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NEWSLETTER
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Staff Matters

Legal News from Union Syndicale

Invalidity allowance

This issue of **Staff Matters** will focus on the invalidity allowance.
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StaffMatters@unionsyndicale.eu

Invalidity pension, incapacity to work, occupational disease, accident, Art. 73, Art. 78 SR, social security

The Staff Regulations provide considerable social protection for the benefit of staff members suffering from partial or total invalidity or occupational diseases.

Case T-9/17, *RI / Council*, of 12 July 2018

Case T-4/17, *Coedo Suarez / Council*, of 13 December 2017

Facts and Court decision

The applicant in case *RI / Council*, having worked for several years as translator for the Council, suffered from health problems at her left hand. The procedure to acknowledge her illness as an occupational disease under Art. 73 Staff Regulations (SR) was successful, while the Council refused to acknowledge that her permanent invalidity under Art. 78 SR also resulted from an occupational disease.

The Court annulled this decision of the Council, because it was based on an erroneous opinion of the Invalidity Committee. The Court found that the Invalidity Committee did not deliver a proper reasoning, but only stated that the disease was not of occupational origin; the Invalidity Committee did not assess whether the applicant was exposed to the risk of acquiring the disease from which the invalidity resulted, while exercising her service functions. Although the definition and determination of a certain disease and the link between several diseases are medical questions and therefore not subject to the scrutiny of the judges, the Court held that a proper reasoning in the assessment of the Invalidity Committee is required because it allows the staff member to understand the assessment and it allows the Court exercise its judicial control.

Background

Art. 73 and Art. 78 SR stipulate two important social benefits for staff members. Both stand next to each other, i.e. they can be claimed cumulatively. The definitions of the legal terms are equal in both procedures, however the procedures are separate from one another and the results of these procedures may differ.

Art. 73 SR provides for an **insurance cover** of risks related to sickness and accident, whereas Art. 78 relates to the incapacity to work and stipulates the monthly payment of an **invalidity allowance** corresponding to 70% of the last basic salary of the official, with a minimum equal to the basic salary for grade AST1/1. If the invalidity arises from an accident in the course of or in connection with the performance of his/her duties, from an occupational disease, from a public-spirited act or from risking his life to save another human being, the minimum of the invalidity allowance shall be 120% of the basic salary for grade AST1/1 and the pension contribution will be paid by the institution. Under Art. 73 SR, in case of total permanent invalidity, the insurance benefit is a lump sum equal to eight times of the annual basic salary. In case of partial permanent invalidity, this sum would be reduced.

It is important to differentiate that Art. 78 SR (invalidity allowance) is related to the **incapacity to work**, while Art. 73 SR (insurance coverage) looks at the physical and psychological **harm for the integrity** of the person. Whether a disease is an occupational one, requires the proper assessment of the links between the disease and the professional activity exercised.

Comments

In Case *RI / Council* the Court only had to deal with the allowance entitlement under Art. 78 SR. The assessment delivered by the Invalidity Committee was deficient, with the consequence that the Council was not allowed to base its decision on it. It was therefore correct for the Court to annul the Council decision that refused the acknowledgement of an occupational origin of the applicant's disease.
The other entitlement - under the insurance coverage (Art. 73 SR) - was not to be decided upon here. It has to be claimed in a separate procedure, in which another, separate committee (the "Medical Committee") submits its opinion to the insurance company and the institution.
In *Case RI / Council* the committees of the two proceedings (Art. 73 and Art. 78 SR) reached different conclusions regarding the question whether the disease was of occupational origin.
Both procedures can be started in parallel. There is an obligation on the institution to complete these procedures reasonably fast. In some cases the Court had to impose damages upon the institution for not having handled the procedure within reasonable time.

The term '**occupational disease**' is not defined in the SR. The jurisprudence follows the line of the insurance coverage to the European Schedule of Occupational Diseases, and asks "if the employees have been exposed in the course of their work on behalf of the Policyholder to the risks of contracting these diseases". Importantly, under these terms, "an occupational disease shall also be considered as any disease or aggravation of a pre-existing disease that does not feature on the Schedule referred to under the preceding paragraph, when it is sufficiently established that it has its root cause in the exercise or during the exercise of the duties performed in the service of the Policyholder." In practice, this means that e.g. also **psychological harassment** can lead to the development of a disease that is to be recognised as being of occupational origin, with the consequence of an entitlement to the social benefits under Art. 73 and Art. 78 SR, as described above.

It is important to retain from the case law on the invalidity of staff:

- that the decision to refuse the occupational origin of a disease can be annulled if the Invalidity Committee has based its decision on an **erroneous understanding** of an occupational disease;
- that if the disease figures in the European Schedule of Occupational Diseases it is sufficient for a staff member to show the **plausibility** of having acquired the disease at work, i.e. that the disease probably has its origin in the occupational activity;
- that the opinion of the Invalidity Committee has to contain a **proper reasoning**. Also the proper constitution and functioning of the Invalidity Committee are subject to judicial control.

Summary and Recommendations

Invalidity and occupational diseases are serious threats for the professional and private lives of staff. The available social protection provided by the SR for these situations is considerable, but requires timely and accurate action by the staff member concerned, as well as continuous follow-up of the procedures. Some aspects of the work of an Invalidity Committee are subject to judicial control.

It is recommended that the acknowledgement of a disease as being of occupational origin is requested from the outset, in order to avoid the risks of preclusion at a later stage. It is further recommended that the requests under Art. 73 and Art. 78 SR are introduced within a reasonable period once the disease is known and the staff member has all elements available to claim his/her rights. This assessment deserves a timely and individual legal advice and strategic guidance.