OPINION OF ADVOCATE GENERAL RUIZ-JARABO COLOMER

delivered on 1 June 1995 *

1. In this case, the question before the Court of Justice is whether a doctor affiliated to a social security scheme for civil servants of a Member State may rely upon Community law to have periods of employment in public hospitals in another Member State taken into account for the acquisition of entitlement to a retirement pension, in view of the fact that the national legislation of the first State allows, under certain conditions, periods worked in its public hospitals to be taken into account.

Facts

2. As is apparent from the documents before the Court, staff doctors of the Idrima Koinonikou Asphalisseon (Social Security Institution, hereinafter 'IKA'), a public legal person, are entitled under Decree Law No 4277/1962 to a retirement pension payable by that Institution, granted in accordance with Law No 3163/1955 concerning IKA staff pensions and the provisions concerning the award of civil and military pensions of Decree Law 1854/1951, the latter being applicable by analogy.

Under that legislation, at the doctor's request and on payment of a special sum to purchase pension rights, account may be taken for the purposes of entitlement to a pension of periods of service for the State or a public legal person as a civil servant or as a permanent or temporary doctor receiving a monthly salary or daily or weekly remuneration, and periods served in the armed forces as a reserve soldier and periods of independent medical practice. The abovementioned special payment is equal to 5% of the monthly pay received by the person concerned at the time of making the request, multiplied by the number of months corresponding to the period of service to be recognized.

3. The appellant in the main proceedings, Mr Vougioukas, is an IKA staff doctor who in 1988 applied to the IKA for recognition as periods of employment, in addition to the periods completed in various national hospitals, for the purposes of acquiring the right to a retirement pension, of periods he had worked as a doctor in public hospitals in the Federal Republic of Germany, namely between January 1964 and January 1965 and

* Original language: Spanish.

subsequently between September 1966 and December 1969, being the periods in which he was affiliated to the general scheme for employed persons.

Both that initial application and the subsequent claim were dismissed on the grounds that, save for a small number of exceptions which did not apply to the appellant's case, the provisions of the national legislation concerning pensions, applying to IKA staff doctors, did not provide for account to be taken of periods of service abroad for purposes of acquisition of rights to a retirement pension. The appeal against the decision to dismiss the claim to the second section of the Elengtiko Sinedrio (Court of Auditors) was dismissed as unfounded.

Mr Vougioukas lodged an application for review of that decision before the Elengtiko Sinedrio meeting in plenary session, which referred various questions to the Court of Justice for a preliminary ruling on the interpretation of Articles 48 and 51 of the EEC Treaty and the validity of Article 4(4) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community. [1]

Questions referred for a preliminary ruling

4. The questions referred by the Elengtiko Sinedrio meeting in plenary session are as follows:

'(1) In view of the fact that, during the period of their career, the staff doctors of the IKA may, from time to time, be appointed to be in charge of and to direct the clinical services of the IKA, participate in the proceedings of its principal or secondary clinical committees and consequently, in the course of their duties, be required to take decisions relating to the objectives and functioning of the IKA,

(a) may they on that ground be regarded as "civil servants" within the meaning of Article 4(4) of Regu-

1 — In the consolidated version contained in Council Regulation (EEC) No 2001/83 of 2 June 1983 amending and updating Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community and also amending and updating Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71 (OJ 1983 L 230, p. 6).

lation No 1408/71, that is to say, do they exercise public authority, and

(b) is it sufficient in order for them to be regarded as "civil servants" that they are afforded the possibility of occupying such positions or must they have actually occupied them, even if only once during their career in the public service?

(2) In so far as their pension situation is governed, irrespective of whether or not they have occupied such positions, by a pension scheme related principally to the pension provisions applicable to civil servants and military personnel, is that sufficient for the scheme in question to be regarded as a "special" scheme of social security benefits for civil servants within the meaning of Article 4(4) of Regulation No 1408/71, as it now applies? Thus, for a scheme of social security benefits to be regarded as "special", is it sufficient that it concerns civil servants or refers to the existing social security scheme for civil servants of a Member State, or does the meaning of "special" perhaps require other elements or arrangements which in any event may not be less favourable than the basic principles contained in the abovementioned regulation and in Article 51 of the EEC Treaty which refers to the aggregation, for the purpose of acquiring and retaining the right to benefit and of calculating the amount of benefit, of all periods taken into account under the laws of the several countries?

