpose of protecting the financial equilibrium of the [JSIS] and respecting the principle of social security cover forming the basis for Article 72 of the Staff Regulations, reimbursement ceilings for certain benefits may be set in the general implementing provisions.

If the costs claimed by the member are lower than the ceiling, reimbursement shall be calculated on the basis of costs claimed.

2. In the case of benefits for which no reimbursement ceiling has been set, the proportion of the costs deemed excessive by comparison with normal costs in the country where the costs have been incurred shall not be reimbursed. The portion of the costs deemed excessive shall be determined on a case-by-case basis by the [s]ettlements [o]ffice [of the JSIS] after consulting the [m]edical [o]fficer.

...

6. In accordance with Article 72(1) of the Staff Regulations, costs shall be reimbursed in full in the case of tuberculosis, poliomyelitis, cancer, mental illness and other illnesses recognised by the appointing authority as of comparable seriousness after consulting the [m]edical [o]fficer of the [s]ettlements [o]ffice [of the JSIS].

The [m]edical [o]fficer's opinion shall be delivered on the basis of general criteria laid down in the general implementing provisions after consultation of the [m]edical [c]ouncil [of the JSIS].

...'

9 Article 30 of the Joint Rules provides:

'1. Advances may be granted to members to enable them to meet major items of expenditure. Such advances shall be allocated primarily in the form of a request for direct billing in the case of hospitalisation.

2. Advances on medical expenses shall be recovered, either from any amount owed to the member under [the JSIS] or from the remuneration or pension or from any amount owed to the member by the institution or from the survivor's pension following the member's death. ...'

10 Under Article 35 of the Joint Rules:

'...

2. Before taking a decision on a complaint introduced on the basis of Article 90(2) of the Staff Regulations the appointing authority or, as the case may be, the [a]dministrative [b]oard [of the JSIS] shall request the opinion of the [m]anagement [c]ommittee [of the JSIS].

...'

11 Article 36 of the Joint Rules provides:

'The [JSIS] shall operate through a [m]anagement [c]ommittee, a [c]entral [o]ffice, [s]ettlements [o]ffices and a [m]edical [c]ouncil.'

12 Article 41 of the Joint Rules provides:

'The [m]anagement [c]ommittee shall be assisted by a [m]edical [c]ouncil composed of a medical officer from each institution and the medical officers from each [s]ettlements [o]ffice.

The [m]edical [c]ouncil may be consulted by the [m]anagement [c]ommittee or the [c]entral [o]ffice concerning any matter of a medical nature which arises in connection with [the JSIS]. It shall meet at the request of the [m]anagement [c]ommittee, of the [c]entral [o]ffice or of the medical officers of the [s]ettlements [o]ffices and shall deliver its opinion within such time as may be specified.'

13 Article 43 of the Joint Rules provides, with respect to authorisation and checking:

‘1. Implementation of revenue and expenditure of the [JSIS] shall be performed by analogy and in accordance with the provisions of [Regulation No 1605/2002] and in particular Article 60 thereof.

2. ...

3. The [c]entral [o]ffice shall perform ex post checks or have them performed, with a view to

— ensuring the legality and correctness of the transactions performed by the [s]ettlements [o]ffices and observance of the principles of sound financial management,

...’

14 According to Article 52 of the Joint Rules:

‘1. Under the third subparagraph of Article 72(1) of the Staff Regulations, the institutions shall empower the [European] Commission to lay down, by general implementing provisions, the rules governing the reimbursement of costs with a view to protecting the financial balance of the [JSIS] and respecting the principle of social security cover forming the basis for the first subparagraph of Article 72(1) of the Staff Regulations.

...’

15 Title II, Chapter 2, Point 1.3 of the General Implementing Provisions adopted by the European Commission in application of Article 52 of the Joint Rules (‘the General Implementing Provisions’), concerning the procedures for reimbursement in the event of hospitalisation, establishes, with respect to that rate of reimbursement:

‘Hospitalisation for a surgical operation or medical treatment is reimbursed at the rate of 85%.

The rate of reimbursement rises to 100%:

— in the case of serious illness;

— ...

— in the event of prolonged hospitalisation, for accommodation costs beyond 30 consecutive days, after consultation of the [m]edical [o]fficer.’

16 The abovementioned Point 1.3. of the General Implementing Provisions provides, by way of reimbursement conditions:

‘In order to qualify for reimbursement, the hospitalisation must be the subject of a medical report to the [m]edical [o]fficer of the [s]ettlements [o]ffice.

— Accommodation costs:

Accommodation costs relating to board and lodging, service and taxes are reimbursed on the basis of expenses actually incurred and according to the relevant invoicing rules applicable in the country of hospitalisation. If the accommodation costs are included in the all-in charge for a day in hospital, the reimbursement will be made as an aggregate amount.

Accommodation costs will depend on the type of room chosen. They will be reimbursed up to the price of the least expensive single room in the hospital.

Accommodation costs will be reimbursed only for the period of hospitalisation that is medically required to carry out the procedures or provide the treatment in the country of hospitalisation.

...'

- 17 Title III, Chapter 4 of the General Implementing Provisions, which regulates direct billing and advances, states:

'In accordance with Article 30 of the [J]oint [R]ules advances may be granted to members to enable them to meet major items of expenditure. Direct billing is the primary form of assistance, although advances may be granted under exceptional circumstances.

...

1. Direct billing

Members must apply for direct billing in advance, except in an emergency or a case of force majeure.

Direct billing is granted in the following instances:

- In the event of hospitalisation, direct billing covers the main invoices and the surgeon's fees.

...

In the event of direct billing, after the reimbursement rates have been calculated the costs to be met by the member are, as a rule, deducted from later reimbursements, or from the salary, pension or other sums owing from the institution. At the request of the [s]ettlements [o]ffice, the balance may be reimbursed by a transfer to the JSIS bank account.

...'

- 18 Title III, Chapter 5 of the General Implementing Provisions, on recognition of the status of serious illness, provides as follows:

'1. Definition

Serious illnesses include tuberculosis, poliomyelitis, cancer, mental illness and other illnesses recognised by the appointing authority as of comparable seriousness.

Such illnesses typically involve, to varying degrees, the following four elements:

- a shortened life expectancy
- an illness which is likely to be drawn-out
- the need for aggressive diagnostic and/or therapeutic procedures
- the presence or risk of a serious handicap.

...'

