

4. In proceedings brought under Article 91 of the Staff Regulations, the Court of First Instance has jurisdiction only to review the lawfulness of an act adversely affecting an official and is not entitled, in the absence of an individual implementing measure, to rule in the abstract on the lawfulness of a provision of a general nature.

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fifth Chamber)
24 November 1993^{*}

In Case T-13/93,

Roger Cordier, an official of the Commission of the European Communities, residing in Luxembourg, represented by Jean-Noël Louis, of the Brussels Bar, with an address for service at the offices of Fiduciaire Myson SARL, 1 Rue Glesener,

applicant,

v

Commission of the European Communities, represented by Gianluigi Valsesia, Principal Legal Adviser, acting as Agent, assisted by Alberto Dal Ferro, of the Vicenza Bar, with an address for service in Luxembourg at the office of Nicola Anecchino, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION firstly, for annulment of the decision of the Luxembourg claims settlement office of 9 March 1992 refusing the applicant supplementary reimbursement of medical expenses incurred by his wife in Belgium and, secondly, for a declaration that the provisions for the interpretation of Article 9(1) of the Rules on Sickness Insurance for Officials of the European Communities, published in *Administrative Notices* on 31 December 1990, are unlawful,

^{*} Language of the case: French

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Fifth Chamber),

composed of: A. Kalogeropoulos, President, R. Schintgen and D. P. M. Barrington,
Judges,

Registrar: J. Palacio González, Administrator,

having regard to the written procedure and further to the hearing on 14 September
1993,

gives the following

Judgment

Facts and legal background

- 1 The applicant, Mr Roger Cordier, is an official in Grade B 1 at the Commission, employed at the Statistical Office in Luxembourg.
- 2 The applicant's wife, Mrs Maria Rosa Cordier-Cristallo, is covered, primarily, by the Luxembourg Sickness Fund for Employees in the Private Sector ('the Luxembourg Fund'). She is in receipt of an invalidity pension which does not exceed the ceiling provided for by Article 3(1) of the Rules on Sickness Insurance for Officials of the European Communities ('the Insurance Rules') and thus is eligible for supplementary sickness insurance under the Sickness Insurance Scheme common to the institutions of the European Communities ('the Joint Scheme').
- 3 On 3 March 1992, Mrs Cordier consulted Dr S., a general practitioner in Arlon, and paid him a consultation fee of BFR 490.

4 When she submitted the bill to the Luxembourg Fund, reimbursement was refused on the grounds that under Article 58 of its rules the Luxembourg Fund does not pay for medical treatment received abroad where it is not given prior authorization by its medical officer and an established doctor practising in Luxembourg.

5 Under Article 58 of the rules of the Luxembourg Fund:

‘Insured persons may only receive treatment abroad with the consent of their sickness fund, except in the case of immediate treatment where an accident or illness occurs abroad. The consent of the sickness fund for consultations abroad is subject to the submission of a reasoned opinion by the insured’s usual doctor. The consent of the sickness fund for medical treatment abroad or for treatment in Luxembourg by a university professor or doctor of like rank is subject to the submission of a certificate drawn up by the insured’s usual doctor recommending treatment abroad and the approval of the medical officer who may call for the opinion of a specialist. The consent of the sickness fund cannot be refused if the treatment is not available in the Grand Duchy.’

6 Following the refusal of reimbursement, on 9 March 1992 the applicant submitted the bill to the claims settlement office of the Joint Scheme in Luxembourg seeking reimbursement of the medical expenses incurred under the supplementary cover to which his wife was entitled.

7 By note of the same date the claims settlement office of the Joint Scheme in Luxembourg also refused the reimbursement of the medical expenses in question, stating that: ‘Your wife is entitled to supplementary cover.’

8 Entitlement to supplementary reimbursement of medical expenses under the Joint Scheme is governed by the following rules.

Under Article 72(1) of the Staff Regulations of Officials of the European Communities ('the Staff Regulations'):

'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 Communities after consulting the Staff Regulations Committee.'