(3) Inasmuch as under Article 4(4) of Regulation No 1408/71 a "special" scheme of benefits for the "civil servants" of a Member State might be regarded as allowing arrangements which do not provide for, or do not permit, the aggregation of periods of employment completed by the civil servant under the legislation of another Member State for the purpose of acquiring and retaining the right to benefit and of calculating the amount thereof, does that provision of the abovementioned regulation run counter to the first paragraph of Article 51 of the EEC Treaty, in view of the fact that Article 48(4) concerning access to employment in the public service, which states that Article 48 "shall not apply to employment in the public service", does not clearly appear to apply to the scheme of social security benefits in such a way as to cause a person subject to a special social security scheme for the civil servants of a Member State to lose the abovementioned right to aggregate, for the purpose of acquiring and retaining the right to benefit and of calculating the amount of benefit, earlier periods of employment completed in other Member States, where the

national benefits scheme for civil servants does in fact permit such aggregation to the extent to which the aggregated earlier periods of employment were completed abroad in analogous public establishments?'

The relevant Community provisions

5. The Community provisions of relevance in determining this case are Articles 48 and 51 of the Treaty and Article 4(4) of Regulation No 1408/71.

Article 48 of the Treaty guarantees the free movement of workers within the Community, which presupposes, in accordance with paragraph 2 thereof, 'the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment'. Article 48(4) provides that 'the provisions of this Article shall not apply to employment in the public service'.

Article 51 requires the Council to adopt 'such measures in the field of social security as are necessary to provide freedom of movement for workers; to this end, it shall make arrangements to secure for migrant workers and their dependants:

(a) aggregation, for the purpose of acquiring and retaining the right to benefit and of calculating the amount of benefit, of all periods taken into account under the laws of the several countries;

(b) payment of benefits to persons resident in the territories of Member States'.

Finally, Article 4(4) of Regulation No 1408/71, which was adopted by the Council in order to fulfil that obligation, excludes from its material scope, *inter alia*, 'special schemes for civil servants and persons treated as such'.

The first question: the scope of the exclusion under Article 4(4) of Regulation No 1408/71 in relation to the exception in Article 48(4) of the Treaty

6. The wording of the first question indicates that the national court envisages the possibility that Article 4(4) of Regulation No 1408/71, which excludes from its material scope 'special schemes for civil servants and persons treated as such', refers solely to 'civil servants' within the meaning of the exception provided for by Article 48(4) of the Treaty, as interpreted by the Court of Justice.

7. In addition to the parties in the main proceedings, the Greek Government, the German Government, the French Government, the Council and the Commission have submitted observations in this case.

The appellant supports the interpretation put forward by the national court according to which the term 'civil servants' in Article 4(4) of Regulation No 1408/71 must remain limited to those who, under the case-law of the Court of Justice, are excluded from the free movement of workers. The French Government also states that, in this case, the IKA staff doctors can only be considered as civil servants for the purpose of Article 4(4) of Regulation No 1408/71 in so far as they occupy positions which imply the actual exercise of public authority.

The IKA points out that, in Regulation No 1408/71, the notion of 'civil servants' is used in a broad sense to include not only the employees of the State but also persons treated as such, such as employees of public bodies or local administrative authorities. In any event the setting up of special schemes and the decision whether all or some of those categories of employees are subject to those schemes rests with the national legislature.

8. On the other hand, the Commission, the Council, the Greek Government and the German Government consider that the question of the participation of a civil servant in the exercise of public authority arises only in the context of interpreting Article 48(4) of the Treaty and not in connection with interpreting Article 4(4) of Regulation No 1408/71. The decisive criterion must not be the actual activity of the civil servant, but his affiliation to a special pension scheme, whose creation and regulation are in any event matters for the Member States.

