ORDER OF THE COURT (Fourth Chamber)
8 October 1998 *

In Case C-228/97 P,

Hedwig Kuchlenz-Winter, the ex-spouse of a former official of the European Parliament, residing at Kehlen (Luxembourg), represented by Dieter Rogalla, Rechtsanwalt, Sprockhövel, with an address for service in Luxembourg at the Chambers of Decker, Braun & Wagner, 16 Avenue Marie-Thérèse,

appellant,

APPEAL against the judgment of the Court of First Instance of the European Communities (First Chamber) of 16 April 1997 in Case T-66/95 *Kuchlenz-Winter* v *Commission* [1997] ECR II-637, seeking to have that judgment set aside,

the other party to the proceedings being:

Commission of the European Communities, represented by Julian Currall, Legal Adviser, acting as Agent, and Bertrand Wägenbaur, Rechtsanwalt, Hamburg, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

* Language of the case: German.

THE COURT (Fourth Chamber),

composed of: P. J. G. Kapteyn, President of the Chamber, H. Ragnemalm (Rapporteur) and K. M. Ioannou, Judges,

Advocate General: P. Léger,
Registrar: R. Grass,

after hearing the Opinion of the Advocate General,

makes the following

Order

1 By application lodged at the Court Registry on 20 June 1997, Mrs Kuchlenz-Winter brought an appeal under Article 49 of the EC Statute of the Court of Justice against the judgment of the Court of First Instance of 16 April 1997 in Case T-66/95 *Kuchlenz-Winter* v *Commission* [1997] ECR II-637 ('the judgment appealed against'), by which it dismissed her application for a declaration that the Commission is in principle under a duty, on the one hand, to continue to guarantee the appellant cover under the Common Sickness Insurance Scheme of the institutions of the European Communities ('the Common Scheme') and, on the other hand, to use its right of initiative *vis-à-vis* the Council with a view to enabling persons in the appellant's position to qualify for cover under the Common Scheme and, in the alternative, for a statement drawing the German Government's attention to the gap in its national legislation on sickness insurance and calling upon it to take appropriate measures to rectify that situation.

2 The facts of the case as set out in the judgment appealed against can be summarised as follows.

3 When, in 1957, the appellant, a German national, married Mr Kuchlenz, also a German national, she was an official of the Court of Justice of the European Coal and Steel Community in Luxembourg. In 1958, she was transferred to the Commission of the European Atomic Energy Community in Brussels. Her husband, who in the interim had become an official of the European Parliament, was transferred in 1963 to Luxembourg. At that point, after a little over seven years' service within the Communities, Mrs Kuchlenz-Winter gave up her job and ceased to be affiliated to the Common Scheme in her own right but continued to be insured by virtue of her husband (paragraphs 1 and 2 of the judgment appealed against).

4 By decree of 10 December 1993, which was made absolute on 1 April 1994, the Cour d'Appel (Court of Appeal), Luxembourg, dissolved the marriage of the appellant and Mr Kuchlenz. Following that decree, they agreed to split the retirement pension which Mr Kuchlenz receives from the Communities, pursuant to the provisions of the Bürgerliches Gesetzbuch (German Civil Code), which provides for the adjustment of pension rights in the event of divorce. That agreement was endorsed by the Juge de Paix (Magistrate), Luxembourg (paragraph 3).

5 Under Article 72(1*b*) of the Staff Regulations of Officials of the European Communities ('the Staff Regulations'), which provides that the ex-spouse of an official may, in certain circumstances, continue to be insured against sickness for a maximum of one year following the date of the decree absolute, the applicant continued to qualify for benefits under the Common Scheme (paragraph 4).

6 As a Luxembourg resident, Mrs Kuchlenz-Winter is also entitled to be affiliated to the Luxembourg statutory social security scheme (paragraph 5).

7 However, since she has not completed the requisite periods of insurance in Germany, she is not entitled to be affiliated to the German statutory social security scheme. Furthermore, she does not satisfy the requirements for voluntary affilia-

tion to such a scheme and private sickness insurance schemes refuse to insure her because she is seriously ill (paragraph 5).

8 On 7 February 1994, Mrs Kuchlenz-Winter submitted to the Parliament and the Commission requests that they take a decision which would enable her to retain her social security cover under the Common Scheme beyond the one-year period laid down in Article 72 of the Staff Regulations. After the request submitted to the Commission had been rejected, by implication, the appellant submitted a complaint against that decision on 26 July 1994 which the Commission rejected by letter of 11 January 1995 (paragraphs 6 to 8).

9 On 24 February 1995, the appellant brought an action before the Court of First Instance.

The judgment appealed against

10 The Court of First Instance first of all rejected a plea of inadmissibility raised by the Commission, according to which the action should have been brought against the Parliament and not the Commission. In doing so, it based itself, on the one hand, on the fact that, in its letter of 11 January 1995, the Commission did not state that it was not competent, and, on the other hand, on the important part played by the Commission in administering the Common Scheme (paragraphs 28 to 33).