Article 3 of the Insurance Rules reads as follows:

'The persons covered by a member's insurance shall be:

1. the spouse, unless he or she is a member of the Scheme, provided that:

- he or she is not gainfully employed; or
- if he or she is gainfully employed or in receipt of income derived from previous gainful employment, he or she is covered against the same risks by any other legal provisions or rules and his or her annual income from such employment before tax does not exceed the basic annual salary of an official in the first step of grade C 5, subject to the weighting for the country in which the spouse receives his or her direct or deferred income from gainful employment;

...'

Under Article 6(1) of the Insurance Rules:

'Where a member or a person covered by his insurance may claim reimbursement of expenses incurred under any other compulsory sickness insurance, the member shall:

- (a) notify the office responsible for settling claims;
- (b) in the first instance apply, or have the person concerned apply, for reimbursement under the other scheme;
- (c) attach to any application for reimbursement made under this Scheme a statement, together with supporting documents, of reimbursements which the member or the person covered by his insurance has obtained under the other scheme.'

9 On 31 March 1992 the applicant lodged a complaint under Article 90(2) of the Staff Regulations, registered with the Secretariat-General of the Commission on 24 April 1992, seeking the withdrawal of the decision in issue, reimbursement by the Joint Scheme of the expenses incurred by his wife for the medical consultation in Belgium and, in the alternative, the withdrawal of the provisions for the interpretation of Article 9(1) of the Insurance Rules.

10 At a meeting held on 1 July 1992 the Commission's interdepartmental group considered the applicant's complaint in his presence but was unable to reach an amicable settlement of the dispute.

11 On 12 August 1992 the chairman of the Management Committee of the Joint Sickness Insurance Scheme ('the Management Committee') informed the applicant that, when it discussed his complaint on 15 July 1992, the Management Committee could not reach the required majority opinion either in favour of a proposal confirming the decision of the claims settlement office including a recital on the

problem of the rules on interpretation, or in favour of a proposal simply confirming the decision with a reference in the minutes to the underlying problem of the rules on interpretation.

- 12 On 4 November 1992 the Commission's Director-General for Personnel and Administration informed the applicant of the decision taken by the Commission on 28 October 1992 explicitly rejecting his complaint in the following terms: 'In view of the failure of the applicant's wife to follow the procedural rules of the primary insurance fund, the Commission cannot grant Mr Cordier's complaint.'

Procedure

- 13 The applicant brought this action by application lodged at the Court Registry on 3 February 1993.
- 14 By letter of 27 April 1993 the applicant informed the Court that he would not lodge a reply.
- 15 Upon hearing the report of the Judge-Rapporteur, the Court (Fifth Chamber) decided to open the oral procedure without any preparatory inquiry.
- 16 The parties presented oral argument and replied to the questions put by the Court at the hearing on 14 September 1993.

Forms of order sought

- 17 The applicant claims that the Court should:
- rule that the provisions for the interpretation of the Insurance Rules, published in *Administrative Notices* on 31 December 1990, are unlawful in that they restrict the principle of freedom of choice as laid down in Article 9 of those Rules;
 - accordingly:
 - (1) annul the decision of 9 March 1992 of the claims settlement office of the Joint Scheme in Luxembourg, refusing reimbursement of the sum of BFR 490 incurred by the applicant's wife in fees paid to Dr S. on 3 March 1992;
 - (2) annul the decision of the claims settlement office of the Joint Scheme refusing reimbursement to the applicant's wife in accordance with its rules;
 - (3) refer the matter back to the Commission for the adoption of a fresh decision on reimbursement;
 - (4) order the defendant to pay the costs.

The Commission contends that the Court should:

- (1) dismiss the application as unfounded;
- (2) make an appropriate order as to costs.