Facts giving rise to the dispute

- 19 Mr de Pretis Cagnodo, a former official of the Commission and the recipient of a retirement pension, is, as such, covered by the JSIS. His wife, who is also an applicant in the present case, is covered primarily by the JSIS in her capacity as the spouse of a member of the scheme and as a person covered under him.
- 20 On 22 January 2009, Mrs Trampuz de Pretis Cagnodo, as spouse of the member and the person representing him, submitted an application for direct billing, under Title III, Chapter 4, Point 1 of the General Implementing Provisions, to the settlements office in respect of her own hospitalisation, scheduled for 12 February 2009, in the Clinica Anthea in Bari (Italy). On 5 February 2009 the settlements office granted her request and wrote to the hospital informing it that the settlements office should be directly billed for Mrs Trampuz de Pretis Cagnodo's hospitalisation expenses and stating that no provisional invoice or demand for payment should be sent to the insured person.
- 21 Mrs Trampuz de Pretis Cagnodo was admitted to hospital on 13 February 2009. She underwent an operation on 14 February 2009, which was followed by a complication requiring a second operation on 25 February 2009. She remained in the Clinica Anthea until 25 March 2009, for a total of 40 days.
- 22 On 13 April 2009, in accordance with the decision approving direct billing for the hospitalisation expenses, the settlements office contacted the Clinica Anthea and asked that the principal invoice be sent directly to it, and not to the patient, for payment. The Clinica Anthea sent the settlements office Invoice No 4080 of 16 April 2009 for a total of EUR 83 893.20 including value added tax ('VAT'); of this amount, EUR 57 600 was for accommodation costs at EUR 1 440 per day, including VAT, and EUR 26 293.20 for medical and hospital expenses. The invoice, which was detailed with respect to the latter expenses but did not specify the type of room occupied by Mrs Trampuz de Pretis Cagnodo, was paid in full by the settlements office without the applicants first being informed of the amount invoiced.
- 23 The settlements office sent Mr de Pretis Cagnodo Payment Slip No 10, dated 1 October 2009, from which it is apparent that: (i) the total amount paid for hospitalisation was EUR 83 893.20; (ii) the settlements office considered that the accommodation costs invoiced, a total of EUR 57 600, were excessive; (iii) reimbursement for those costs was limited to EUR 28 800, or EUR 720 per day, including VAT, Mr de Pretis Cagnodo being liable for the remaining EUR 28 800; and (iv) the reimbursable hospitalisation costs, namely EUR 55 093.20, including EUR 26 293.20 for medical expenses and EUR 28 800 for accommodation, were reimbursed to the applicant at the rate of 85%, so that the settlements office was liable for EUR 46 829.20 and Mr de Pretis Cagnodo was liable for the remaining EUR 8 263.98. Those calculations show that, for 40 days of hospitalisation, including medical expenses and accommodation costs, the settlements office considered that the sum of EUR 1 377.30 per day of hospitalisation was reimbursable.
- 24 Mrs Trampuz de Pretis Cagnodo submitted comments on Payment Slip No 10, underlining the possibility of contacting the Clinica Anthea in order to obtain further information about the accommodation. As is apparent from the Commission's decision of 23 July 2010, which was subsequently taken in response to the complaint lodged by Mrs Trampuz de Pretis Cagnodo on the basis of Article 90(2) of the Staff Regulations ('the decision rejecting the complaint'), Mrs Trampuz de Pretis Cagnodo was informed on 13 November 2009 that her file had been sent to the medical council of the JSIS ('the medical council') for its opinion. It is also apparent from the decision rejecting the complaint that, by e-mail of 26 November 2009, Mrs Trampuz de Pretis Cagnodo asked the sickness fund to contact the Clinica Anthea and ask it to reconsider the invoice of 16 April 2009.
- 25 It is further apparent from the decision rejecting the complaint that, by e-mail of 27 November 2009, the settlements office informed Mrs Trampuz de Pretis Cagnodo of the contents of the telephone conversation which the official responsible had had with an employee of the Clinica Anthea. During

that conversation, the employee stated that Mrs Trampuz de Pretis Cagnodo had been accommodated in a very luxurious suite, with a brass bed and an à la carte menu. The settlements office's request in writing to be informed of the price of the hospital's least expensive private single room was not answered by the Clinica Anthea.

- 26 It follows from the minutes of the meeting of the medical council held in Brussels (Belgium) on 10 December 2009, which were notified to Mr de Pretis Cagnodo by letter from the settlements office dated 26 January 2010, that the medical council confirmed that the accommodation costs invoiced, a total of EUR 57 600, were excessive, on the basis of the information provided by the Italian doctors, who stated that the price charged in Italy for accommodation costs is between EUR 400 and 600 per day, excluding VAT ('the decision of 26 January 2010').
- 27 Mrs Trampuz de Pretis Cagnodo lodged a complaint, dated 16 April 2010 and registered by the Commission on 22 April 2010, on the basis of Article 90(2) of the Staff Regulations. In her complaint, Mrs Trampuz de Pretis Cagnodo maintained, first, that the settlements office, to which the Clinica Anthea's invoice had been sent, ought to have objected in good time that the sum claimed by way of accommodation costs was excessive and not paid it. Second, Mrs Trampuz de Pretis Cagnodo claimed that the costs associated with her hospitalisation ought to have been reimbursed in full, as the illness which led to her hospitalisation was 'serious' within the meaning of the first subparagraph of Article 72(1) of the Staff Regulations. Last, Mrs Trampuz de Pretis Cagnodo claimed that, as the period of hospitalisation in excess of 30 days was justified, the hospital fees for the last 10 days ought to have been reimbursed in full. As regards the excessive nature of the accommodation costs, she complained that, instead of invoicing those costs at the rate of EUR 300 per day for a single room, the amount which had been communicated to her orally on two occasions before she was admitted to hospital, the Clinica Anthea inflated the accommodation costs to EUR 1 440 per day on the pretext of having accommodated her in a luxurious suite, which, she alleged, was untrue, since that hospital did not have any suites for patients.
- 28 In the light of the complaint, the appointing authority requested the opinion of the medical officer of the settlements office ('the medical officer') as to whether the hospitalisation costs beyond 30 days were justified and also whether the pathology which had led to Mrs Trampuz de Pretis Cagnodo's operation could be recognised as a 'serious illness' within the meaning of Title III, Chapter 5, Point 1 of the General Implementing Provisions. In the opinion issued on 18 May 2010, the medical officer concluded, as regards the first question, that the patient could have left the Clinica Anthea on 8 March 2009, as the subsequent therapy and examinations could have been carried out at home or on an outpatient basis. As regards the second question, the medical officer considered that at least two of the fundamental criteria for recognition of serious illness, namely a shortened life expectancy and the presence or risk of infirmity or a serious handicap, were not satisfied.
- 29 In accordance with Article 35(2) of the Joint Rules, the appointing authority also requested the opinion of the management committee of the JSIS ('the management committee'). At its meeting of 9 and 10 June 2010, that committee discussed the questions raised by the complaint and asked the medical council whether the duration of the hospitalisation was medically indispensable. The medical council answered, on 24 June 2010, that there was not sufficient information in the file relating to hospitalisation beyond 30 days and considered that Title II, Chapter 2, Point 1.3 of the General Implementing Provisions, which provided for full reimbursement for accommodation costs beyond 30 consecutive days, might apply to Mrs Trampuz de Pretis Cagnodo. In the light of the medical council's response, the management committee expressed the view that the settlements office's decision not to apply the full rate of reimbursement for serious illness to Mrs Trampuz de Pretis Cagnodo should be confirmed.
- 30 The decision rejecting the complaint refused to uphold the complaint as regards both the excessive nature of the accommodation costs in excess of EUR 720 per day, including VAT, and the absence of a serious illness within the meaning of Title III, Chapter 5, Point 1 of the General Implementing

