

Afgørelse fra Den Europæiske Ombudsmand i hendes strategiske undersøgelse OI/4/2016/EA af, hvordan Europa-Kommissionen behandler personer med handicap under den fælles sygesikringsordning for EU-ansatte

Afgørelse

Sag OI/4/2016/EA - **Indledt den** 10/05/2016 - **Henstilling om** 16/07/2018 - **Afgørelse af** 04/04/2019 - **Den vedrørte institution** Europa-Kommissionen (Henstilling godkendt af institutionen) |

En FN-komité konstaterede i 2015, at sygesikringsordningen for EU-ansatte, den fælles sygesikringsordning (JSIS), ikke overholder FN's konvention om rettigheder for personer med handicap (UNCRPD). Komitéen anbefalede, at JSIS skulle revideres, så den tilbyder omfattende dækning af handicaprelaterede sundhedsbehov.

Ombudsmanden gennemførte en strategisk undersøgelse efter at have modtaget klager fra ansatte, som havde haft problemer med at få deres egne eller deres familiemedlemmers lægeudgifter tilbagebetalt fuldt ud. Hun konstaterede, at Europa-Kommissionens mangel på effektive foranstaltninger som respons på komitéens anbefaling udgjorde dårlig forvaltning. Hun anbefalede derfor, at Kommissionen skulle revidere reglerne for JSIS. Hun gav også flere forslag til Kommissionen om, hvordan JSIS dækker personer med handicaps behov samt nødvendigheden af at uddanne personale og behørigt høre interessenter for at sikre, at JSIS afspejler personer med handicaps behov.

Kommissionen afgav svar om, at den vil revidere reglerne for JSIS og træffe foranstaltninger, som følger op på de fleste af Ombudsmandens forslag.

Da Kommissionen har accepteret hendes anbefaling, afslutter Ombudsmanden hendes strategiske undersøgelse. Da dette er en vigtig sag, beder hun Kommissionen om at rapportere tilbage om anbefalingens implementering inden for seks måneder. Ombudsmanden bekræfter også hendes forslag om, at det er nødvendigt for Kommissionen at revidere dens regler fra 2004 om at imødekomme personale med handicaps behov.



1. Background to the inquiry

1. The European Union is a party to the UN Convention on the Rights of Persons with Disabilities (UNCRPD) [1], which came into force in January 2011. According to the UNCRPD, persons with disabilities have the right to enjoy the highest attainable standard of health, without discrimination on the basis of disability. Discrimination against persons with disabilities under health insurance schemes is prohibited. [2]

2. In 2015, the UN Committee on the Rights of Persons with Disabilities (UN Committee) reviewed the EU's compliance with the UNCRPD and recommended that "*the European Union revise its Joint Sickness and Insurance Scheme so as to comprehensively cover disability-related health needs in a manner that is compliant with the Convention*". [3]

3. The Joint Sickness Insurance Scheme (JSIS) is the health insurance scheme that covers EU staff members and their families. According to the EU Staff Regulations [4], medical expenses are reimbursed at either 80%, 85% or 100%, depending on different factors. The treatment of illnesses recognised as "serious" is 100% reimbursed.

4. The Commission has adopted General Implementing Provisions (GIPs), which govern the reimbursement of medical expenses under the JSIS. [5] According to the GIPs, an illness is defined as "serious" when it i) leads to shortened life expectancy, ii) is likely to be drawn-out, iii) requires aggressive diagnostic and/or therapeutic procedures, and iv) where it includes the presence or risk of a serious disability. [6]

5. According to EU case-law, these four criteria are cumulative [7]: they must all be met for any given illness to be deemed "serious". At the same time, how one criterion is assessed is likely to influence how the others are assessed. [8]

6. The Ombudsman received three complaints from staff members with disabilities, or whose children have disabilities, about the Commission's refusal to recognise these disabilities as being 'serious illnesses' under the JSIS. As the cases indicated a possible systemic problem, the Ombudsman decided to open a strategic inquiry.

2. The strategic inquiry

7. In May 2016, the Ombudsman opened the inquiry by asking the Commission how it intended to follow up on the UN Committee's concluding observation on the JSIS, and whether it intended to introduce separate criteria and/or special provisions for persons with disabilities. Following the Commission's reply, the Ombudsman's inquiry team met with representatives of the Commission to discuss the case.

8. The Ombudsman then consulted a targeted group of stakeholders on the issues that she had identified as relevant to her inquiry. [9] The Ombudsman issued a report on the findings of her consultation.

