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.

REPORT FOR THE HEARING
delivered in Case C-163/88 *

I — Facts

1. On 2 November 1987, the applicant, a former Member of the Commission of the European Communities, wrote to the Commission asking to be entitled to benefit under the Community's health insurance scheme.

By a letter of 22 December 1987, R. Hay, Director-General for Personnel and Administration, informed him that he could not continue to benefit under the Community's social security scheme because, as a retired official of the Greek State, he was entitled to benefit under another public health insurance scheme.

Moreover, by a letter of 28 January 1988, R. Hay notified the applicant of the monthly amount of his pension, which did not include a deduction for affiliation to the Community health insurance scheme.

2. By a letter of 29 February 1988, the applicant submitted a complaint to the Commission seeking to assert his right, as a former Member of the Commission, to benefit under the Community health insurance scheme.

After careful re-examination of the applicant's case, the complaint was rejected by a letter of 25 March 1988.

II — Written procedure and conclusions of the parties

1. The application was lodged at the Court Registry on 7 June 1988.

2. The applicant claims that the Court should withdraw, amend or annul the contested decision, take any appropriate

* Language of the case: Greek.

measure and award costs against the Commission, including legal fees.

The Commission contends that the Court should reject the application as legally unfounded and award costs as provided for in law.

3. Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court (First Chamber) decided to open the oral procedure without any preparatory inquiry.

III — Submissions and arguments of the parties

1. The applicant considers that his application is admissible as the contested decision was addressed directly and individually to him, and the procedure of Article 90 of the Staff Regulations was followed.

The Commission leaves it to the Court to decide whether it was correct for the applicant to follow the procedure referred to above, or if he ought to have challenged the contested decision directly by means of an application to the Court.

2. As regards the merits of the case, the applicant relies particularly on Article 11 of the regulation governing the emoluments of Members and former Members of the Commission, the Court of Justice and the Court of Auditors, which contains two principles which are wholly identical to those contained in Article 72 of the Staff Regulations. According to the first principle, the risks covered by a national social security scheme are not covered by the Community social security scheme. According to the second principle, the provisions which apply to officials of the Community also apply to Members and former Members of the Commission and of the Court.

According to the applicant, it is evident from the wording of Article 11, cited above, that it does not allow simultaneous cover under national and Community schemes, but does allow the Community system of reimbursement to cover the difference between the national social security scheme and the rate laid down by the Community scheme. On this point, the applicant cites Article 72(4) of the Staff Regulations, according to which persons entitled to benefit under the Community health insurance scheme 'shall declare the amount of any reimbursements paid or which they can claim under any other sickness insurance scheme provided for by law or regulation . . . Where the total which they would receive by way of reimbursement exceeds the sum of the reimbursements provided for in paragraph 1, the difference shall be deducted from the amount to be reimbursed pursuant to paragraph 1, with the exception of reimbursements obtained under a private supplementary sickness insurance scheme covering that part of the expenditure which is not reimbursable by the sickness insurance scheme of the Communities'.

The applicant considers that this is the only interpretation of the abovementioned Article 11 which is logical and correct from a teleological point of view, since the fundamental aim of the Community provisions is to provide all its officials, Members and former Members with an acceptable minimum level of health insurance benefits.

The Commission refers to the supplementary nature of the scheme intended for former Members of the Commission in relation to the corresponding national scheme; Article 72 of the Staff Regulations of officials is also based on that principle and it is clearly laid down in paragraph 4 of the aforesaid article as regards serving officials. Consequently, the Commission interprets Article 11 of the regulation governing the emoluments of Members and former Members of the Commission, the Court of Justice and the Court of Auditors as meaning that any cover of risks under a national health insurance scheme, regardless of the amount or, more generally, the conditions thereof, is sufficient to exclude simultaneous cover by the Community scheme. Were it otherwise, the provision in the final paragraph of Article 11 would be redundant, as national schemes never provide cover under exactly the same conditions as those laid down in the Staff Regulations.

According to the Commission, it is only in exceptional circumstances — for example those in Article 72(2)(1) of the Staff Regulations, relating to officials having reached the age of 60 years — that a retired Community official is covered by the Community scheme while eligible for benefits under a national scheme.

The Commission also refers to the combined provisions of Articles 2(13) and 4(8) of the Rules on Sickness Insurance which, though worded slightly differently, also state the rule on the supplementary nature of the Community health insurance scheme.

3. The applicant also alleges that the contested decision violates fundamental principles of Community law, and in particular the principle of equal treatment. He considers that it is clearly inadmissible for a former Member of the Commission not to be entitled to the difference between the Community benefits and the lower national benefits, or to be unable to benefit thereunder where the national scheme makes no provision for similar benefits (spectacles, dental care, etc.).

The applicant also points out that former Members of the institutions made contributions to the social security scheme during their years of service and expect, on the basis of the principle of the protection of legitimate expectations, to be entitled to health insurance benefits after termination of service.

The applicant states, finally, that the contested decision contains reasons which are insufficient, unclear and contradictory, that the contested decision is a misuse of powers and that in any event it constitutes an improper exercise of the Commission's discretion. In support of that argument the applicant cites the case of a former Member of the Court of Auditors who is covered by the Community social security scheme, although affiliated to a national social security scheme.

The Commission replies that its adoption of the uncontested decision, which contains an unambiguous and full statement of reasons, does not infringe the principle of equal treatment, nor constitute an abuse of power,

nor an improper exercise of its discretion; it has simply refused the applicant eligibility to benefit under the health insurance scheme, correctly interpreting Article 11 of the regulation governing the emoluments of Members and former Members of the Commission, the Court of Justice and the Court of Auditors.

Finally, the Commission notes that it has not been officially informed by the Court of Auditors of the fact that a former Member of the Court of Auditors is covered by the Community social security scheme while being affiliated to a national social security scheme. The Commission is of the opinion that the decision adopted in this respect by the appointing authority of another institution, whose power of appointment is independent of that of the Commission, constitutes a different and incorrect interpretation of the relevant provisions, and cannot constitute a precedent which is binding on the Commission in the present case.

G. C. Rodríguez Iglesias
Judge-Rapporteur