Substance

18 The applicant relies on two pleas in support of his application, alleging, firstly, breach of Article 72(1) of the Staff Regulations and of Article 6(1) of the Insurance Rules, and, secondly, breach of Article 9(1) of the Insurance Rules and the unlawfulness of the provisions for the interpretation of the Insurance Rules.

19 At the hearing, the applicant explained that he objected to the decision in issue because he took the view that, based as it was on rules incompatible with the principle of freedom of choice of practitioner, the refusal by the sickness fund by which his wife was covered by virtue of her own professional activity to pay the medical expenses she incurred in Belgium entitled her to supplementary sickness insurance under the Joint Scheme. He argues that the fact that his spouse is obliged to follow certain procedures to consult a doctor abroad means that she is not eligible by virtue of any other legal provision or regulations for benefits of the same nature and of the same level as those which an official may claim.

20 The defendant argues that the decision to refuse the reimbursement of the medical expenses of the applicant's wife has nothing to do with freedom of choice of practitioner but is simply based on the fact that she did not follow the procedure required by her insurance fund in the case of medical consultations abroad.

21 In view of the connection between the pleas relied on by the applicant, the Court will consider them together.

Arguments of the parties

22 The applicant argues, firstly, that Article 72(1) of the Staff Regulations lays down a general principle that the spouse of an official who is not otherwise eligible for

sickness insurance benefits of the same nature and of the same level, is fully entitled to the same benefits as officials up to 80% of the expenditure incurred. The Insurance Rules, which lay down the conditions for entitlement to sickness insurance, should be interpreted in the light of that principle.

- 23 On that point, the applicant argues that the consultation of a practitioner established outside the territory of Luxembourg is one of the benefits for which reimbursement is available under the Insurance Rules. Accordingly, the applicant argues, the claims settlement office of the Joint Scheme was bound to accord supplementary cover for the expenses incurred by his wife in accordance with Article 72(1) of the Staff Regulations, which, he submits, provides that the spouse of an official must be eligible for the same sickness insurance benefits as an official himself, even if only by way of supplementary cover. The applicant takes the view that the concept of supplementary cover cannot be restricted to the benefits paid by the primary insurance fund but must be extended, in accordance with the Insurance Rules, to all medical expenses, whether or not reimbursed by a primary insurance fund.
- 24 On that point the applicant states that his wife complied with the provisions of Article 6(1) of the Insurance Rules in that she initially requested the reimbursement of the medical expenses she had incurred from her sickness fund, the Luxembourg Fund, which refused to pay on the grounds that its rules only allow the reimbursement of medical expenses incurred abroad under certain conditions.
- 25 The applicant points out, secondly, that under Article 9(1) of the Insurance Rules: 'Persons covered by this Scheme shall be free to choose their practitioners and hospitals or clinics.'
- 26 In refusing to reimburse medical expenses incurred by his wife in consulting a practitioner of her choice the claims settlement office thus refused her that freedom of choice. That interpretation by the claims settlement office of the rules governing

the Joint Scheme gives rise to discrimination between the spouses of officials according to whether they are gainfully employed or not. Spouses who are not in gainful employment are covered by the same rules as the official by whose insurance they are covered and can choose their practitioner freely, while spouses who are employed and are members of the Luxembourg Fund are prevented from consulting a practitioner abroad.

- 27 The applicant argues further that the view of the claims settlement office of the Joint Scheme in Luxembourg, that supplementary reimbursement of medical expenses incurred abroad can be claimed only if the rules of the national sickness insurance scheme have been complied with, has the effect of preventing the spouse of an official who has the Luxembourg Fund as his or her primary insurer from receiving any reimbursement.
- 28 Thirdly, the applicant notes that the provisions for the interpretation of the Insurance Rules published in *Administrative Notices* on 31 December 1990 specify, with regard to Article 9(1) of the Insurance Rules guaranteeing freedom to choose a practitioner, that 'beneficiaries entitled to supplementary reimbursement are free to choose their practitioner only if this is permitted by the main insurer'.
- 29 The applicant points out that the decisions of the Court of First Instance and the Court of Justice (Case T-75/89 *Brems v Council* [1990] ECR II-899, upheld by the Court of Justice in Case C-70/91 P *Council v Brems* [1992] ECR I-2973) have established that a general implementing rule cannot have the effect of reducing the scope of a provision of the Staff Regulations or of defeating its purpose.
- 30 The applicant therefore argues that the claims settlement office cannot base its decision to refuse reimbursement on the above interpretation provision which, he claims, is contrary to Article 9(1) of the Insurance Rules as it restricts the free choice of practitioner and is, therefore, unlawful.