The Greek Government disagrees with the restrictive interpretation which the national court gives Article 4(4) of Regulation

No 1408/71, on three grounds: first, in view of the differences between the wording in the Treaty and that in Regulation No 1408/71, the special schemes excluded from the material scope of that regulation cover not only civil servants but also staff treated as such, such as the employees of public bodies or undertakings who, irrespective of the nature of their work are, under national law, covered by a different social security scheme from the general scheme for workers; secondly, the two provisions have different objectives, since Article 48(4) of the Treaty concerns access to employment, while Article 4(4) of Regulation No 1408/71 refers to persons who are already employed by public administrative authorities and whose social security scheme is different from the general scheme for workers; finally, if a test based on the nature of the duties performed was applied in interpreting Article 4(4) of that regulation it would result in the illogical conclusion that, amongst workers subject to the special scheme for civil servants, only some of them would be entitled to have insurance periods completed in any other Member State taken into account. In the alternative, it pleads that duties carried out by IKA staff doctors are linked to the decision-making process of a public body, entailing participation in the exercise of public authority; in that regard it is enough that the person in question may come to occupy such a post.

9. I must agree with the interpretation put forward by the Commission, the Council and the Greek and German Governments.

The reasoning of the national court cannot be accepted, even though it seems to be based on the assertion contained in an *obiter dictum* in the *Lohmann* [2] case — referred to in certain of the written observations submitted to the Court — according to which the exclusion from the material scope of Regulation No 1408/71 of special schemes for civil servants and persons treated as such is only 'the logical consequence of Article 48(4) of the Treaty which excludes "employment in the public service" from the application of the provisions relating to freedom of movement for workers within the Community'.

10. The consistent case-law of the Court on the exclusion of access to employment in the public sector states:

'... employment in the public service for the purposes of Article 48(4), which is excluded from the ambit of Article 48(1) to (3), must be understood as meaning a series of posts which involve direct or indirect participation in the exercise of powers conferred by public law and duties designed to safeguard the general interests of the State or of other public authorities and which, because of that fact, presume on the part of those occupying them the existence of a special relationship of

2 — Case 129/78 *Lohmann* [1979] ECR 853, paragraph 3. Advocate General Mancini in his Opinion in Case 307/84 *Commission* v *France* [1986] ECR 1725 considers that that *obiter dictum* has 'all the appearance of a *lapsus calami*'.

allegiance to the State and reciprocity of rights and duties which form the foundation of the bond of nationality. The only posts excluded are those which, having regard to the tasks and responsibilities involved, are apt to display the characteristics of the specific activities of the public service in the spheres described above'. [3]

That strict interpretation of the term 'employment in the public service' is a Community concept and applies only in relation to access to employment since, as is well known, once a Member State has admitted nationals of other Member States to such posts it cannot apply to them discriminatory measures with regard to remuneration or other conditions of employment. [4]

11. However, the concept of 'civil servants' under Article 4(4) of Regulation No 1408/71 falls in a different field, that of social security of migrant workers, which is only partially governed by Community law. According to the case-law of the Court, Article 51 of the Treaty provides for the coordination, not the harmonization, of the legislation of the Member States and, consequently, of the rights of persons working there; it does not affect substantive and procedural differences between the social security systems of the Member States, nor the rights of persons working there. [5]

Since Community law simply coordinates the legislation of the Member States, those States alone are responsible for regulating their social security schemes, and the Court has stated on a number of occasions that it is for the legislation of each Member state to lay down the conditions relating to the right or the obligation to become affiliated to a social security scheme or to a particular branch under such a scheme, provided always that in this connection there is no discrimination between nationals of the host State and nationals of the other Member States. [6]

As is clear from a case recently decided by the Court, Member States may make use of their retained powers in order to lay down, for example, that professional soldiers — who are undoubtedly in 'employment in the public service' — fall under both a special social security scheme for civil servants and, as regards medical care provisions, under the general sickness and invalidity insurance scheme for employed persons. [7]

3 — See, for example, Case C-4/91 *Bleis* [1991] ECR I-5627, paragraph 6.

4 — Case 225/85 *Commission* v *Italy* [1987] ECR 2625, paragraph 11.

5 — Case 313/86 *Lenoir* [1988] ECR 5391, paragraph 13.