Provisions. As to whether Mrs Trampuz de Pretis Cagnodo's hospitalisation beyond 30 days was indispensable, the appointing authority considered that the file should be sent to the settlements office so that it could request an external medical report.

- 31 It also follows from the decision rejecting the complaint that, in the opinion adopted following the meeting of 9 and 10 June 2010, the management committee requested that Mrs Trampuz de Pretis Cagnodo be given assistance by the central office and/or the settlements office to recover from the Clinica Anthea the amount overcharged for accommodation. The file does not show that those offices complied with the management committee's request.

Forms of order sought

- 32 The applicants claim in their application that the Tribunal should:
- suspend or prohibit provisionally implementation of the compulsory recovery procedure for the sums at issue and prohibit temporarily the automatic deduction from Mr de Pretis Cagnodo's pension (first head of claim);
 - declare that Mrs Trampuz de Pretis Cagnodo cannot be criticised or censured as regards the amount of the payment of the accommodation costs as demanded by the hospital in which she underwent surgery (second head of claim);
 - classify as 'serious' the illness which caused Mrs Trampuz de Pretis Cagnodo to be hospitalised and the surgery which she had to undergo (third head of claim);
 - declare that the duration of her hospitalisation was unavoidable and therapeutically correct (fourth head of claim);
 - declare that the applicants are not liable to reimburse the payments made by the settlements office (fifth head of claim);
 - order the Commission to cancel the claim for repayment of the sum of EUR 41 833 or of such other sum as might be determined (sixth head of claim);
 - order the Commission to refrain from any automatic deduction of the amount of EUR 41 833 or of such other sum as might be determined from Mr de Pretis Cagnodo's pension (seventh head of claim);
 - adopt various measures of inquiry (eighth head of claim);
 - order the Commission to pay the costs (ninth head of claim).
- 33 The applicants provided further detail and expanded on the form of order sought when the application was put in order, on 16 November 2010, in that, by their action, they claim that the Court should:
- annul the Commission's decision as contained in Payment Slip No 10 of 1 October 2009;
 - annul the decision of 26 January 2010;
 - annul the decision rejecting the complaint.

- 34 The Commission contends that the Court should:
- dismiss the action as inadmissible or as unfounded;
 - order the applicants to pay the costs.

Procedure

- 35 On 5 November 2010, the Registry of the Tribunal contacted the applicants' representative, in accordance with Article 36 of the Rules of Procedure, for the purpose of putting the application in order, as neither the act annulment of which was sought, nor the document certifying the authority of the applicants' representative, nor a summary of the dispute, was annexed to the application, and for that purpose granted him a period expiring on 15 November 2010. As the application was put in order only on 16 November 2010, the Second Chamber of the Tribunal, to which the case had been assigned, decided, at its meeting of 24 October 2011, in the exercise of its discretion under Article 36 of the Rules of Procedure, that failure to observe the time prescribed for putting the application in order should not render the application inadmissible.
- 36 By a separate document lodged at the Registry of the Tribunal on 15 November 2010, the applicants requested the judge hearing applications for interim relief to order the suspension of implementation of the compulsory recovery procedure, entailing the automatic deduction from Mr de Pretis Cagnodo's pension of the non-reimbursed amounts relating to his wife's hospitalisation. That application was registered as Case F-104/10 R.
- 37 By order of 15 February 2011 in Case F-104/10 R *de Pretis Cagnodo and Trampuz de Pretis Cagnodo v Commission*, the President of the Tribunal dismissed the application for suspension of implementation, on the ground that the applicants had not established that the condition relating to urgency was satisfied in this case.
- 38 On 11 April 2011 the applicants sent the Tribunal the external medical report requested by the settlements office following the decision rejecting the complaint which the settlements office had sent to them on 30 March 2011. In that document, the specialist consulted concluded that on the basis of the material in the file Mrs Trampuz de Pretis Cagnodo's hospitalisation beyond 30 days could be justified. The settlements office followed that opinion and, in Payment Slip No 11 of 18 March 2011 credited EUR 2 066 to Mr de Pretis Cagnodo, which was deducted from the total amount for which he was liable. Following that deduction, in addition to the EUR 28 000 for accommodation costs which the settlements office considered to be excessive, Mr de Pretis Cagnodo remained liable for the amount of EUR 6 197.98.
- 39 On 26 October 2011 the Registry of the Tribunal informed the parties of the measures of organisation of procedure decided on by the Tribunal, in accordance with Article 56 of the Rules of Procedure, which were adopted for the purpose of clarifying certain points and hearing the applicants' views on the inadmissibility of the action raised by the Commission in its defence.
- 40 In the same communication, the Registry of the Tribunal informed the parties that the Tribunal proposed, pursuant to Article 77 of the Rules of Procedure, to consider of its own motion whether there was an absolute bar to proceeding with the action based on Mrs Trampuz de Pretis Cagnodo's lack of interest in bringing an action, on the ground, in particular, that Payment Slip No 10 adversely affected Mr de Pretis Cagnodo, whereas only Mrs Trampuz de Pretis Cagnodo had lodged a complaint and, at first sight, she did not appear to be able to derive a direct benefit from the annulment of that payment slip, since she was neither the addressee nor the beneficiary of it.

