28.9.2012

NOTICE TO MEMBERS

Subject: Petition 0227/2012 by Vladimir Hacek (Slovak), on alleged violations of European standards by health insurance companies in Slovakia

1. Summary of petition

The petitioner is a doctor and complains that Slovak health insurance companies do not respect European Union, or even European Council, law on their performance and type of activity. The petitioner provides numerous examples of this, highlighting the allegedly incorrect application of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the health and safety of workers at work.

2. Admissibility

Declared admissible on 21 June 2012. Information requested from Commission under Rule 202(6).

3. **Commission reply**, received on 28 September 2012

The petitioner is a medical doctor, psychiatrist, the only shareholder and a professional representative in a limited liability company who provides healthcare on the basis of contracts with health insurance companies operating in the Slovak Republic.

The petitioner complains about the alleged failure by the Slovak Republic to comply with EU law. He considers that national legislation - Article 8 of Act No 581/2004 on health insurers and the supervision in healthcare and Act No 578/2004 on providers of healthcare, health workers, professional organizations in healthcare are contrary to the Charter of Fundamental Rights of the European Union, in particular its Article 16, Article 21(1) and Article 31, as well as the Convention for the Protection of Human Rights and Fundamental Freedoms, specifically Article 4(2), Article 14 and Article 17, the Convention concerning Forced Labour or Compulsory Labour (No 29) and the Universal Declaration of Human Rights.

The petitioner indicates that the national Act on health insurers, Article 8, provides that health insurers reimburse only "ordered health care services", i.e. a predetermined volume of healthcare services provided over a specified period of time. Therefore, he is not entitled to claim reimbursement for healthcare actually provided.

In addition, there is a lack of clarity and consistency about the types of healthcare services which are subject to reimbursement. Health insurers are free, in the petitioner's view, to interpret the existing legislation in a way that suits them best. Further, there is no independent arbitrator at the level of state authority who would have the right to review and assess how the insurers apply national law in relation to reimbursable healthcare services.

The petitioner also considers that national law is very much tilted in favour of health insurers allowing them to impose terms and conditions in the contracts with healthcare providers.

Furthermore, the petitioner is not satisfied with the fact that the reimbursement for healthcare rendered is made at the end of the month following the invoice date. Due to this, he is unaware whether he already reached the limit of pre-ordered healthcare services in a given month and therefore would need to suspend his activities to avoid the burden of uncompensated healthcare.

The petitioner also complains about an obligation set out in the Act on health insurers to secure a temporary replacement during his absence (i.e. holidays) and the respective fine for non-compliance with this obligation. He finds it difficult to comply with this requirement as during his absence he would have to pay the wage to a doctor replacing him as well to continue to pay other healthcare activities related expenses (rent, communal charges, wage to the nurse, etc.).

The petitioner explains that in case no one would be willing to replace him, he is forced to work 250 days in a year without the right to paid leave, in breach of his rights to rest, recreation and the limitation of his working hours.

In the petitioner's view, this amounts to forced labour outlawed by the Universal Declaration of Human Rights, the Charter of Fundamental Rights of the European Union, the Convention for the Protection of Human Rights and Fundamental Freedoms and the Convention on Forced Labour.

Finally, the petitioner considers that he qualifies both as an employer and an employee as he is the only person in a limited liability company. Therefore, he is under an obligation to ensure his rights regarding health and safety at work laid down in Directive 89/391/EEC, in particular the prevention of work related risks, and Directive 2003/88/EC on working time. However, he is not in a position to do so as he is subjected to physical, mental and sensory burdens at work and his working time limits are exceeded. Therefore, he alleges that Article 2 of Directive 89/391/EEC, which states that the Directive applies to all sectors of activity, is not incorporated into national law in such a way as to apply also to the work in healthcare.