6 — Case 254/84 *De Jong* [1986] ECR 671, paragraph 13, and Case 43/86 *De Rijke* [1987] ECR 3611, paragraph 12.

7 — Case C-71/93 *Van Poucke* [1994] ECR I-1101.

12. It follows that the concept of 'civil servants' for purposes of the exception laid down in Article 48(4) cannot be extended to Article 4(4) of Regulation No 1408/71 because, otherwise, the Member States would be obliged to amend their social security schemes. The possibility of imposing such an obligation presupposes the harmonization of the legislation of the Member States relating to social security which, as Community law now stands, does not yet exist.

It should therefore be concluded that the term 'civil servants' in Article 4(4) of Regulation No 1408/71 means all those employees of a public authority for whom the national legislature has provided their own compulsory social security scheme.

In the light of that interpretation it is not necessary to examine whether, in this case, the IKA doctors participate in the exercise of public authority.

The second question: the concept of "special schemes for civil servants" under Article 4(4) of Regulation No 1408/71

13. By its second question, the national court wishes to know whether, for a scheme of social security benefits to be considered as special,

— it is sufficient that it concerns civil servants or that it refers to the existing social security scheme for civil servants of a Member State, or whether

— the term 'special' embraces other elements or arrangements which in any event may not be less favourable than the basic principles contained in the regulation.

14. The appellant in the main proceedings considers that the concept of 'special schemes for civil servants' has to be interpreted strictly; the fact that a social security scheme is intended exclusively for civil servants and persons treated as such is not enough for it to be categorized as 'special', which requires there to be some particularity rendering the application of the provisions of the regulation impossible or too difficult. Since the social security scheme applying to IKA staff doctors does not objectively have such a particularity either in its organization or overall system, the appellant concludes that the regulation can be applied to it without major difficulty.

The German and French Governments and the Commission argue that the fact that the scheme in question is a special social security scheme intended for civil servants and that it contains provisions fundamentally different from those governing the general scheme is sufficient to exclude that scheme from the scope of the regulation.

In the opinion of the Greek Government, it is sufficient for a scheme of social security benefits to be intended for civil servants or to refer to a social security scheme for civil servants in force in a Member State for it to be considered 'special' within the meaning of Article 4(4) of the regulation.

15. On that point, I agree with the Greek Government. By placing 'special schemes for civil servants and persons treated as such' outside the scope of Regulation No 1408/71, the Community legislature has excluded from coordination the social security schemes, distinct from the general schemes applying to the remainder of workers, which Member States have set up for all or part of their staff employed in the public service. The differences, whatever their extent, which exist in each Member State between those special schemes and the general scheme are, in my opinion, not significant in that regard.

For there to be a 'special scheme for civil servants' within the meaning of Article 4(4) of the regulation, it is enough therefore that, in the exercise of its powers, the national legislature establishes a social security scheme, distinct from the general scheme, to which all or certain categories of public sector employees are compulsorily affiliated or which, once set up, as in this case, refers to an existing social security scheme for civil servants in that Member State. As has already been pointed out above, the only condition which the Member States must observe when they regulate those schemes is not to establish any discrimination between their own nationals and those of other Member States.

The third question: the validity of Article 4(4) of Regulation No 1408/71

16. By its third question the national court wishes to know whether Article 4(4) of Regulation No 1408/71 must be declared invalid since it is contrary to Article 51(a) of the Treaty, in so far as it excludes the special schemes for civil servants from the scope of the regulation, and whether that exclusion can deny an IKA staff doctor, who is covered by one of those schemes, the right to aggregate periods of service in another Member State, whereas the national social security scheme for civil servants in issue allows such aggregation where the previous periods of service were completed in similar public establishments in that country.

17. The appellant in the main proceedings argues that Article 4(4) of the regulation is invalid on the basis of two fundamental principles of Community law regarding social security, namely the principle of equal treatment and that of coordination of national laws.