- 41 The parties were given three weeks to comply with the measures of organisation of procedure and to submit their comments on the bar to proceeding with the action raised of the Tribunal's own motion; they did so within the prescribed period.
- 42 As instructed by the Tribunal, the Judge-Rapporteur, pursuant to Article 68 of the Rules of Procedure, examined the possibilities of reaching an amicable settlement of the dispute between the applicants and the Commission and in March 2012 proposed a solution that could have ended the dispute but was not accepted by the parties. At its meeting of 26 April 2012, the Chamber noted that the attempt to reach an amicable settlement had failed and decided to open the oral procedure.
- 43 At the hearing on 21 June 2012, the applicants' representative informed the Tribunal that he was withdrawing the fourth head of claim, seeking annulment of Payment Slip No 10, in that it had not recognised the need for extended hospitalisation, since, in the light of the findings of the specialist consulted in the context of the external medical report requested by the settlements office, the settlements office had decided to reimburse in full Mrs Trampuz de Pretis Cagnodo's hospitalisation costs beyond 30 days.

Admissibility

Arguments of the parties

- 44 In the first place, in its defence, the Commission, without expressly requesting that the action should be declared inadmissible, expressed doubts as to its admissibility on the ground that the administrative procedure had been conducted exclusively by Mrs Trampuz de Pretis Cagnodo, who is not a member of the JSIS, whereas under Article 90 et seq. of the Staff Regulations only the member, namely Mr de Pretis Cagnodo, is entitled to initiate the administrative procedure. On that point, the Commission left the issue to the discretion of the Tribunal.
- 45 Subsequently, in its response to the measures of organisation of procedure, the Commission itself pleaded the bar to proceeding with the action raised by the Tribunal of its own motion, based on Mrs Trampuz de Pretis Cagnodo's lack of interest in bringing an action, and formally requested the Tribunal to declare the action inadmissible, since Mr de Pretis Cagnodo had not preceded his action by a complaint under Article 90(2) of the Staff Regulations, although he is the sole addressee of the disputed payment slip issued by the settlements office, as his wife is not formally an addressee of the Clinica Anthea's invoice.
- 46 In the second place, in its defence the Commission claimed that the application is inadmissible because it does not comply with Article 35 of the Rules of Procedure, since it does not set out either the pleas in law or the arguments of law relied on in support of the form of order sought by the applicants.
- 47 In the third place, in the Commission's opinion, the action is inadmissible since, in asking the Tribunal, in particular, to classify Mrs Trampuz de Pretis Cagnodo's illness as 'serious', the applicants are asking the Tribunal to rule on questions of a medical nature, which, as such, are outside its jurisdiction.
- 48 In the fourth place, the Commission claims that the action should be declared inadmissible on the ground that by certain heads of claim the applicants are asking the Tribunal to issue directions to the Commission.
- 49 The applicants contend that the plea of inadmissibility based on Mrs Trampuz de Pretis Cagnodo's lack of interest in bringing an action is unfounded. Article 90(2) of the Staff Regulations is aimed at all those who have an interest in its application. In the present case the complaint was lodged by Mrs Trampuz de Pretis Cagnodo, who has no income of her own, and is exclusively dependent on the

retirement pension received by her husband. Accordingly, any event capable of reducing the amount of that source of income, such as the withholding from her husband's pension of the amounts owed by way of medical expenses, is of direct and individual concern to her. The fact that she alone lodged the complaint is explained by the fact that it was she who was involved in the hospital events and was more familiar with them than her husband. The applicants add that, in so far as Mrs Trampuz de Pretis Cagnodo lodged the complaint in her capacity as Mr de Pretis Cagnodo's spouse she did so not only for herself but also for and on behalf of her husband, and they submit that, in any event, the application was brought by the two spouses, which should dispel any doubt as to the fact that each of them has an interest in bringing an action and as to the correctness of the administrative procedure. The applicants have not commented on the other pleas of inadmissibility raised by the Commission.

Findings of the Tribunal

- 50 It should be made clear at the outset that the Commission is wrong to maintain that the administrative procedure was not followed correctly.
- 51 Under Article 90(1) and (2) of the Staff Regulations, any person to whom the Staff Regulations apply may submit to the appointing authority either a request that it take a decision relating to him or a complaint against an act adversely affecting him. It follows from the first subparagraph of Article 72(1) of the Staff Regulations, moreover, that, as the spouse of a former official, Mrs Trampuz de Pretis Cagnodo is covered against the risk of sickness. It follows that she is a 'person to whom the Staff Regulations apply' within the meaning of Article 90 of those regulations.
- 52 That assessment is confirmed by the provisions of the Joint Rules, in particular Articles 12 to 14, under which a member's spouse is covered by virtue of the member's cover, either primarily or on a top-up basis, depending on whether or not the spouse has income from gainful employment.
- 53 Admittedly, under Articles 27, 28 and 30 of the Joint Rules only members are able to submit applications for prior authorisation, applications for reimbursement or applications for advances to meet major items of expenditure.
- 54 The fact none the less remains that Article 1 of the Joint Rules includes among the 'persons covered' by the JSIS both members and persons covered under them and that, under Article 26 of the Joint Rules, persons covered under a member are, like the member himself, registered with the central office and with a settlements office of the JSIS. As regards the fact that Payment Slip No 10 was addressed solely to Mr de Pretis Cagnodo, that is merely the consequence of the fact that, according to Article 30 of the Joint Rules and Point 1 of Chapter 4 of Title III of the General Implementing Provisions, it is the member who deals with the settlements office of the JSIS when submitting a request for direct billing. Although in the present case the request for direct billing was submitted by Mrs Trampuz de Pretis Cagnodo, she submitted that request in the name of her husband, a possibility for which the form itself made provision.
- 55 In the present case, the invoices sent by the hospital to the settlements office and paid by that office bore the name of Mrs Trampuz de Pretis Cagnodo and, after Payment Slip No 10 was sent, it was she who, being better placed than her husband to know what services were in fact provided by the hospital, dealt with the settlements office, which recognised her as the appropriate person to deal with and referred the matter to the medical council. The same applied when she lodged a complaint, on the basis of Article 90(2) of the Staff Regulations, against the settlements office's decision. Following that complaint, the appointing authority sought the opinion of the medical officer and that of the management committee, the matter having also been referred to the medical council, and, in response, then adopted the decision rejecting the complaint, which was communicated to

Mrs Trampuz de Pretis Cagnodo with a covering letter addressed to her by name, informing her that she could bring an action before the Tribunal against that decision within three months of receiving it.