Commission's observations

As far as the health insurance system of Slovakia is concerned, it should be noted that EU law in the field of social security provides for the co-ordination and not the harmonisation of

social security schemes. This means that each Member State is free to determine the details of its own social security system, including which benefits shall be provided, the conditions of eligibility, how these benefits are calculated and how much contribution should be paid. EU law on the coordination, in particular Regulation (EC) No 883/2004, intervenes to ensure that application of the different national legislations does not adversely affect persons who exercise their right to free movement within the European Union.

Since the petition refers exclusively to the healthcare system in Slovakia, the EU rules on the coordination of social security systems do not apply to the matters complained of relating to this national system. These matters fall solely within the national competence and should be resolved at the national level, in accordance with the applicable national rules and procedures.

As regards the management of health services and healthcare, Article 168 (7) of the Treaty on the Functioning of the European Union stipulates that "*the responsibilities of the Member States shall include the management of health services and medical care and the allocation of the resources assigned to them."* The same provision requires that "*Union action shall respect the responsibilities of the Member States for the definition of their health policy and for the organisation and delivery of health services and medical care."*

Insofar as the petitioner complains that he is not in a position to ensure his rights to healthy and safe working conditions**,** it should be noted that the EU health and safety at work legislation aims to achieve *"improvements in the safety and health of workers at work"* as stated in the Framework Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work (Article 1(1)).

This Directive defines a worker as "*any person employed by an employer, including trainees and apprentices but excluding domestic servants"* (Article 3(a)).

According to the case-law of the Court of Justice of the European Union, the essential feature of an employment relationship is that for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration (judgment of 14 October 2010 of the European Court of Justice in Case C-428/09, *Union syndicale Solidaires Isère*, paragraph 28 and case-law cited therein).

Therefore, self-employed persons, whose work is not subject to any employment relationship with an employer, are not, save certain limited exceptions where self-employed could jeopardise the health and safety of employees, covered by the EU directives dealing with health and safety at work.

The petitioner explains that he is the only shareholder and professional representative in a limited liability company, he operates as a legal entity and therefore he is an employer employing himself. Under such circumstances and in view of the aforesaid, it appears that the petitioner's work is not subject to an employment relationship and therefore he is not covered by the definition of "worker". It follows that the EU health and safety at work legislation, including Directives 89/391//EEC and 2003/88/EC, are not applicable to the petitioner in respect of the matters complained of as these Directives are applicable only to workers.

Should the petitioner be regarded under national law both as an employer and an employee to whom health and safety at work legislation in the Slovak Republic applies, as an employer he

would be obliged to respect health and safety requirements and as an employee he would have the rights to healthy and safe working conditions. Such matters are under the competence of national authorities.

As to the complaints regarding remuneration, it should be noted that pay is not covered by the EU social legislation. Article 153(5) of the Treaty on the Functioning of the European Union states:" *The provisions of this Article shall not apply to pay. ..".* This matter is therefore left to the competence of national authorities.

As far as the breaches of the rights enshrined in the Charter of Fundamental Rights of the European Union, in particular its Article 16 - freedom to conduct a business, Article 21(1) non-discrimination and Article 31 - fair and just working conditions, are claimed, it is relevant to provide the following explanations regarding the application of the Charter of Fundamental Rights of the European Union.

Pursuant to Article 51 of the Charter, the provisions of the Charter are addressed to the Member States only when they are implementing European Union law and the Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union or modify powers and tasks as defined in the treaties. As stated above, it has been established that the matters complained of do not fall within the remit of EU law which would render the Charter applicable.

As to the alleged breaches of the rights set out in the Convention for the Protection of Human Rights and Fundamental Freedoms, the Convention concerning Forced Labour or Compulsory Labour and the Universal Declaration of Human Rights, these international legal instruments are not adopted within the framework of the EU and therefore issues regarding their application and interpretation do not fall within the Commission's competence.

Conclusions

The Commission cannot intervene in the petitioner's case as the matters complained of fall within the remit of national law. If the petitioner considers that his rights have been violated, he may bring his case before the competent national authorities, including the courts, who should be able to properly assess the case with due regard for the applicable national provisions and international obligations of the Slovak Republic.