11 The Court of First Instance then held that the head of claim seeking a declaration that the Commission is under a duty to continue to provide cover for the appellant under the Common Scheme was admissible (paragraph 35).

12 However, since the Community judicature is not entitled to issue directions to a Community institution, the Court of First Instance interpreted that head of claim as seeking annulment of the acts of the Commission rejecting the request made by the appellant to continue to be affiliated to the Common Scheme (paragraph 24).

13 In support of that head of claim, the appellant raised four pleas in law before the Court of First Instance: breach of the duty to have regard for her welfare; breach of the principle of free movement of persons; breach of the principle of equal treatment; and entitlement to a pension in her own right.

14 With regard to the first plea, the Court of First Instance pointed out that the duty to have regard for the welfare of the person concerned had to be performed within the framework established by the provisions in force and, in particular, it could not enable an applicant to obtain from the institutions a different result from that dictated by provisions whose sense is clear. In view of the clarity of Article 72(1*b*) of the Staff Regulations, the Court of First Instance decided that the applicant could not have her cover under the Common Scheme maintained beyond the period prescribed by that provision on the basis of the duty to have regard for her welfare (paragraph 43). The first plea was therefore rejected.

15 In her second plea, Mrs Kuchlenz-Winter had claimed that her right to move freely in the Community was seriously restricted by the fact that, if she left Luxembourg, she would lose the only sickness cover available to her.

16 In this regard, the Court of First Instance stated that, according to Article 8a of the EC Treaty, the free movement of persons is subject to the limitations and conditions laid down, *inter alia*, in secondary legislation. It pointed out that, in the case of persons who, like Mrs Kuchlenz-Winter, are not in active employment, the existence of sickness insurance was not, as the appellant claimed, a consequence of the right of free movement (paragraphs 47 and 48).

17 The Court of First Instance concluded that the question of the appellant's cover by a sickness insurance scheme from which she could benefit while residing in her country of origin could not be brought within the ambit of the principle of free movement as enshrined in the Treaty and implemented by secondary legislation (paragraph 50). That plea was therefore also rejected by the Court.

18 In her third plea, Mrs Kuchlenz-Winter had argued that the refusal to grant her the benefit of sickness cover under the Common Scheme constituted a breach of the principle of equal treatment inasmuch as former Members of the Commission, the Court of Justice, the Court of First Instance and the Court of Auditors continue to be covered by the Common Scheme if they are not covered by another public sickness insurance scheme (Council Regulation (ECSC, EEC, Euratom) No 2426/91 of 29 July 1991 amending Regulation No 422/67/EEC-No 5/67/Euratom determining the emoluments of the President and Members of the Commission, the President, Judges, Advocates-General and Registrar of the Court of Justice and the President, Members and Registrar of the Court of First Instance and Regulation (EEC, Euratom, ECSC) No 2290/77 determining the emoluments of the Members of the Court of Auditors (OJ 1991 L 222, p. 1)).

19 In that connection, the Court of First Instance pointed out that there was a breach of the principle of equal treatment where two classes of persons whose factual and legal situations were not essentially different were treated differently (paragraph 55). In the present case, it took the view that, since the relationship attaching officials to the institutions was not limited in time, the situation of officials was not the same as that of the persons to whom Regulation No 2426/91 applied, whose term of office was limited in time (paragraphs 56 and 57). The Court therefore concluded that there was no breach of the principle of equal treatment.

20 In her fourth and final plea, Mrs Kuchlenz-Winter had maintained that her right under German divorce law to half of her ex-husband's retirement pension entitled her to a pension in her own right, so that the Commission was under an obligation to award her cover under the Common Scheme.

21 The Court of First Instance held that the scope of the Common Scheme was a matter for the Community legislature and that a decision of a court of a Member State could not have the effect of conferring a status the conditions for the acquirement of which are laid down by Community measures (paragraph 64). Since Mrs Kuchlenz-Winter did not fulfil the conditions for the acquirement of a pension laid down by the Staff Regulations (paragraphs 61 to 63), the last plea was rejected.

The appeal

22 In her appeal, Mrs Kuchlenz claims that the Court should set aside the judgment of the Court of First Instance and order the Commission to pay the costs of both sets of proceedings. She argues that the Court of First Instance incorrectly assessed the points of law raised by the four pleas put forward in the application.

23 The Commission contends that the Court should declare the appeal manifestly inadmissible on the basis of Article 119 of its Rules of Procedure or, in the alternative, declare it manifestly unfounded. The Commission also requests the Court to order the appellant to pay the costs of the proceedings.

Findings of the Court

24 Under Article 119 of the Rules of Procedure of the Court of Justice, where the appeal is manifestly inadmissible or clearly unfounded, the Court may at any time dismiss the appeal by reasoned order without opening the oral procedure.

25 Furthermore, under the first paragraph of Article 51 of the EC Statute of the Court of Justice, an appeal is to be limited to points of law and is to lie on the grounds of lack of competence of the Court of First Instance, a breach of procedure before it which adversely affects the interests of the appellant or the infringement of Community law by the Court of First Instance. Article 112(1)(c) of the Rules of Procedure states that the appeal must contain the pleas in law and legal arguments relied on.