- 56 In those circumstances, in which the Commission itself considered that Mrs Trampuz de Pretis Cagnodo was the proper person to deal with in the context of the administrative procedure, and in application of the rule *nemo potest venire contra factum proprium*, according to which the administration is required to comply with its own measures, the Tribunal considers that the Commission cannot validly claim at this stage that Mrs Trampuz de Pretis Cagnodo had no interest in acting in order to submit herself, in knowledge of the facts, comments on the account set out on Payslip No 10, or indeed to lodge a complaint against that account. It should be added that, as the action before the Tribunal was brought by the applicant spouses, it must be understood that, both at the time of submitting the request for direct billing and during the administrative procedure, although those actions were carried out by Mrs Trampuz de Pretis Cagnodo alone and in her name, the applicant spouses acted by common agreement. It follows that the action is not inadmissible on the ground of the supposed irregularity of the administrative procedure.
- 57 As regards the possibility that the application constitutes a breach of Article 35(1)(e) of the Rules of Procedure, it should be borne in mind that, in the words of that provision, 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. It has consistently been held that 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 (judgment of 1 December 2010 in Case F-89/09 *Gagalis v Council*, paragraphs 36 and 37).
- 58 The Tribunal finds that, in this case, the pleas in law and arguments of fact and law relied on are not set out as such. The fact remains, however, that on a careful reading those elements can be found in the text of the application.
- 59 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 the applicants by the fourth paragraph of Article 19 of the Statute of the Court of Justice of the European Union, 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.
- 60 In those circumstances, and since what the Commission claims to be the incomplete content of the application has not prevented it from defending itself in this case, in so far as it has been able to submit a defence which addresses both the admissibility and the merits of the case, the action cannot be declared inadmissible for breach of Article 35(1)(e) of the Rules of Procedure.
- 61 As regards the plea of inadmissibility raised by the Commission against the third head of claim in the application, asking the Tribunal to classify the illness which required Mrs Trampuz de Pretis Cagnodo’s hospitalisation and the surgery which she underwent as ‘serious’, it should be borne in mind that it is settled case-law that, while it is true that the remedies provided for in the Staff Regulations cannot, in principle, be used in order to challenge medical assessments properly so-called, which must be held to be definitive where the conditions in which they are made are not irregular, the fact remains that it is for the Tribunal, without calling into question the medical assessments on which the contested decision is based, in this instance the decision refusing to recognise that Mrs Trampuz de Pretis Cagnodo’s illness was serious, to consider whether the appointing authority, in adopting the contested decision, assessed the facts correctly and accurately applied the relevant legal provisions

(judgment of 18 September 2007 in Case F-10/07 *Botos v Commission*, paragraphs 39 and 40). It follows that the third head of claim in the application must not be declared inadmissible on the basis of the arguments put forward by the Commission.

- 62 The Commission raises a fourth plea of inadmissibility against two heads of claim in the application, namely the sixth, whereby the Tribunal is requested to order the Commission to cancel the claim for repayment of the sum of EUR 41 833, or of such other sum as may be determined, which is not reimbursed by the JSIS, and the seventh, whereby the Tribunal is requested to order the Commission to refrain from any automatic withholding from Mr de Pretis Cagnodo's pension of that sum or such other sum as may be determined. In addition, the Tribunal observes that, by the second head of claim in the application, the applicants request the Court to declare that Mrs Trampuz de Pretis Cagnodo is not to be criticised or censured in respect of the amount and the payment of the accommodation costs invoiced by the Clinica Anthea.
- 63 It has consistently been held that it is not the place of the Courts of the European Union to issue directions to the administration or to make abstract declarations of law in the context of the review of legality based on Article 91 of the Staff Regulations (judgment of 12 December 2012 in Case F-90/11 *BS v Commission*, paragraph 100 and the case-law cited, on appeal before the General Court of the European Union in Case T-83/13 P). It follows that the three heads of claim referred to above must be rejected as inadmissible.
- 64 Last, by the first head of claim in the application, the applicants request the Tribunal to suspend provisionally the procedure for the compulsory recovery of the sums not reimbursed by the JSIS and to prohibit the Commission provisionally from making automatic deductions from Mr de Pretis Cagnodo's pension.
- 65 Those heads of claim formed the subject-matter of the separate application lodged by the applicants on 15 November 2010, which led to the order in Case F-104/10 *R de Pretis Cagnodo and Trampuz de Pretis Cagnodo v Commission*, which rejected those heads of claim.
- 66 Consequently, as those heads of claim have already been rejected, they cannot be submitted to the Tribunal or examined by the Tribunal in the context of these proceedings.
- 67 When the application was put in order, the applicants sought to clarify their claims by adding, in a supplementary statement, three new heads of claim.
- 68 While there can be no doubt as to the admissibility of the first head of claim in the supplementary statement, namely annulment of Payment Slip No 10, in that that head of claim is covered by the third, fourth and fifth heads of claim in the application, the situation is otherwise as regards the second and third heads of claim in the supplementary statement, whereby the applicants seek annulment, respectively, of the decision of 26 January 2010 and the decision rejecting the complaint, as those heads of claim are not set out in the application.
- 69 As the stage of putting the application in order can concern, in accordance with Article 36 of the Rules of Procedure, only the requirements set out in Article 35(1)(a), (b), (c), (2) and (5) of the Rules of Procedure, the scope of the action cannot be extended at that stage by the addition of heads of claim.
- 70 It follows that the second and third heads of claim in the supplementary statement are inadmissible.

Substance

- 71 As the first, second, sixth and seventh heads of claim in the application, and the second and third heads of claim in the applicants' supplementary statement, have been declared inadmissible and the applicants withdrew at the hearing the fourth head of claim in the application, only the third and fifth heads of claim in the application, as clarified by the first head of claim in the supplementary statement, remain to be examined. The Tribunal will examine the third head of claim first and then the fifth head of claim, both of which seek the annulment of Payment Slip No 10 of 1 October 2009, as amended by Payment Slip No 11 of 18 March 2011 ('the payment slip at issue').

Third head of claim, as clarified in the first head of claim in the supplementary statement, directed against the decision of the settlements office, contained in the payment slip at issue, to limit reimbursement of the hospitalisation costs to 85% on the ground that Mrs Trampuz de Pretis Cagnodo's illness was not considered 'serious'

- 72 In support of this claim for annulment, the applicants put forward a single plea in law, alleging manifest error of assessment

Arguments of the parties

- 73 The applicants claim that in refusing to recognise that the illness which caused Mrs Trampuz de Pretis Cagnodo to be hospitalised is a serious illness the administration made a manifest error of assessment. In view of the type of surgery carried out when she was hospitalised, of the fact that she had to undergo a second emergency operation, of the duration of the period for which she had to receive rehabilitation therapy in a different hospital and also of the fact that she is permanently required to use a crutch in order to walk, her illness satisfies the conditions set out in Title III, Chapter 5, Point 1 of the General Implementing Provisions in order to be considered a 'serious illness' within the meaning of that provision. That classification would have had the consequence that the rate of reimbursement of her hospitalisation would have been increased to 100%. In support of that argument, the applicants produce the opinions of two specialist doctors and a certificate issued by a specialist doctor of a local public health authority.
- 74 The Commission contends that the decision that Mrs Trampuz de Pretis Cagnodo's illness was not a serious illness was taken in compliance with applicable legislation. It refers to the opinion of the medical officer of the settlements office of 18 May 2010, in which that officer concluded that two of the four fundamental criteria fixed by the General Implementing Provisions are not satisfied in the present case.