- 31 Finally, in support of his argument, the applicant refers to a judgment of the Administrative Tribunal of the International Labour Organization of 8 December 1988 (*In re Boland*, Judgment No 924, Reports of the 65th session), in which it held, applying rules and regulations identical to those of the institutions of the European Communities, that, ‘According to Article 3(1)(b) of Rule No 10 someone who is covered by the Eurocontrol scheme and who may claim reimbursement under any other compulsory sickness insurance scheme shall “in the first instance apply ... for reimbursement under the other scheme”. That is what Mrs Boland did, but the Luxembourg scheme refused her claim, its reason for doing so being that it lays down conditions that do not allow freedom to choose the practitioner. Such freedom is a right that Article 5 of Rule No 10 confers on “persons covered” by the Eurocontrol scheme, and under Article 2 they include, besides “members”, “persons covered by their insurance” and, in particular, according to 2(2), the spouse’.
- 32 The defendant argues, firstly, that the purpose of Article 72(1) of the Staff Regulations and of the Insurance Rules is to ensure that the spouse of an official has sickness insurance cover equivalent to that enjoyed by the insured official himself in identical circumstances. In the case of the spouse of an official who is in gainful employment, that purpose is achieved, it argues, through the supplementary cover provided for by the Joint Scheme.
- 33 The defendant points out that assistance under the Joint Scheme is none the less subject to the spouse’s having first requested reimbursement of his medical expenses as a matter of priority from his own sickness fund, in accordance with its procedures. Analysis of the purpose of Article 72(1) of the Staff Regulations and of Articles 3 and 6 of the Insurance Rules reveals clearly that this condition cannot be waived.
- 34 On that point, the defendant argues that, if a spouse could obtain the reimbursement by the Joint Scheme without proving that he or she had complied properly with the procedure required by his or her own sickness fund, this would entail a risk of overlapping cover contrary to Article 72 of the Staff Regulations and the case-law of the Court of Justice, which, in Case 339/85 *Brunotti v Commission* [1988] ECR 1379, held: ‘It is apparent from those provisions [Article 72(1) of the

Staff Regulations] that the authors of the Staff Regulations proceeded on the principle that the scope of sickness insurance for officials and members of their families should be determined so as to avoid as far as possible overlapping sickness insurance cover.’

35 In this case, the defendant points out, the applicant’s spouse did not comply with the procedural rules of her own sickness fund in that she did not request prior authorization for a medical consultation abroad. The defendant does not dispute that the concept of supplementary cover extends, under the rules of the Joint Scheme, to all medical expenses, whether or not they are reimbursed by the primary insurance scheme, but argues that, although eligible for supplementary cover under the Joint Scheme, the applicant’s spouse cannot claim reimbursement of her expenses by the latter when she has voluntarily put herself in a position in which she cannot receive such supplementary reimbursement. The defendant adds that payment by the Joint Scheme in a case like this cannot be acceptable for a scheme whose financial balance must be carefully safeguarded.

36 The defendant then points out that reimbursement of the medical expenses incurred by the applicant’s wife was refused not because she chose a doctor practising outside Luxembourg territory but because she did not follow the procedure required by her sickness insurance fund.