9. The Ombudsman found that the Commission's failure to take any effective action in reply to the UN Committee's recommendation constitutes maladministration. In July 2018, she made a recommendation to the Commission to address this. She also made five



suggestions for improvement to the Commission. The Commission replied to the Ombudsman in January 2019. [10]

The Ombudsman's recommendation

10. On the basis of her strategic inquiry, the Ombudsman reached the following **conclusion** :

The failure of the Commission to take any effective action, in response to the UN Committee's recommendation of 2 October 2015 to revise the JSIS, amounts to maladministration.

11. The Ombudsman **recommended** that:

The Commission should immediately set about the task of revising the GIPs (which govern the operation of the JSIS) with a view to ensuring that persons with disabilities will, in future, be dealt with under the JSIS in a manner which complies with the UNCRPD. For the purposes of its revision of the GIPs, the Commission should set out a clear timeline for consulting relevant representatives of staff members with disabilities as well as representatives of staff members with dependants with disabilities. The revision process should focus on the criteria for the full reimbursement of medical costs but other issues may also need to be considered.

12. In addition, the Ombudsman made five suggestions to the Commission on how to improve the JSIS and on how to deal with the wider needs of persons with disabilities. In particular, the Ombudsman **suggested** that:

1) The Commission should publish a non-exhaustive list of assistive devices which are reimbursable under the GIPs.

2) The Commission should carry out an assessment to identify - in a non-exhaustive way - non-medical needs relating to disabilities. It should initiate a procedure to ensure that the non-medical needs of EU staff members - and their families - with disabilities are addressed in a satisfactory way, through the allocation of sufficient resources and within an appropriate framework, under the EU institutions' social schemes.

3) The Commission should review its current rules on "reasonable accommodation" for staff with disabilities in the light of the provisions of the UNCRPD.

4) The Commission should ensure, where it is not already happening, that special training on how to deal with disability is part of the induction programme for its staff working on related issues, as well as for staff at management level.



5) The Commission should establish regular contacts with the associations of EU staff members with disabilities, or who have family members with disabilities, in order to receive feedback on the day-to-day application of the JSIS and of the social schemes for persons with disabilities. The Commission should also consult these associations in a meaningful, timely and structured way in the development and implementation of legislation and policies concerning them.

The Commission's reply to the Ombudsman's recommendation

13. Regarding the **recommendation**, the Commission stated that the flexible approach it applies to the criteria for determining a "serious illness" means that, in practice, a significant number of medical-related expenses linked to disabilities are already fully reimbursed. However, it agreed that it would be preferable to revise the GIPs to formalise this flexible approach, and committed to doing so. The Commission also committed to consult all relevant stakeholders. [11]

14. The Commission noted that any change to the GIPs will relate to medical expenses, and would need to take into account the long-term financial sustainability of the JSIS.

15. Regarding the **first suggestion** that the Commission should publish a list of assistive devices that can be reimbursed under the JSIS, the Commission indicated that it was reflecting on how best to publish on its website a non-exhaustive list of assistive devices, which are reimbursable under the JSIS.

16. In reply to the **second suggestion**, the Commission stated that it would consult the other EU institutions on how to revise the current guidelines for dealing with the non-medical needs of staff members with disabilities or with family members with disabilities, taking into account the financial resources available in each institution. The Commission said that it is in favour of fully reimbursing the school fees for the children of staff members who need to attend special schools due to their disabilities. The Commission stated, however, that it does not consider it necessary to draw up an overview of non-medical expenses relating to disabilities, and that it already endeavours to give the optimal support on a case-by-case basis.

17. Concerning the **third suggestion**, the Commission took the view that it is not necessary to revise its rules on how to accommodate the needs of staff members with disabilities. It is already endeavouring to improve information and staff training on disability-related matters, and tries to ensure a consistent and coordinated approach to accommodating the needs of staff members with disabilities. Should the rules need to be revised in the future, this would be done in consultation with staff members with disabilities.



18. Concerning the **fourth suggestion**, the Commission indicated that it is planning to introduce special training sessions on dealing with disabilities in its induction course for new managers. It has also improved the information available for managers on its internal policy on disabilities and how to accommodate the needs of staff members with disabilities. It added that the first point of contact for new staff members with disabilities or who have family members with disabilities is a trained, specialised social assistant. The social assistant's tasks cover a range of issues, including procedural issues, accommodating special needs and schools for children with special needs. The assistant is part of the dedicated team dealing with financial support relating to staff members with disabilities or who have family members with disabilities.

