Reports of Cases

JUDGMENT OF THE GENERAL COURT (Seventh Chamber)

28 May 2020 *

(Civil service — Officials — Social security — Article 73 of the Staff Regulations — Common rules on the insurance against the risk of accident and of occupational disease — Article 16 — Statement of occupational disease — Article 22 — Medical Committee — Refusal to recognise the occupational nature of a disease — Irregularity of the opinion of the Medical Committee)

In Case T–213/19,

AW, represented by L. Levi and S. Rodrigues, lawyers,

applicant,

v

European Parliament, represented by T. Lazian and I. Lázaro Betancor, acting as Agents,

defendant,

APPLICATION under Article 270 TFEU for annulment of the Parliament's decisions of 7 August 2018 rejecting the requests to recognise the occupational nature of a disease, submitted by the applicant on 15 and 28 July 2016

THE GENERAL COURT (Seventh Chamber),

composed of R. da Silva Passos, President, I. Reine and L. Truchot (Rapporteur), Judges,

Registrar: L. Ramette, Administrator,

having regard to the written part of the procedure and further to the hearing on 26 February 2020,

gives the following

Judgment [1]

…

Law

…

* Language of the case: French.

1 Only the paragraphs of the present judgment which the Court considers it appropriate to publish are represented here.

Substance

…

31 The applicant submits that many documents submitted in the procedures for recognition of the occupational nature of the diseases in question were not communicated to the Medical Committee at its meeting on 10 April 2018. The applicant adds that, on 12 April 2018, Dr B sent the abovementioned documents to Dr C, who, however, refused to forward them to the Medical Committee, in accordance with 'instructions' which, according to the applicant, he had received from the Parliament not to take account of documents submitted after 30 March 2017. According to the applicant, it was for the Medical Committee alone, and not the Appointing Authority, to assess the relevance of documents liable to be of use to it.

32 According to the applicant, in those circumstances, since it did not receive a complete file containing all the documents submitted by the applicant since the opening, in July 2016, of the procedures for recognition of the occupational nature of the diseases in question, the Medical Committee did not have access to all the available documents liable to be of use to it in its assessment, in breach of the first subparagraph of Article 22(3) of the [Common rules on the insurance against the risk of accident and of occupational disease ('the Insurance rules')].

…

44 First of all, it must be pointed out that, under settled case-law, the provisions of the Staff Regulations on the Medical Committee responsible in the context of Article 73 of the Staff Regulations are intended to confer upon medical experts the task of making definitive appraisals of all medical questions (see judgments of 4 October 1991, *Commission* v *Gill*, C–185/90 P, EU:C:1991:380, paragraph 24 and the case-law cited, and of 16 June 2000, *C* v *Council*, T–84/98, EU:T:2000:156, paragraph 43 and the case-law cited). The Medical Committee's task of making an objective and independent assessment of medical matters requires that it has complete freedom of assessment. The medical assessments, properly speaking, made by the Medical Committee must be regarded as definitive where they have been issued under proper conditions. The EU Courts are only empowered to determine, first, whether that committee was constituted and has functioned properly and, second, whether its opinion is valid (see judgment of 25 October 2017, *Lucaccioni* v *Commission*, T–551/16, not published, EU:T:2017:751, paragraph 78 and the case-law cited).

45 It follows from the first sentence of Article 22(3) of the Insurance rules that, for a Medical Committee validly to issue a medical opinion, it must be in a position to have notice of all the available documents liable to be of use to it in its assessment (see, to that effect, judgments of 15 July 1997, *R* v *Commission*, T–187/95, EU:T:1997:119, paragraph 49, and of 3 March 2004, *Vainker* v *Parliament*, T-48/01, EU:T:2004:61, paragraph 132).

46 In that respect, while all the documents submitted in the procedure for recognition of the occupational origin of the disease come within the scheme of the Insurance rules (see, to that effect, judgment of 1 October 1991, *Vidrányi* v *Commission*, C-283/90 P, EU:C:1991:361, paragraph 25), neither Article 73 of the Staff Regulations nor the Insurance rules thereunder contain provisions specifying the nature of the documents to be contained in the file of the Medical Committee referred to in the first subparagraph of Article 22(3) of those rules.

47 It follows, on the other hand, from the very wording of the Insurance rules that the file must contain all the available documents liable to be of use to the Medical Committee to enable it to make the assessments necessary for drawing up its report.

48 In the present case, it is common ground that the Parliament did not disclose to the Medical Committee certain documents initially submitted by the applicant in support of his requests for recognition of the occupational nature of the diseases in question.

49 It is apparent from the file and it is not disputed that the documents which were not disclosed to the Medical Committee are the documents listed, as regards the request for recognition of the occupational nature of the rachialgia, on page 45 of Annex A 9 and, as regards the request for recognition of the occupational nature of the stress urticaria, on page 176 of Annex A 10 ('the documents at issue'). The documents at issue consisted of 15 documents concerning the request for recognition of the occupational nature of the rachialgia and 19 documents concerning the request for recognition of the occupational nature of the stress urticaria. They included, inter alia, medical reports, which concluded that those diseases were occupational in nature as well as various agreements of the Joint Sickness Insurance Scheme of the Institutions of the European Communities ('JSIS') concerning the treatments followed by the applicant.

