



27.2.2013

NOTICE TO MEMBERS

Subject: Petition 1395/2010 by Krzysztof Szremski (Polish), on his problems with the Polish and Spanish social security systems in connection with an application for cash benefits for incapacity for work

1. Summary of petition

The petitioner, who has worked in Spain since January 2006, took sick leave while on holiday in Poland in 2009. He was subsequently sacked on the grounds that the reason for his absence was not submitted on form E 115 (Medical report relating to incapacity for work) and form E 116 (Claim for cash benefits for incapacity for work). The petitioner maintains that there has been an administrative error in this case, as INSS (the Spanish social security fund) did not send his application for the forms in question to the department of ZUS (the Polish social security fund) responsible for the petitioner's file. The petitioner also considers that ZUS did not follow the procedure set out in the relevant regulations concerning the social security of migrant workers, and therefore calls on the European Parliament to take the matter up.

2. Admissibility

Declared admissible on 14 February 2011. Information requested from Commission under Rule 202(6).

3. Commission reply, received on 10 June 2011.

On the basis of Regulations (EEC) No 1408/71 and 574/72 on coordination of social security, which was in application at the time of the facts, a person entitled to sickness benefits in cash is entitled to receive those benefits when an incapacity for work has been confirmed while that person has been temporarily staying on the territory of another Member state.

Regulations (EEC) 1408/71 and 574/72 were replaced as from 1st May 2010 with Regulations

(EC) No 883/2004¹ and 987/2010². The rules on sickness benefits in cash however were not substantially changed.

The procedure for claiming sickness benefits in cash, when incapacity for work has started during a temporary stay of the employed person outside the competent Member state, was determined by Article 24 in conjunction with Article 18 of Regulation (EEC) No 574/72.

In the light of these provisions, the communication between the social security institutions is direct. The insured person only has an obligation to inform the institution of the Member State of stay about his incapacity for work. This information should be transferred by the institution of the place of stay to the institution of the competent Member state (using the E116 form). Any subsequent communication between institutions of the competent Member state and the Member state of stay is direct and based on the E-forms (which - although still in use after the entry into application of new Regulations - are being phased out and will be fully replaced by 1st May 2012 by the electronic data exchange). The institution of the competent Member state might at any time request an institution of the Member state of stay to issue form E116 form which is a medical report confirming incapacity for work.

As regards the documents submitted, the Spanish competent institution requested the Polish institution to issue E116 form on two occasions (8/4/2009 and 7/7/2009). The requests have been accepted by the latter and the information has been sent (18/5/2009, 31/8/2009).

According to the petitioner's correspondence with his employer, the reason for his dismissal was the fact that the Spanish social security institution informed the employer that the petitioner's incapacity for work had not been confirmed by E116 form.

In the light of the documents enclosed with the petition, the Polish liaison body (for the sickness benefits in cash - *Zakład Ubezpieczeń Społecznych - Departament Zasiłków*) contacted the Spanish liaison body (*Instituto Nacional de la Seguridad Social*) on two occasions (on 2/9/2009 and a subsequent reminder was sent on 14/1/2011). The dossier of documents enclosed with the petition does not contain the Spanish institution's response to the request for clarification of the Polish social security institution.

In the light of the above, it seems that the situation experienced by the petitioner is due to problems in the cooperation between the two social security institutions involved.

It is not entirely clear whether the Spanish social security institution based the decision on the fact that the E116 form had not been delivered, or - as the employer's letter regarding the dismissal might suggest - that the petitioner himself did not deliver the E116 form to the Spanish competent institution. The latter request would not be in compliance with the applicable rules on coordination of social security.

If the petitioner agrees to disclose his data, the Commission is ready to contact the Spanish authorities to request clarification on his case.

¹ OJ L 166, 30.4.2004, p. 1–123

² OJ L 284, 30.10.2009, p. 1–42

4. REV Commission reply, received on 27 February 2013.

As regards the petitioner's dismissal, the Commission points out that there is no specific EU law regarding the grounds, procedure and consequences of individual dismissals¹. It is therefore for the competent Spanish authorities to regulate and resolve such issues on the basis of the applicable national legislation and after establishing all pertinent facts in each case.

As regards the issue related to social security of migrant workers, as the Commission has pointed out in the previous communication, from the information available it follows that the Polish institution ZUS has accepted the requests from the Spanish institution to issue the E1 16 form and contacted the Spanish liaison body on two occasions.

To further clarify the situation, the Commission has addressed a request to the Spanish authorities, following the agreement of the complainant to disclose the personal data. It has requested these authorities to inform the petitioner directly on the results of their investigation. The Commission should also receive a copy of this reply, and should its assessment reveal a breach of EU rules on coordination of social security systems, it will take the necessary steps.

The Commission is not in a position to assess the factual circumstances of individuals, but it monitors the implementation of the EU law by the Member States, and it examines the national legislation and practice when it is considered that this legislation might infringe the EU law.

¹ Apart from cases where there is discrimination based on nationality, gender, race and other prohibited grounds which does not seem to exist in the present case.