19. In reply to the **fifth suggestion**, the Commission said that all measures are always discussed in the fora provided for in the Staff Regulations, which means that staff representatives are involved, including staff with disabilities. It stated that it also consults the Joint Committee for Equal Opportunities (COPEC) on disability-related issues, and that its relevant departments [12] have regular contacts with associations for staff members with disabilities or who have family members with disabilities. It added that it had recently created a single contact point for staff queries concerning medical and non-medical matters relating to disabilities. It supports staff members who experience difficulties in accessing the available support schemes from national authorities in the Member States where they reside.

The Ombudsman's assessment after the recommendation

20. The Ombudsman welcomes the Commission's reply and is satisfied that, overall, it accepts her recommendation and most of her suggestions.

21. Regarding the **recommendation**, the Ombudsman welcomes the Commission's commitment to launch a process to revise the GIPs as soon as possible, in particular concerning the criteria for determining what expenses are fully reimbursed. This issue is of great importance for ensuring that the rights of persons with disabilities are respected.

22. The Ombudsman appreciates that this is a challenging process involving many different parties. Bearing in mind that one of the complaints she received on this matter was submitted in 2014, she encourages the Commission to do all it can so that the procedure is completed as quickly as possible.

23. The Ombudsman welcomes the Commission's commitment to consult COPEC and the associations of staff with disabilities or who have family members with disabilities. The Commission should ensure that these associations are consulted **throughout this process, in a meaningful and timely manner**. The Commission should inform these



associations already now about how they will be consulted.

24. Given the importance of the issue, the Ombudsman will monitor how the Commission implements her recommendation. She therefore asks the Commission to report within six months on the substantive progress it has made.

25. The Ombudsman welcomes the fact that the Commission is working out how best to publish on its website a non-exhaustive list of assistive devices, which are reimbursable under the JSIS (**first suggestion**). She urges the Commission to proceed with this work as soon as possible.

26. The Ombudsman welcomes the Commission's commitment to consult the other EU institutions on revising the current guidelines regarding the social aid scheme, taking into account the budgetary resources available in each institution (**second suggestion**). The Ombudsman reiterates her view that it would be more appropriate if a separate budget line, common for all EU institutions, were to be made available for this purpose. She urges the Commission to take this into account when revising the guidelines. The Ombudsman further understands the Commission's argument that, even if it were to set out an overview of the non-medical needs of persons with disabilities, it may still be better to deal with these needs on a case-by-case basis.

27. As regards school fees, in December 2018, the Ombudsman raised with the President of the Commission the question of fully covering the school fees for the children of staff members who need to attend special schools due to their disabilities. [13] She is pleased to note that the Commissioner for Budget and Human Resources announced in January 2019 that the Commission will fully cover these fees and take the lead in changing the relevant guidelines for how other institutions deal with this.

28. The Ombudsman welcomes the Commission's commitment to revise its induction course for new managers to address the needs of staff with disabilities or who have family members with disabilities (**fourth suggestion**). Training at management level is of great importance as line managers normally take decisions concerning how to accommodate the needs of staff members with disabilities. The Ombudsman also welcomes the fact that the Commission has a trained social assistant to provide support to staff with disabilities or who have family members with disabilities. She urges the Commission to ensure that all staff members dealing with disability issues receive the necessary training during their induction programme.

29. Regarding the **fifth suggestion** , the Ombudsman welcomes the creation of a single contact point for queries concerning medical and non-medical matters related to disabilities. The Commission further stated that its relevant departments have regular contacts with associations of staff members with disabilities and staff members with dependants with disabilities. The Ombudsman stresses that it is important for the Commission to meet with these associations on a regular basis to get their feedback on disability related issues.



30. The Ombudsman regrets that the Commission considers that there is no need to review its rules on accommodating the needs of staff with disabilities (**third suggestion**). The Commission adopted the current rules in 2004, whereas the UNCRPD entered into force in 2011. According to the UNCRPD, in order to promote equality and eliminate discrimination, parties need to take all appropriate steps to ensure that ‘reasonable accommodation’ of the needs of staff with disabilities is provided. [14] The Ombudsman considers that this entails putting in place an appropriate framework for dealing with requests to accommodate the needs of employees with disabilities in a clear, fair, and consistent manner.