Findings of the Tribunal

- 75 According to the first subparagraph of Article 72(1) of the Staff Regulations, the rate of reimbursement for medical expenses is to be increased to 100%, in particular in a case of tuberculosis, poliomyelitis, cancer, mental illness and other illnesses recognised by the appointing authority as of comparable seriousness. Point 1 of Chapter 5 of Title III of the General Implementing Provisions lays down the criteria to be used for the purpose of determining whether an illness is to be considered a serious illness. Under that provision, the illnesses recognised as serious illnesses are the same as those set out in the first subparagraph of Article 72(1) of the Staff Regulations, while it is specified that illnesses 'recognised by the appointing authority as of comparable seriousness' are illnesses involving, to varying degrees, four criteria, 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.

- 76 It should be added, in that regard, that the Tribunal has already held that the criteria referred to in the preceding paragraph are cumulative (*Botos v Commission*, paragraph 42 et seq.). 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. It has also been held by the Tribunal, with respect to the same criteria, that they 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 (see judgment of 28 September 2011 in Case F-23/10 *Allen v Commission*, paragraph 49).
- 77 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 (see *Allen v Commission*, paragraph 50).
- 78 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 *Allen v Commission*, paragraph 51).
- 79 As to whether the refusal to recognise the seriousness of Mrs Trampuz de Pretis Cagnodo’s illness was incorrect, it is appropriate to refer to the settled case-law cited at paragraph 61 of this judgment, according to which the remedies provided for in the Staff Regulations may not in principle be employed in order to challenge medical assessments properly so-called, which must be regarded as definitive where the conditions in which they are made are not irregular (see, to that effect, judgment of 19 January 1988 in Case 2/87 *Biedermann v Court of Auditors*, paragraph 8, and judgment of 16 March 1993 in Joined Cases T-33/89 and T-74/89 *Blackman v Parliament*, paragraph 44).
- 80 Without calling into question the medical assessments used to support the decision limiting reimbursement of the hospitalisation costs to 85%, the Tribunal must none the less consider whether the appointing authority, when it refused to recognise that Mrs Trampuz de Pretis Cagnodo’s illness was a serious illness, assessed the facts correctly and applied the relevant legal provisions accurately (see, to that effect, judgment of 7 November 2002 in Case T-199/01 *G v Commission*, paragraph 59, and judgment of 12 May 2004 in Case T-191/01 *Hecq v Commission*, paragraph 63).
- 81 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 Mrs Trampuz de Pretis Cagnodo’s hospitalisation as a ‘serious illness’, the appointing 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 (see *Botos v Commission*, paragraph 41).
- 82 In the present case, the appointing authority relied, in the decision rejecting the complaint, on the opinion expressed by the medical officer on 18 May 2010, in which he had concluded that ‘at least two of the fundamental criteria [laid down in Point 1 of Chapter 5 of Title III of the General Implementing Provisions] are not met, namely the shortened life expectancy and the current presence or risk of a serious handicap or infirmity’, and confirmed the decision of the settlements office not to apply the rate of reimbursement for serious illness of 100% but the normal rate of 85%. The appointing authority therefore did not make a manifest error in inferring from the medical findings brought to its notice that the conditions laid down in the General Implementing Provisions for classification as a serious illness and, consequently, for the application of the rate of reimbursement of 100% were not satisfied.

- 83 It remains for the Tribunal to examine whether, in following the opinion of the medical officer, the settlements office did in fact rely on the criteria, listed at paragraph 75 of the present judgment, to which the classification of an illness as ‘serious’ is subject.
- 84 In that regard, it follows from the case-law that, 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 (see *Allen v Commission*, paragraphs 68 to 70).
- 85 Next, 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 validate or invalidate a medical assessment, or indeed to arbitrate between a number of contradictory medical assessments (see, to that effect *Allen v Commission*, paragraphs 70 and 71).
- 86 In that regard, it is clear that the criteria for serious illness (shortened life expectancy, 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) fall within the category of medical assessments, because, in order to give an opinion on whether one or other of those criteria is met, the medical officer or the medical council of the JSIS do not merely establish facts, they undertake a genuine assessment of those facts, an assessment which requires competence in the field of medicine (*Allen v Commission*, paragraph 75).
- 87 However, although its review does not extend to strictly medical assessments such as those concerning the seriousness of an illness, the Tribunal – where, as in the present case, 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 made clear, in that regard, that it is for the administration to establish that the medical officer did undertake such an assessment (*Allen v Commission*, paragraph 76).
- 88 According to the opinion of 18 May 2010 of the medical officer, whom the appointing authority had asked to determine whether the pathology which had led to the operation undergone by Mrs Trampuz de Pretis Cagnodo could or could not be recognised as a serious illness within the meaning of Title III, Chapter 5, Point 1 of the General Implementing Provisions:

‘...

- 2) [Mrs Trampuz de Pretis Cagnodo’s] pathology, which led to the operation, cannot be recognised as a serious illness, according to the criteria laid down the General Implementing Provisions (Title [III], Chapter 5, Point 1).

She is suffering from an orthopaedic pathology ...

That pathology, by its very nature, does not entail a shortened life expectancy; nor is the patient’s life ever in danger, even during hospitalisation.

At present, according to the statement of the orthopaedic medical specialist treating [Mrs Trampuz de Pretis Cagnodo] (report of 22 March 2010), the patient’s conditions are entirely satisfactory.

“The clinical and radiological result is excellent” ...

At least two of the fundamental criteria laid down for recognition of serious illness are not satisfied, that is to say, a shortened life expectancy and the presence or risk of a serious handicap.’

