JUDGMENT OF THE COURT (First Chamber)
12 December 1989 *

In Case C-163/88

Georgios Kontogeorgis, represented by P. Bernitsas, of the Athens Bar, with an address for service in Luxembourg at the Chambers of Aloyse May, 31 Grand-rue,

applicant,

v

Commission of the European Communities, represented firstly by Dimitrios Gouloussis, its Legal Adviser, then by Maria Condou-Durande, with an address for service in Luxembourg at the office of Georgios Kremlis, a Member of the Commission's Legal Department, Centre Wagner, Kirchberg,

defendant,

APPLICATION for the revocation, amendment or annulment of the decision of the Commission of 25 March 1988 (No 02248), signed by Richard Hay, Director-General for Personnel and Administration, refusing to allow the applicant to become affiliated to the health insurance scheme for officials of the European Communities, and of all connected decisions, prior or subsequent,

THE COURT (First Chamber)

composed of: Sir Gordon Slynn, President of Chamber, R. Joliet and G. C. Rodríguez Iglesias, Judges,

Advocate General: F. G. Jacobs
Registrar: B. Pastor, Administrator

having regard to the Report for the Hearing and further to the hearing on 26 September 1989,

* Language of the case: Greek.

after hearing the Opinion of the Advocate General delivered at the sitting on 7 November 1989,

gives the following

Judgment

1 By an application lodged at the Court Registry on 7 June 1988, Georgios Kontogeorgis, a former Member of the Commission of the European Communities, brought an action for the annulment of the decision of 25 March 1988 by which the Commission refused to allow him to become affiliated to the health insurance scheme for officials of the European Communities, and of all measures ancillary thereto, prior or subsequent.

2 The contested decision is based on Article 11 of Regulation No 422/67/EEC of the Council of 25 July 1967 determining the emoluments of Members and former Members of the Commission, the Court of Justice and the Court of Auditors (Official Journal, English Special Edition, 1967, p. 222), as amended by Regulation (ECSC, EEC, Euratom) No 2163/70 of the Council of 27 October 1970 (Official Journal, English Special Edition, 1970 (III), p. 724). Article 11 provides that:

'A Member of the Commission or of the Court shall be entitled to the benefits of the social security scheme provided for in the Staff Regulations of Officials of the European Communities covering sickness, occupational disease, industrial accident and birth and death defects.

This article shall also apply to former Members of the Commission or of the Court who benefit either under the pension scheme provided for in Article 8 or under the transitional allowance provided for in Article 7. This paragraph shall not, however, be applied in order to cover risks already covered by another social security scheme under which the former Member of the Commission or of the Court may benefit.'

3 The applicant, who in his capacity of retired civil servant is covered by the Greek health insurance scheme, takes the view that, even though Article 11 does not allow simultaneous cover under national and Community health insurance schemes, it does allow him to be affiliated to the Community scheme, so that he can be insured against the specific risks which are not covered by his national scheme and be entitled, for every individual risk covered by both schemes, to reimbursement from the Community scheme of the difference between the level of cover provided by the national social security scheme and the standard amount laid down by the Community scheme.

4 The Commission, on the other hand, takes the view that Article 11 must be interpreted as meaning that the existence of any cover against the risk of sickness under a national scheme, whatever the level of the cover or the conditions attached thereto, is sufficient to exclude the possibility of affiliation to the Community scheme.

5 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the course of the procedure and the submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

6 In support of his interpretation of Article 11 of Regulation No 422/67/EEC of the Council, the applicant relies on Article 72(2) of the Staff Regulations, which, in his view, lays down the same principle for officials who have remained in the service of the Communities until the age of 60 years. Only if the Community health insurance scheme is applied in order to supplement the benefits paid under other social security schemes is it possible to achieve the fundamental aim of the Community provisions, which is to provide all its officials, members and former members, with an acceptable minimum level of health insurance benefits, while at the same time avoiding simultaneous cover, for the same specific risks, under the Community scheme and another social security scheme.