31. By way of response to a point raised during the consultation, the Commission noted that, although the first contact point for the person concerned is the line manager, requests are dealt with consistently because its Directorate-General for Human Resources (DG HR) is consulted. Although the Ombudsman has found no evidence that this is not the case in practice, the need to consult DG HR in all cases is not set out in the applicable rules. [15]

32. The Ombudsman urges the Commission to endorse a broader approach regarding the possible measures that can be taken to accommodate the needs of staff members with disabilities. To this end, the Commission could draw on the submissions to the Ombudsman’s consultation.

Conclusion

Based on the inquiry, the Ombudsman closes this case with the following conclusion:

The Ombudsman welcomes the fact that the Commission accepted her recommendation and reacted positively to most of her suggestions. Given the importance of the issue, she will closely monitor how the Commission implements her recommendation. She therefore asks the Commission to report within six months on the substantive progress made.

The Ombudsman confirms the third suggestion, which she set out in her recommendation of 16 July 2018.

The Commission will be informed of this decision.

Emily O'Reilly European Ombudsman Brussels, 04/04/2019

[1] UN Convention on the Rights of Persons with disabilities was adopted on 13 December 2006 and approved on behalf of the EU by Council Decision 2010/48 of 26 November 2009: <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>



[2] Article 25 “Health” of the UNCRPD.

[3] Concluding observations regarding the EU's implementation of the Convention on the Rights of Persons with Disabilities made by the relevant UN Committee, 2 October 2015, Point 87:

https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=CRPD%2FC%2FEU%2FCO

[4] Article 72 of the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1549272035601&uri=CELEX:01962R0031-20190101>

[5] Commission Decision laying down general implementing provisions for the reimbursement of medical expenses, which entered into force on 01 July 2007:

http://ec.europa.eu/pmo/tender/06_annexe6_dge_en.pdf .

[6] Title III, chapter 5 of the GIPs.

[7] Judgement of the Civil Service Tribunal of 18 September 2007, *Botos v Commission*, F-10/07, paras 41-44

<http://curia.europa.eu/juris/document/document.jsf?jsessionid=5AB5024E8A3143458C5D4E0B7C07D854?text>

[8] Judgement of the Civil Service Tribunal of 28 September 2011, *Allen v Commission* , F-23/10, para 79

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=110181&pageIndex=0&doclang=EN&mode>

[9] The Ombudsman sent the issues that she had identified as relevant to her inquiry and on which she expected to make suggestions to the Commission to:

- the European Parliament's Disability Support Group, which consists of European Parliament staff members with a disability, or who are carers of a family member with a disability or who have a professional interest in disability issues;

- the European Commission's Disability Support Group, which is an association of staff members from the Commission, as well as other EU institutions, who are responsible for a person with a disability or a delay in development;

- the Association of Staff with a Disability in the European Commission, which comprises staff members with a disability or long-term health condition; and

- the European Disability Forum (EDF), which is an NGO that brings together representative



organisations of persons with disabilities from across Europe.

The Ombudsman also received two spontaneous individual contributions.

[10] All documents related to the inquiry, including the Ombudsman's letter to the Commission opening the strategic inquiry, the consultation report, and the Ombudsman's recommendation, are available at:

<https://www.ombudsman.europa.eu/en/opening-summary/en/65814> .

[11] Including the Inter-institutional Management Committee of the JSIS, the Staff Regulations Committee, the Joint Committee for Equal Opportunities (COPEC), the Staff Committee, trade unions and representatives of staff members with disabilities or who have family members with disabilities.

[12] It mentioned, in particular, its Directorate-General for Human Resources and Security and the Paymaster Office.

[13] Strategic Initiative concerning the United Nations Convention on the Rights of Persons with Disabilities

(UNCRPD) and the European Schools (SI/4/2018/EA):

<https://www.ombudsman.europa.eu/en/correspondence/en/108659> .

[14] Article 5 of the UNCRPD, para 3.

[15] According to Article 7 of the 2004 Commission decision, where there is a request to accommodate special needs, the Commission's Medical Service, in cooperation with a specialist designated in accordance with the provisions of the Code of Good Practice for the Employment of People with Disabilities, examines whether it is possible to do so and, if so, how to do so. However, according to the Commission's brochure on reasonable accommodation, "*it is often the case that the relevant HR service (AMC) (including the local IRM for specific ICT tools) and other services (e.g. OIB, OIL, Medical Service, etc.) may be closely involved in the follow-up process*".