- 89 It must be stated that in this case Mrs Trampuz de Pretis Cagnodo did not follow the procedure laid down at Point 3 of Chapter 5 of Title III of the General Implementing Provisions for requests for recognition of serious illness which, where it is obtained, grants full cover of the costs occasioned by the serious illness from the date of the medical certificate accompanying the request for recognition and for a maximum period of five years, but, when submitting her comments on Payment Slip No 10 and also in her complaint, merely requested that, for the purpose of reimbursement in full of her hospitalisation costs alone, the illness which gave rise to them should be regarded as a serious illness. In those circumstances, the assessment of the four criteria laid down in Point 1 of Chapter 5 of Title III of the General Implementing Provisions had to be made by reference to her medical situation as it existed immediately before she was hospitalised.
- 90 However, it is apparent from the actual wording of the medical officer’s opinion of 18 May 2010 that, so far as the criterion of the presence or risk of serious handicap is concerned, first, the medical officer relied on the medical data in a report of 23 March 2010 of the orthopaedic specialist who treated Mrs Trampuz de Pretis Cagnodo, that is to say, more than one year after the surgery which she underwent, and, second, the assessment of that criterion was carried out by reference to her medical situation in May 2010 and not immediately before she was hospitalised, in February 2009.
- 91 It follows that the possibility of a risk of serious handicap before Mrs Trampuz de Pretis Cagnodo was hospitalised was not properly examined.
- 92 However, that error in the application of the applicable rules cannot entail the annulment of the decision of the settlements office refusing to classify the illness as serious. It is also apparent from the wording of the medical officer’s report of 18 May 2010 that the medical officer did not merely consider whether or not just one of the four criteria in Point 1, Chapter 5, Title III of the General Implementing Provisions was satisfied, but also expressed his views concerning a second criterion, namely a shortened life expectancy. In that regard, the medical officer stated in his opinion that the orthopaedic pathology which had led to Mrs Trampuz de Pretis Cagnodo’s hospitalisation did not by its nature entail a shortened life expectancy and that her life had never been in danger, even while she was in hospital.
- 93 In those circumstances, as the four criteria for recognition of a serious illness are cumulative and must necessarily all be satisfied, albeit to varying degrees, the fact that in this case one of them was not satisfied was sufficient to preclude recognition that the ailment which had led to Mrs Trampuz de Pretis Cagnodo’s hospitalisation was a serious illness. Accordingly, the settlements office did not commit a manifest error of assessment when it refused to consider that her illness was serious, on the basis of the medical officer’s opinion of 18 May 2010, in which it was concluded that there was no shortened life expectancy.
- 94 As the single plea raised in support of the third head of claim is unfounded, it is not appropriate to annul the decision of the settlements office, as stated on the payment slip at issue, to limit reimbursement of the hospitalisation costs to 85% on the ground that Mrs Trampuz de Pretis Cagnodo’s illness is not considered to be ‘serious’.

Fifth head of claim, as clarified by the first head of claim in the supplementary statement, directed against the decision of the settlements office as contained in the payment slip at issue, to leave the applicants liable for the sum of EUR 28 800 for accommodation fees regarded as excessive

- 95 In support of this head of claim, the applicants raise a single plea, alleging breach of the principle of sound administration and of the duty to have regard for the welfare of officials

Arguments of the parties

- 96 The applicants agree with the settlements office's assessment of the excessive nature of the accommodation costs invoiced by the Clinica Anthea. An amount of EUR 1 440 per day, including VAT, is a wholly exaggerated rate by comparison with the services provided, namely a simple room of normal size with standard furnishings, consisting of a hospital bed and a chair, a room identical to all the other rooms in the hospital, and meals which, in Mrs Trampuz de Pretis Cagnodo's opinion, were ordinary and quite mediocre.
- 97 As to who must pay the sum of EUR 28 800 for accommodation costs which the settlements office considers excessive, the applicants claim, in the first place, that in view of the high amount invoiced for accommodation, the settlements office should not have paid that amount to the Clinica Anthea without first informing them of the amount invoiced. That information would have enabled them to object to payment, on the ground that, before she was admitted to hospital, the Clinica Anthea had informed Mrs Trampuz de Pretis Cagnodo that the accommodation costs were EUR 300 per day. The settlements office's approach prevented the applicants from reacting in good time and presented them with the *fait accompli* of being liable for the sum which the settlements office considered excessive.
- 98 In the second place, the applicants stated that the administration never suggested that they should send the settlements office an estimate of the accommodation costs.
- 99 In the third place, they maintain that the settlements office's conduct not only towards them but also towards the JSIS, which incurred an unjust payment, was unacceptable. In those circumstances, as the Commission was the only person entitled to bring an action against the Clinica Anthea in order to secure reimbursement of the excessive amount paid, it ought not to have passed that amount on to the applicants.
- 100 In the fourth place, the applicants submit that, in any event, the harm caused by the lack of attention, circumspection and prudence on the part of the settlements office cannot be attributed to them.
- 101 The Commission contends that the applicants' claims are unfounded.
- 102 In the first place, the Commission claims that the attribution to the applicants by the settlements office, following the opinion of the medical officer, of the part of the accommodation costs considered excessive by comparison with normal costs in the country in which the costs were incurred, is based on Article 20(2) of the Joint Rules. In that regard, the Commission observes that Mr de Pretis Cagnodo received a copy of the letter of 5 February 2009 in which the settlements office informed the hospital that it would make direct payment of Mrs Trampuz de Pretis Cagnodo's hospitalisation costs, together with an information slip from the 'Administration and payment of individual rights' Office (PMO, 'the information slip'), relating to the maximum amounts of reimbursement and the recovery of amounts advanced, which stated in particular that the amounts paid by the JSIS were not necessarily reimbursable under Article 72 of the Staff Regulations but might subsequently be recovered from the member.
- 103 In the second place, after Mrs Trampuz de Pretis Cagnodo challenged Payment Slip No 10, the Commission acted diligently in checking the accommodation details and providing her with satisfactory explanations. In addition, the medical officer, in accordance with Article 41 of the Joint Rules, referred the case to the medical council, which issued its opinion at the meeting held on 10 December 2009. In the Commission's submission, it is apparent from the minutes of that meeting that the calculation of the reimbursable costs was carried out on the basis of the applicable legislation, taking as a reference value the normal costs in the country in which the costs were incurred, for the same type of accommodation.