As regards equal treatment, he argues that the only exception provided for by the Treaty is in Article 48(4), which, in accordance with the case-law of the Court, only excludes from its scope posts which imply the exercise of public authority, that exception relating only to access to certain public sector posts and not to persons who already work in the public service. Article 4(4) of Regulation No 1408/71 is incompatible with the Treaty, since its scope is wider in that it incorporates, in so far as they are subject to special social security schemes, civil servants, such as hospital doctors, who fall outside the derogation under Article 48(4).

As regards the principle of coordination of laws, since Article 51 does not lay down any exception, civil servants and persons treated as such — whether in a general social security scheme or a special scheme — must enjoy, in the same way as other workers, the right to free movement and the coordination of national laws concerning social security. Otherwise the Council would in practice be able to restrict the exercise by certain categories of workers of the fundamental right of free movement.

Finally, the appellant states that even if the Council were recognized as having the power to make exclusions, such as the one in Article 4(4) of Regulation No 1408/71, such exclusions ought to be justified on objective and serious grounds, whereas in this case there is no such justification set out in the regulation.

18. The Greek Government asserts the validity of the provision in issue and submits, on the basis of the *Lohmann* case, [8] that the exclusion of special schemes for civil servants or persons treated as such from the scope of the regulation is justified under Article 48(4) of the Treaty in so far as that article lays down an exception to the principle of the free movement of workers as regards posts in the public service.

The IKA, the Council and the German Government submit that the provision in issue is valid for the same reasons.

19. The French Government and the Council both note that, in ascertaining whether Article 4(4) of Regulation No 1408/71 is

8 — Cited in note 2.

compatible with Article 51 of the Treaty, the essential question is whether or not, in the concrete case, the person concerned would have the rights which his national law confers upon him reduced because of the exclusion of special schemes for civil servants from the scope of the regulation. They point out, first, that pursuant to Article 2(3) of the regulation, the regulation applies to civil servants and persons who, in accordance with the legislation applicable, are treated as such, where they are or have been subject to the legislation of a Member State to which the regulation applies, and, secondly, that Article 15(2) of Council Regulation (EEC) No 574/72 of 21 March 1972 laying down the procedure for implementing Regulation No 1408/71 [9] allows periods of insurance completed under a special scheme applying to the civil servants of a Member State to be considered as periods of insurance eligible for aggregation, where those periods are taken into account under legislation of that Member State which is included within the scope of the regulation. Accordingly, where national legislation allows those periods of insurance to be taken into account, the person concerned will not have his rights reduced but, where the national legislation does not provide for such a possibility, Regulations No 1408/71 and No 574/72 will not put the worker in a more favourable position than he would have been in under national law.

The Council concludes that the latter case requires the adoption of additional coordination provisions and states that it is currently examining a proposal from the Commission to amend Regulation No 1408/71 to include *inter alia* special schemes for civil servants within its scope. [10]

20. Rather than analysing the validity of the provision, the Commission puts forward the solution to be offered to the national court based on the case-law of the Court of Justice concerning Articles 48 and 51 of the Treaty. In its written observations, it starts from the premiss that the principle of equal treatment is unreservedly applicable to social security — since social security is part of conditions of work — for the civil servants of the Member States and persons treated as such. It adds that the principle of equal treatment, which formally consists in treating nationals of other Member States in the same way as those of the host State, implies that certain events which occur on the territory of another Member State must likewise be treated in the same way as other similar events which may occur in the host Member State. It concludes that since the Greek legislation provides for the possibility of taking account, for the purposes of pension entitlement, of periods completed in Greek public hospitals other than those of the IKA, the

9 — As consolidated by Regulation No 2001/83, cited above.

10 — Proposal for a Council Regulation (EEC) amending Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community and Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71 (OJ 1992 C 46, p. 1).

principle of equal treatment requires periods previously completed by the person concerned in public hospitals in Germany to be taken into account as well.

Finally, it classifies the exclusion by Article 4(4) of Regulation No 1408/71 of the special schemes for civil servants from the material scope of the regulation as a legal lacuna which may be filled when the proposal submitted to the Council is adopted. [11]

21. I consider that the reason for the exclusion of the special schemes for civil servants or persons treated as such from the scope of Regulation No 1408/71 lies not in Article 48(4) of the Treaty, but in the profound differences between such schemes in the Member States which, when contemplating their coordination, the legislature may have regarded as insurmountable.