37 Whilst stressing that the question of the free choice of practitioner is irrelevant to this dispute, the defendant points out that the plea alleging the unlawfulness of the interpretation provisions of 31 December 1990 relating to Article 9 of the Insurance Rules has ceased to have any purpose as the Commission published new rules for interpretation in *Administrative Notices* on 15 January 1993, which read as follows: ‘Freedom of choice is applicable to beneficiaries of complementary coverage only after they have exhausted the possibilities offered by their primary scheme.’

- 38 The defendant points out, further, that in requiring the spouse of an official to comply with the rules of his or her own sickness insurance fund in order to be eligible for supplementary reimbursement under the Joint Scheme, Article 72 of the Staff Regulations and the Insurance Rules are intended to prevent overlapping insurance cover for that spouse and thus in no way represent a breach of the principles of non-discrimination and equal treatment.
- 39 As to the judgment of the Administrative Tribunal of the International Labour Organization of 8 December 1988, the defendant does not dispute the similarity of the two cases, but points out that there is nevertheless a fundamental difference between them in that, in the *Boland* case, Mr Boland's wife had sought the prior authorization of the Luxembourg Fund for treatment abroad and that authorization had been refused, whereas, in this case, the applicant's wife had failed to seek prior authorization to consult a doctor abroad and had thus breached the procedures laid down by the Luxembourg Fund.
- 40 The defendant notes, further, that in the *Boland* case, the Eurocontrol sickness fund refused to give 'any answer whatever' (paragraph 13 of the judgment), unlike the Commission in this case, which gave full reasons for its decision to reject the applicant's complaint. The two cases cannot therefore be considered to be comparable.

Findings of the Court

- 41 Under Article 72(1) of the Staff Regulations, the spouse of an official who is not eligible by virtue of any other legal provision or regulations for benefits of the same nature and of the same level as an official is insured against sickness under the Joint Sickness Insurance Scheme, subject to joint rules to be drawn up.
- 42 Article 3(1) of the Insurance Rules provides that, where he or she is in gainful employment, the spouse of a member is covered by the Joint Sickness Insurance Scheme provided that he or she is covered against the same risks by virtue of other legal provisions or rules and that his or her annual income from such employment does not exceed a certain threshold.

43 Article 6(1) of the Insurance Rules further provides that where a member or a person covered by his insurance may claim reimbursement of expenses incurred under any other compulsory sickness insurance, the member must notify the office responsible for settling claims and in the first instance apply, or have the person concerned apply, for reimbursement under the other scheme.

44 Article 72(1) of the Staff Regulations thus reserves cover of a member's spouse by the Joint Scheme to the peripheral cases in which he or she cannot otherwise obtain comparable benefits, and seeks to avoid, as far as possible, overlapping sickness cover (see *Brunotti v Commission*, cited above, and Case 58/88 *Olbrechts v Commission* [1989] ECR 2643).

45 Both Article 72 of the Staff Regulations and Articles 3 and 6 of the Insurance Rules assume that, as far as possible, the spouse of an official who is in gainful employment must seek reimbursement of medical expenses from the sickness insurance scheme which covers him or her against sickness by virtue of his or her own employment, the Joint Scheme providing only supplementary cover (see Case T-20/91 *Holtbecker v Commission* ECR II-2599).

46 Thus, a spouse who, under the statutory, administrative or other rules governing the benefits provided by the insurance fund of which he or she is a member by reason of his or her own employment, is not entitled to or cannot request authorization enabling him or her to obtain reimbursement of medical expenses which

he or she incurs abroad can claim supplementary cover, as can a spouse who, having requested such authorization where the relevant provisions or rules of the insurance fund allow, is refused it.

47 It must therefore be determined whether Mrs Cordier, who is covered by the Joint Scheme by virtue of her husband's membership under the second indent of Article 3(1) of the Insurance Rules, is in a position to claim supplementary cover by the Joint Scheme in this case.

48 The rules of the sickness insurance fund of which the applicant's wife is a member do not absolutely or definitively preclude the right of a member to obtain the reimbursement of medical expenses incurred abroad but do make such reimbursement subject to prior authorization.