Findings of the Tribunal

- 104 It is common ground that, under Article 20(2) of the Joint Rules, for services for which no reimbursement ceiling is fixed, such as accommodation costs during hospitalisation, the proportion of the costs deemed excessive by comparison with normal costs in the country where the costs have been incurred is not to be reimbursed. It is also common ground that, under that provision, the proportion of the costs deemed excessive is to be determined on a case-by-case basis by the settlements office of the JSIS.
- 105 In the present case, the parties are agreed that the rate of EUR 1 440 per day invoiced by the Clinica Anthea is excessive by comparison with the normal average costs in Italy for that type of service, but especially by comparison with the rate of EUR 300 per day, including VAT, which had been indicated to Mrs Trampuz de Pretis Cagnodo by an employee of the Clinica Anthea before she was admitted to hospital. In that regard, Mrs Trampuz de Pretis Cagnodo has placed on the file the statement of a witness who accompanied her on 13 January 2009 when she obtained information from the Clinica Anthea about the accommodation rate. It is apparent from the testimony produced by the applicants that, according to the information provided orally by the abovementioned employee, the rates charged by the Clinica Anthea at the time were EUR 216 per day if the patient shared the room and was covered by social security and EUR 300 per day if the patient was alone in the room and was covered by private insurance.
- 106 The parties differ, however, on whether, as the applicants claim, the accommodation costs deemed excessive by the settlements office, namely EUR 28 800, must be charged to the settlements office, on the ground that it did not contact the applicants before paying the invoice submitted by the Clinica Anthea, or whether, as the Commission claims, they must be charged to the applicant and deducted from his retirement pension.
- 107 It must be stated at the outset that the option members have, under Article 30 of the Joint Rules, of receiving advances in order to enable them to meet considerable expenditure, in the form of direct billing in the case of hospitalisation, constitutes an undeniable advantage for them. If the information slip were systematically sent to beneficiaries of the JSIS, when they request direct billing, they might be encouraged to obtain information, notably from the hospital, about the costs which they might incur and to compare them with the General Implementing Provisions in force, in order to avoid considerable expenditure that might prove not to be reimbursable by the JSIS and for which they would thus be liable. It should be added, in that regard, that, in the case of accommodation costs during hospitalisation, the General Implementing Provisions set no ceiling.
- 108 In the present case, although Mrs Trampuz de Pretis Cagnodo obtained information from the Clinica Anthea about the accommodation costs which she would incur, she received only oral information and not a written document that would have probative value. It should be added, however, that although it was 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.
- 109 In those circumstances, the applicants cannot be criticised for having failed to comply with any obligation or rule of law. In the absence of any ceiling established in the General Implementing Provisions for accommodation costs in the event of hospitalisation, they were unable to compare the amount of the costs which had been stated to them by the Clinica Anthea with the amount that might be reimbursable. Furthermore, even if they had contacted the settlements office in order to ask whether accommodation costs of EUR 300 per day would be reimbursed, the answer would in any event have been affirmative, since in payment slip No 10 the settlements office reimbursed those costs at the rate of EUR 720 per day.
- 110 So far as the Commission is concerned, it plays a dual role in the direct billing of hospitalisation costs.

- 111 First, according to Article 27 of Regulation No 1605/2002, which, pursuant to Article 43 of the Joint Rules, 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.
- 112 In that regard, it follows from Article 52 of the Joint Rules that the Commission is to administer the JSIS by delegation from the other institutions and is under an obligation to lay down the rules governing the reimbursement of medical costs with a view to protecting the financial balance of the scheme between expenditure and revenue. Under the principle of sound administration, the Commission and, by extension, the 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. In the present case, owing to its location, the settlements office was well placed to know the average prices charged for accommodation by hospitals in Italy and to react in light of the fact that the Clinica Anthea had in this case invoiced EUR 57 600 for Mrs Trampuz de Pretis Cagnodo's accommodation for 40 days.
- 113 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.
- 114 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 such as that sent to the settlements office by the Clinica Anthea, that is to say, an invoice in a very high sum in which, although the medical services are itemised and described, accommodation is simply invoiced at 40 days at EUR 1 440 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.
- 115 In the present case, if the settlements office had contacted the applicants before paying the invoice sent to it by the Clinica Anthea they would have been able to claim in good time that the cost of accommodation which had been indicated to them was EUR 300 per day.
- 116 Conversely, owing to the settlements office's conduct in paying the invoice without asking any questions, the expenditure of the JSIS was increased without justification, since, instead of reimbursement at the rate of 85% of the accommodation costs corresponding to 30 days, at EUR 300 per day, the settlements office made reimbursement at the rate of EUR 720 per day.
- 117 Furthermore, the applicants were liable not only for the sum of EUR 28 800 for the accommodation costs deemed excessive by the settlements office but also for 15% of the amount corresponding to 30 days' accommodation at EUR 720 per day, whereas if the accommodation had been invoiced in accordance with the information supplied to Mrs Trampuz de Pretis Cagnodo, the amount charged to them would have been considerably lower.
- 118 It must therefore be held that, by not requesting information from the Clinica Anthea, before paying the invoice, about the amount invoiced for accommodation costs and by not informing the applicants of that amount, the settlements office and, by extension, the Commission failed to observe both the principle of sound administration and the duty to have regard to the applicants' welfare.

- 119 As the plea raised in support of the fifth head of claim is well founded, the decision of the settlements office, as indicated on the payment slip at issue, to hold the applicants liable for the sum of EUR 28 000 for accommodation costs deemed excessive must be annulled.
- 120 In the light of the foregoing considerations, there is no need to grant the applicants' request, forming the subject-matter of the eighth head of claim in the application, to order the measures of inquiry which they propose.

Costs

- 121 Under Article 87(1) of the Rules of Procedure, without prejudice to the other provisions of Chapter 8 of Title 2 of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Under Article 88 of the Rules of Procedure, however, '[a] party, even if successful, may be ordered to pay some or all of the costs, if this appears justified by the conduct of that party, including before the proceedings were brought, especially if he has made the other party incur costs which are held to be unreasonable or vexatious'.
- 122 In the present case, while it follows from the grounds set out above that the applicants have been only partially successful as regards the claims against the payment slip at issue, which means that the Commission has been only partially unsuccessful, as regards those claims, it also follows that the conduct of the settlements office, held to be unlawful, meant that the applicants incurred additional costs in so far as the accommodation costs reimbursed at the rate of 85% were considerably higher than those which the applicants could expect.
- 123 In view of the particular circumstances of the present case, and since the application of Article 88 of the Rules of Procedure is not confined solely to situations in which the administration has made applicants incur costs which are held to be unreasonable or vexatious, the Commission must bear its own costs, including those incurred in the interlocutory proceedings, and is ordered to pay the costs incurred by the applicants, including those which they incurred in the interlocutory proceedings.

On those grounds,

THE CIVIL SERVICE TRIBUNAL (Second Chamber)

hereby:

- 1. Annuls 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;**
- 2. Dismisses the action as to the remainder;**
- 3. Declares that the European Commission is to bear all of its own costs and orders it to pay all of the costs incurred by Mr de Pretis Cagnodo and Mrs Trampuz de Pretis Cagnodo.**

Rofes i Pujol

Boruta

Bradley

Delivered in open court in Luxembourg on 16 May 2013.

W. Hakenberg
Registrar

M.I. Rofes i Pujol
President