22. Although the Council has not yet coordinated those systems, it is still nonetheless bound to do so. Article 51 of the Treaty requires the Council to adopt such measures in the field of social security as are necessary to secure for migrant workers the aggregation, for the purpose of acquiring and retaining the right to benefit and of calculating the amount of benefit, of all periods taken into account under the laws of the several countries. In practice, several special schemes for civil servants exist in the Member States which may differ considerably from one Member State to another. However, having regard to the ever increasing tendency in the Member States to affiliate their civil servants to general schemes and the gradual disappearance of the differences which historically distinguished the special schemes from the general schemes, the technical difficulties in coordinating those schemes, behind which the Council was able to shelter in the past, no longer seem insurmountable. A token of this is the aforementioned proposal for a regulation which, if approved, will extend the scope of Regulation No 1408/71 to special schemes for civil servants and persons treated as such.

23. I therefore agree with the Commission that the exclusion laid down in Article 4(4) of Regulation No 1408/71 leaves a lacuna which the Council must fill as soon as possible. But I do not think that that provision must be declared invalid by the Court of Justice for the following reasons:

— First, a declaration of invalidity would not entail either the coordination of the

11 — Cited above in note 10.

special schemes for civil servants of the Member States or the direct applicability of the provisions of Regulation No 1408/71 in circumstances where they were not previously applicable.

— Secondly, Article 4(4) of Regulation No 1408/71 has neither the aim nor effect of depriving nationals of the Member States of their right of freedom of movement or of deterring them from exercising that right. The fact that the special schemes for civil servants are excluded from the scope of the regulation does not automatically mean that the periods for which contributions were made in those schemes can never be taken into account for a migrant worker.

24. It is necessary to bear in mind that, as the Court of Justice has reiterated, the provisions of Regulation No 1408/71, precisely because they implement Article 51 of the Treaty, must be interpreted in the light of the objective of that article, which is none other than to contribute to establishing the fullest possible freedom of movement of migrant workers, a principle which is one of the foundations of the Community, and that the objective of Articles 48 to 51 would not be achieved if, as a result of having exercised their right of freedom of movement, workers were to lose the social security benefits granted to them by the national legislation of a Member State. [12]

25. Accordingly, in order to determine in practice whether a migrant worker has had his rights to a pension prejudiced because he was at some point in his working life in a special scheme for civil servants, it is necessary in each case to refer to the applicable national provisions.

First, as the Council and the French Government point out in their observations, Article 2(3) of the regulation includes within its personal scope civil servants and persons treated as such in so far as they are or have been subject to the legislation of a Member State to which the regulation applies; Article 15(2) of Regulation No 574/72 allows periods of insurance completed under a special scheme applicable to civil servants of a Member State to be regarded as reckonable periods of insurance for the purpose of aggregation, where those periods are taken into account under a law of that Member State which is included within the scope of Regulation No 1408/71. If a migrant worker who was affiliated to a special scheme for civil servants can rely on that provision his pension rights will not be affected.

12 — *De Jong*, cited in note 6, paragraph 14, and Case 284/84 *Spruyt* [1986] ECR 685, paragraph 18.

Secondly, if a special scheme for civil servants is completely closed off in the sense that no account may be taken of any period of contribution to a different scheme, the migrant worker's pension rights will be prejudiced in so far as the taking account of any periods he has worked in another Member State will necessarily be refused. However, since a national provision to that effect also leads to refusal to take into account, for workers who did not leave their country, periods of contribution to a general scheme in that same Member State, it must be concluded that the damage suffered by the migrant worker in such a case does not originate from the exercise of the right of freedom of movement.

26. It remains for me to consider the effects of a special scheme for civil servants which, as in this case, is not closed off — since it allows account to be taken, for the purposes of entitlement to a pension, *inter alia*, of the periods of service for the State or for a public legal person, and service in the armed forces as a reservist and periods in independent medical practice — but which precludes account being taken of periods worked abroad.