7 However, it must be pointed out that the second paragraph of Article 11 of Regulation No 422/67/EEC does not allow former members to be affiliated to the Community health insurance scheme if they are insured against sickness under another social security scheme, regardless of the level and conditions of cover

under that latter scheme. The term 'risks' which appears in the second paragraph of Article 11 must be understood as referring to the three categories of risks (sickness, occupational disease and industrial accident) mentioned in the first paragraph of the article.

8 The second paragraph of Article 11 thus has the same scope as Article 72(2a) of the Staff Regulations, which provides that the Community health insurance scheme is to apply to officials who left the service of the Communities before the age of 60 years 'provided that they cannot obtain cover under any other public scheme of sickness insurance'. It follows that, whilst the scheme applicable to members in office is the same as that applicable to serving officials, the scheme applicable to former members who benefit either under the pension scheme provided for in Article 8 of Regulation No 422/67/EEC or under the transitional allowance provided for in Article 7 thereof, is the same as the scheme applicable to officials who have left the service of the Communities before the age of 60 years.

9 The second paragraph of Article 11 of Regulation No 422/67/EEC could only be interpreted in the way suggested by the applicant if it contained a criterion of equivalence, as regards the level and conditions of cover, between the Community scheme and the applicable national social security scheme, such as that which the Community legislature inserted in Article 72(1) of the Staff Regulations which provides that the spouse of a serving official is to be covered by the Community scheme where such a spouse 'is not eligible for benefits of the same nature and of the same level by virtue of any other legal provision or regulations'.

10 That interpretation is not invalidated by the fact that Article 72(4) of the Staff Regulations provides that the benefits paid under the Community scheme must be calculated by taking account of the benefits which may be obtained under any other sickness insurance scheme provided for by law or regulation. Article 72(4) lays down an anti-overlapping rule applicable to persons covered by the Community health insurance scheme. It cannot therefore be relied on in order to determine the persons covered by that health insurance scheme.

11 As regards the need to provide all officials, members and former members with an acceptable minimum level of health insurance benefits, it must be pointed out that the determination of the level of benefits provided under the Community scheme and of the scope of that scheme is a matter for the Community legislature. By amending Regulation No 422/67/EEC by Regulation (ECSC, EEC, Euratom) No 2163/70, of 27 October 1970, the Community legislature extended the Community health insurance scheme to former members of the Commission, the Court of Justice and the Court of Auditors, who benefit either under the pension scheme provided for in Article 8 or under the transitional allowance provided for in Article 7. However, that extension of the Community scheme was expressly limited to former members who do not benefit under another social security scheme, unlike serving members, who are covered by the Community scheme even when they are covered by another scheme, subject only to Article 72(4) of the Staff Regulations.

12 The applicant also claims that the contested decision violates fundamental principles of Community law, has some of the characteristics of a misuse of powers and constitutes an improper exercise of the Commission's discretion. The applicant points out that former members of the institutions made compulsory contributions to the social security scheme during their years of service and are therefore entitled to expect, on the basis of the principle of the protection of legitimate expectations, to receive corresponding health insurance benefits after the termination of their service.

13 That argument must also be rejected. It is apparent from the considerations set out above that the contested decision simply refused to allow the applicant to benefit under the Community health insurance scheme upon the basis of a correct interpretation of Article 11 of Regulation No 422/67/EEC. The deductions and contributions paid into the Community social security scheme are justified by the cover which the applicant enjoyed during his term of office.

14 Finally, the applicant refers to the case of a former member of another institution who, in a situation identical to his own, was allegedly allowed to benefit under the Community social security scheme while being affiliated to a national social security scheme.

15 Without its being necessary to check whether that allegation is true, it must be pointed out that the applicant cannot in any event derive any right whatsoever from a practice of another Community institution which is not in conformity with Regulation No 422/67/EEC.

16 It follows from the foregoing that the application must be rejected.

Costs

17 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. However, Article 70 of those rules provides that institutions are to bear their own costs in proceedings brought by servants of the Communities.

On those grounds,

THE COURT (First Chamber)

hereby:

(1) Dismisses the application;

(2) Orders the parties to bear their own costs.

Slynn Joliet Rodríguez Iglesias

Delivered in open court in Luxembourg on 12 December 1989.

J.-G. Giraud
Registrar

Gordon Slynn
President of the First Chamber