49 Where, as here, the spouse of an official who is insured by virtue of his or her own employment loses the right to obtain reimbursement for such medical expenses from his or her own insurance fund solely because he or she did not at the appropriate time seek authorization to consult a doctor or receive treatment abroad, he or she cannot claim supplementary reimbursement of those expenses by the Joint Scheme, the basis for which is contained in Article 72(1) of the Staff Regulations.

50 Accordingly, the applicant's wife cannot claim reimbursement by the Joint Scheme for the medical expenses she incurred in Belgium, as she lost the right to reimbursement of those expenses by her own insurance fund by failing to request, in accordance with its rules, its prior authorization to incur the expenses in question in Belgium.

51 It should be pointed out that the argument raised by the applicant at the hearing that the principle of freedom of choice of practitioner, contained in Article 9(1) of the Insurance Rules, takes precedence over national rules and, *a fortiori*, over the

rules of a sickness insurance fund of a Member State and that, therefore, in accordance with the principle of equal treatment, the spouse of a member official must enjoy the same benefits as the member himself, is inapplicable in the circumstances of this case.

52 It is not for this Court, when reviewing the legality of measures under Article 179 of the EEC Treaty, to rule on the legality in Community law of national provisions concerning sickness insurance schemes or the rules of a national sickness insurance fund. That power of review falls either to the Court of Justice, in an action brought by the Commission under Article 169 of the Treaty or by a Member State under Article 170 of the Treaty seeking a declaration that a Member State has failed to fulfil an obligation under the Treaty, or to the national courts which, may, if appropriate, refer a question to the Court of Justice under Article 177 of the Treaty for a preliminary ruling on the interpretation of the Treaty.

53 Furthermore, the principle of freedom of choice of practitioner is not enshrined in the Staff Regulations themselves but derives from Article 9(1) of the Insurance Rules drawn up by agreement between the institutions of the European Communities. Accordingly, the provisions relating to the free choice of practitioner do not fall within the category defined in the second paragraph of Article 189 of the Treaty; they are not binding in their entirety and directly applicable in all Member States and thus cannot have the effect of invalidating, in the case of the spouse of an official who is a member of a sickness insurance scheme by virtue of his or her own employment, any statutory or other rules making reimbursement of medical expenses incurred abroad subject to prior authorization from the insurance fund.

54 On the question of the provisions for the interpretation of Article 9 of the Insurance Rules, which the applicant pleaded were unlawful, it should be pointed out that those provisions — which, in any event, are no longer in force — were not the basis for the decision of the claims settlement office, as it did not refuse reimbursement of medical services on the grounds that the primary scheme of which the applicant's wife was a member did not permit consultation of a doctor abroad, but

solely on the grounds that the applicant's wife did not follow the rules imposed by her own insurance scheme. It is clear from the case-law of this Court that, in proceedings brought under Article 91 of the Staff Regulations, the Court has jurisdiction only to review the lawfulness of an act adversely affecting an official and is not entitled, in the absence of an individual implementing measure, to rule in the abstract on the lawfulness of a provision of a general nature (Case T-110/89 *Pincherle v Commission* [1991] ECR II-635, Case T-41/90 *Barassi v Commission* [1992] ECR II-159 and Case T-42/90 *Bertelli v Commission* [1992] II-181). Accordingly, in the absence of a decision taken pursuant to the provisions for the interpretation of Article 9(1) of the Insurance Rules, the applicant may not plead the unlawfulness of those provisions.

55 It follows from all of the foregoing that the application must be dismissed.

Costs

56 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. However, Article 88 of those Rules provides that in proceedings between the Communities and their servants the institutions are to bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fifth Chamber)

hereby:

1. Dismisses the application;

2. Orders the parties to bear their own costs.

Kalogeropoulos

Schintgen

Barrington

Delivered in open court in Luxembourg on 24 November 1993.

H. Jung

A. Kalogeropoulos

Registrar

President