26 It follows from those two provisions that an appeal must indicate precisely the contested elements of the judgment and the legal arguments in support of the request to have it set aside.

27 It is settled case-law that that requirement is not satisfied by an appeal which confines itself to repeating or reproducing word for word the pleas in law and arguments previously submitted to the Court of First Instance, including those based on facts expressly rejected by that Court; in reality, such an appeal amounts to no more than a request for reexamination of the application submitted to the Court of First Instance, a matter which falls outside the jurisdiction of the Court, by virtue of Article 49 of its Statute (order in Case C-26/94 P *Mrs X* v *Commission* [1994] ECR I-4379, paragraph 13).

28 As regards the first plea alleging breach of the duty to have regard for her welfare, the appellant submits that the Court of First Instance failed to comply with the obligation of the Community judicature to develop the law. However, she does not give any indication of the basis for that alleged obligation or a clear explanation of its content. On the one hand, the appellant maintains that the obligation should have prompted the Court of First Instance to amend the Community legislation in force in order to enable her to benefit from the Common Scheme. On the other hand, she states that that obligation requires the Community judicature to draw the attention of the Community institutions to gaps and weaknesses in Community legislation with a view to prompting them to amend it.

29 In that regard, it is sufficient to observe that the Community institutions and bodies are required to act within the limits of the powers conferred on them by Community acts, and that it is not the task of the Community judicature to amend the Community legislation in force. Moreover, the Community judicature is under no obligation to comment on the advisability of amending that legislation. The first plea is therefore manifestly unfounded.

30 In her second plea, the appellant claims that the right to move and reside freely within the territory of the Member States is unconditional and that that right cannot be restricted by the fact that the Community legislature has not yet adopted legislation concerning the class of person to which she belongs. Furthermore, the appellant maintains that a restriction of the right in question constitutes direct or indirect discrimination against women.

31 In that regard, it should be noted that, as is clear from paragraph 44 of the judgment appealed against, the appellant largely confines herself to repeating the arguments which were put forward before the Court of First Instance. Moreover, she does not advance any argument to show that the Court of First Instance committed an error of law in finding that she could not rely on the principle of the free movement of persons in order to continue to be covered by the Common Scheme even though she no longer fulfilled the requirements for affiliation to that scheme. It follows that the second plea is manifestly inadmissible.

32 As regards the third plea, concerning breach of the principle of equal treatment, the appellant maintains that there is no fundamental difference between officials and the persons to whom Regulation No 2426/91 applies, since the relationship attaching the latter class of person to the institutions may be terminated for a number of reasons and the same is true of officials.

33 In that connection, it should be noted that the arguments put forward by the appellant do not call in question the finding of the Court of First Instance that the situation of officials is not the same as that of the persons to whom Regulation No 2426/91 applies, whose term of office is limited in time, and that there was therefore no infringement of the principle of equal treatment. It follows that that plea is manifestly unfounded.

34 Finally, in her fourth plea, to the effect that she is entitled in her own right to a pension, the appellant claims that the Court of First Instance wrongly based its finding on the decisions relating to her divorce, whereas the basis of the entitlement in question is the adjustment of pension rights prescribed by the Bürgerliches Gesetzbuch. Moreover, the appellant maintains that, by continuing to pay her part of her ex-husband's retirement pension, the Community has already recognised that entitlement.

35 In that regard, it should be noted that the question whether the adjustment of pension rights arises from a decision of a national court, whether it arises from an agreement between the spouses or whether it stems directly from national legislation is not decisive for the purpose of appraising this plea. That adjustment of pension rights could not have the effect of conferring on the appellant a pension entitlement which is dependent on requirements laid down by the Staff Regulations. The fact that the pension is paid directly to the appellant by the institutions of the Community does not lead to a different conclusion. The fourth plea is therefore manifestly unfounded.

36 In those circumstances, the appeal must be declared, in part, manifestly inadmissible and, in part, manifestly unfounded pursuant to Article 119 of the Rules of Procedure.

Costs

37 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. For the reasons given by the Court of First Instance, namely that the application sought annulment of an act terminating rights which the appellant derived from the Staff Regulations owing to the fact that she had been married to an official, the proceedings come under Article 70 of the Rules of Procedure, which provides that, in proceedings between the Communities and their servants, the institutions are to bear their own costs. However, pursuant to the second paragraph of Article 122 of the Rules of Procedure, Article 70 is not applicable to appeals brought by officials or other servants of an institution. Since the appellant has been unsuccessful in her appeal, she must be ordered to pay the costs of these proceedings.

On those grounds,

THE COURT (Fourth Chamber)

hereby:

1) Dismisses the appeal;

2) Orders the appellant to pay the cost of the appeal proceedings.

Luxembourg, 8 October 1998.

R. Grass

Registrar

P. J. G. Kapteyn

President of the Fourth Chamber