It is immediately clear that the appellant's pension rights have been adversely affected because he made use of his right of freedom of movement: if, instead of leaving to work in Germany, he had remained in his country of origin — even to practise as an independent doctor — before working for the IKA, he would have been entitled to have that period taken into account, on payment of a special payment to purchase pension rights, whereas in this case that right is denied him.

27. In addition, a provision such as that at issue entails disguised discrimination within the meaning of the case-law of the Court, according to which, 'the rules regarding equality of treatment ... in the Treaty ... forbid not only overt discrimination by reason of nationality but also all covert forms of discrimination which, by the application of other criteria of differentiation, lead in fact to the same result'. [13]

It should be pointed out that, in accordance with the case-law of the Court, the fact that the appellant is a Greek national has no bearing on the applicability of the principle that there should be no discrimination. Any

13 — Case 152/73 *Sotgiu* [1974] ECR 153, paragraph 11.

Community national who, irrespective of his place of residence and his nationality, has exercised the right to freedom of movement of workers and has been employed in another Member State, falls within the scope of Article 48 of the Treaty. [14]

It is easy to establish that the Greek legislation on the pension rights of IKA doctors entails disguised or covert discrimination: it is liable to have a more serious effect on nationals of other Member States than Greek nationals, since, of the doctors who are going to apply for account to be taken of periods completed in centres other than those of the IKA, the majority of those who have worked in Greece will be of Greek nationality, while most of those who have worked outside Greece will be nationals of other Member States.

28. However, it follows from the *Sotgiu* [15] case that disguised discrimination is not prohibited by Article 48(2) where the difference in treatment is objectively justified. Like Advocate General Jacobs in his Opinion on the *Scholz* case, in examining whether that difference in treatment is justified, I would ask what is the objective of the rule. [16]

If the national provision provided only for recognition, for the purposes of pension rights, of periods completed under other schemes for civil servants or persons treated as such, it might be regarded as designed to protect the financial equilibrium of those schemes. However since the Greek scheme in issue provides for account to be taken not only of periods worked in the service of the State or a public legal person, but also of periods of independent medical practice, I consider that the main objective of that provision is to avoid prejudice to the pension rights of doctors who enter the service of the IKA. If that is the purpose of the rule, there can be no objective justification for not taking into account, under the same conditions as for periods completed in Greece, periods completed in another Member State by a doctor who has made use of his right of freedom of movement.

29. I consider, therefore, that where, as in this case, a special scheme for civil servants of a Member State provides that, by means of a special payment to purchase pension rights, members of that scheme are entitled to have account taken, for the purposes of entitlement to a retirement pension, of periods completed in the service of the State and public legal persons, that Member State is bound to take into account under the same terms periods worked in another Member State for similar public bodies.

14 — Case C-419/92 *Scholz* [1994] ECR I-505, paragraph 9.
15 — Cited in note 13.
16 — See the *Scholz* judgment, cited in note 14, at p. I-514.

Conclusion

Having regard to the foregoing, I propose that the Court answer the questions referred by the Elengtiko Sinedrio as follows:

(1) All persons employed by a public authority for whom the national legislature has provided their own social security scheme, to which they are bound to be affiliated, must be regarded as 'civil servants' within the meaning of Article 4(4) of Regulation No 1408/71. That concept as so defined is not the same as that of 'civil servants' covered by the derogation in Article 48(4) of the Treaty. It is, therefore, not necessary to examine whether, in this case, the person concerned exercised public authority.

(2) Social security schemes established by the Member States for persons employed by a public authority to which those persons are bound to be affiliated must be regarded as 'special schemes for civil servants or persons treated as such' for the purpose of Article 4(4) of Regulation No 1408/71.

(3) Consideration of this case has disclosed no factor of such a kind as to affect the validity of Article 4(4) of Regulation No 1408/71. Nevertheless, a Member State which affords persons affiliated to a special scheme for civil servants the opportunity, on making a special payment to purchase pension rights, to have account taken, for the purpose of entitlement to a retirement pension, of periods worked for the State and for public legal persons in that State, cannot rely on that provision in order to deny to one of its nationals the right to have account taken, under the same terms, of periods worked in another Member State for similar public bodies.