50 The Parliament maintains that it disregarded those documents because it considered that they duplicated previously disclosed documents.

51 In its replies to the measures of organisation of procedure, the Parliament submitted that some of the documents at issue were identical to those already in its possession, others were unrelated to the medical questions submitted, and, finally, others contained similar information, that is to say, without being identical, they repeated the same information and conclusions as it already had in its possession.

52 In respect of the last category of documents, which, according to the Parliament, were of medical significance in relation to the questions raised before the Medical Committee, that committee stated that they had been disregarded only in so far as they did not provide new medical evidence compared with that already contained in the file prepared by the institution.

53 It follows from those considerations that the Parliament made a medical assessment of the documents submitted by the applicant in support of his requests for recognition of the occupational nature of the diseases in question, by finding that the content of some of those documents was, from that point of view, similar to that of other documents in the file. The medical nature of this assessment is confirmed by the Parliament itself, which stated that it had asked the institution's doctor to confirm its choice.

54 In that regard, contrary to the Parliament's contention, the Parliament's task of defining the terms of reference provided to the Medical Committee does not entitle it to assess the medical relevance of documents submitted by the insured person in the context of the procedure for recognition of an occupational disease, where the insured person requests that the Medical Committee give an opinion on the draft decision of the Appointing Authority.

55 The institution's sole task, when the insured person or his or her dependants ask the Medical Committee to give its opinion, is to define the terms of reference provided to the committee. Those terms of reference must refer to that committee the medical questions raised both by the report of the doctor representing the insured person and, where appropriate, by any other relevant medical reports submitted by the insured person, in accordance with Article 22(2) of the Insurance rules, pursuant to Article 20(2) of those rules. The medical reports submitted for that purpose, including those which may have been drawn up by doctors other than the doctor representing the insured person on the Medical Committee, set out the medical questions that those doctors intend to raise in order to contest the draft decision of the Appointing Authority taken on the basis of the conclusions of the institution's doctor. The reference in Article 22(2) of the Insurance rules to the relevant medical reports submitted under Article 20(2) of those rules cannot be interpreted as conferring on the institution responsible for defining the terms of reference provided to the Medical Committee the

right to distinguish, for the purposes of their disclosure to that committee, only those reports which it considers relevant from other reports, without negating the effectiveness of the first sentence of Article 22(3) of the Insurance rules. The relevant medical reports submitted in accordance with Article 22(2) of the Insurance rules, pursuant to Article 20(2) of those rules, are in fact those which the insured person or those entitled under him or her considered necessary to disclose to the doctor or doctors designated by the institution for the purposes of applying the provisions of the Insurance rules. It is therefore up to the insured person or those entitled under him or her alone to assess the relevance of the medical reports in question.

56 Consequently, by deciding on medical matters with a view to drawing up the file submitted to the Medical Committee, the Parliament exceeded the scope of its powers and undermined the validity of the work of the Medical Committee.

57 In those circumstances, the Medical Committee cannot be regarded as having been able to examine all the available documents liable to be of use to it in its assessment, within the meaning of Article 22(3) of the Insurance rules, as interpreted in the case-law, as recalled in paragraph 45 above.

58 It follows that the Medical Committee carried out its task under improper circumstances, with the result that the reports which it sent to the Appointing Authority at the end of its work were flawed.

59 In that respect, it is not contested that those of the documents at issue that, according to the Parliament, contained information similar to that already forwarded to the Medical Committee were available during the work of that committee. Nor is it contested that such documents consisted, inter alia, of medical reports from various doctors who had concluded that the diseases in question were occupational in nature and of various agreements of the JSIS concerning the treatments followed by the applicant. Since such documents were clearly linked to the applicant's illnesses, it cannot be ruled out that, if the Medical Committee had been able to examine those documents and, where appropriate, take them into account, its conclusions might have been different (see, to that effect, judgment of 15 July 1997, *R* v *Commission*, T–187/95, EU:T:1997:119, paragraph 57).

60 Since the contested decisions were adopted on the basis of the reports of the Medical Committee, they are vitiated by a procedural defect such as to justify their annulment.

61 It follows from all the foregoing that the third part of the first plea in law must be upheld.

…

On those grounds,

THE GENERAL COURT (Seventh Chamber)

hereby:

1. Annuls the decisions of the European Parliament of 7 August 2018 rejecting the requests for recognition of the occupational nature of AW's diseases of 15 and 28 July 2016;

2. Orders the Parliament to pay the costs.

da Silva Passos Reine Truchot

Delivered in open court in Luxembourg on 28 May 2020.

[Signatures]