# JUDGMENT OF THE COURT (Fifth Chamber)
22 December 1993 *

In Case C-244/91 P,

**Giorgio Pincherle,** represented by Giuseppe Marchesini, of the Vicenza Bar, with an address for service in Luxembourg at the Chambers of Ernst Arendt, 8-10 Rue Mathias Hardt,

appellant,

supported by

**Unione Sindicale Euratom Ispra (USEI),**

**Sindacato Ricerca dell'Unione Italiana del Lavoro (UIL),**

**Sindacato Ricerca della Confederazione Generale Italiana del Lavoro (CGIL),**

**Sindacato Ricerca della Confederazione Italiana Sindacati Liberi (CISL),**

all represented by Giuseppe Marchesini,

interveners,

APPEAL against the judgment of the Court of First Instance of the European Communities in of 12 July 1991 in Case T-110/89 *Pincherle* v *Commission* [1991] ECR II-635, seeking to have that judgment set aside,

the other party to the proceedings being:

* Language of the case: Italian.

**Commission of the European Communities**, represented by Vittorio di Bucci, of its Legal Service, acting as Agent, assisted by Alberto Del Ferro, of the Vicenza Bar, with an address for service in Luxembourg at the office of Nicola Annecchino, of its Legal Service, Wagner Centre, Kirchberg, which has submitted that the appeal should be dismissed,

THE COURT (Fifth Chamber),

composed of: J. C. Moitinho de Almeida, President of the Chamber, R. Joliet, G. C. Rodríguez Iglesias, F. Grévisse and M. Zuleeg, Judges,

Advocate General: M. Darmon,
Registrar: D. Louterman-Hubeau, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 6 May 1993,

after hearing the Opinion of the Advocate General at the sitting on 30 June 1993,

gives the following

## Judgment

1 By application lodged at the Court Registry on 20 September 1991, Mr Pincherle brought an appeal under Article 49 of the EEC Statute of the Court of Justice and the corresponding provisions of the ECSC and EAEC Statutes against the judgment of the Court of First Instance of 12 July 1991 in Case T-110/89 *Pincherle* v *Commission* [1991] ECR II-635 in which that Court dismissed his action for the annulment of a number of decisions of the Brussels office responsible for settling claims ('claims office') of the Joint Sickness Insurance Scheme of Officials of the European Communities.

2 It is apparent from the findings of the Court of First Instance (paragraphs 1 to 6 of the judgment) that Mr Pincherle is Head of the Staff Regulations Division of the Commission of the European Communities at Brussels. As an official he is affiliated to the Joint Sickness Insurance Scheme for officials of the European Communities. Since his children are pursuing their studies in Italy and his wife stays there for fairly long periods, he has incurred medical expenses in that country.

3 In 1988 Mr Pincherle requested the Brussels claims office to reimburse him for those services. Applying the maximum rates of reimbursement provided for in Annex I to the Rules on Sickness Insurance for Officials of the European Communities (the 'Insurance Rules') the claims office decided to reimburse certain of those services only at the rates of 29%, 38%, 43%, 63% and 66%, as shown in the statements of payment drawn up on 8 June, 10 August and 23 August 1988.

4 Mr Pincherle considered that those rates were both inadequate and discriminatory and, by a memorandum of 13 October 1988, which was registered on 19 October 1988, submitted a complaint to the administration under Article 90(2) of the Staff Regulations of Officials of the European Communities. That complaint was rejected by the Management Committee of the Joint Scheme, which, in its Opinion No 1/89 of 23 February 1989, upheld the decisions adopted by the claims office.

5 By application lodged at the Registry of the Court of Justice on 8 May 1989 and referred to the Court of First Instance on 15 November 1989, Mr Pincherle asked the Court to set aside the impugned reimbursement decisions of the claims office on the grounds that the maximum rates of reimbursement fixed in the Insurance Rules were unlawful.

6 Mr Pincherle maintained that the maximum rates of reimbursement established by those rules in the form of flat-rate sums were unlawful for two reasons.

7 First, in his case they had resulted in reimbursement of only a percentage of the expenses incurred that was far below the reimbursement rates of 80% or 85% provided for in Article 72 of the Staff Regulations.

8 As regards Article 8(1) of the Insurance Rules, which provides that special reimbursements may be granted when the expenses incurred are for treatment provided in a country where the cost of medical treatment is particularly high, Mr Pincherle observed that that provision could not reduce the damage caused to him by the inadequacy of the reimbursement ceilings. He maintained that Article 8(1) did not apply to medical treatment provided in Europe.

9 Secondly, Mr Pincherle claimed that the maximum rates of reimbursement were contrary to the principle of non-discrimination on which the provisions of Title V of the Staff Regulations (Emoluments and Social Security Benefits of Officials) are based. Under that principle, the officials of the various institutions are entitled to equal social security benefits irrespective of the place where health treatment was provided.

10 The Court of First Instance treated the two grounds on which Mr Pincherle claimed that the reimbursement ceilings were unlawful as two pleas in law.

11 As regards the compatibility of the ceilings with Article 72 of the Staff Regulations, the Court of First Instance noted in paragraphs 25, 26 and 27 of the judgment that Article 72 simply established maximum rates of reimbursement and therefore did not oblige the Community administration to effect reimbursements at the rate of 80% or 85% of the expenses incurred. Furthermore, the Court considered that the percentages of medical services reimbursed to Mr Pincherle in application of the reimbursement ceilings could not be regarded as too far removed from those maximum rates, since it was apparent from the statements of payment produced that in 15 out of 20 cases the reimbursements were effected at a rate of 80% or 85%. The Court further stated that, contrary to what applicant maintained, Article 8 of the Insurance Rules could apply to medical services provided in the countries of Europe provided that a prior request had been submitted.

12 As regards the second argument, based on the breach of the principle of equality, the Court of First Instance considered in paragraphs 39 to 42 of its judgment that that principle did not require the Commission to bring inequality between the beneficiaries of the Joint Sickness Insurance Scheme to an end forthwith but obliged it only to act in concert with the other institutions for the purpose of making appropriate adjustments to the scheme. A breach of the principle of equality could be established only if the Commission had delayed taking the appropriate measures. Observing that the Management Committee of the Joint Scheme had begun work with a view to revising the Insurance Rules in 1987, that in its Opinion No 3/89 of 23 February 1989 it had proposed introducing correcting mechanisms for certain services where the fees were expressed in Italian lire, and that the work had led, on 1 January 1991, to the revision of the Insurance Rules, the Court considered that, regard being had to the imperative requirement of the financial balance of the scheme and the need to act in concert with the other institutions, the Commission had shown the diligence necessary to remove the inequalities between beneficiaries of the Insurance Rules.

13 Accordingly, the Court of First Instance dismissed the application and ordered the parties to bear their own costs.

**The intervention**

14 On 11 December 1991 the Unione Sindicale Euratom Ispra, the Sindacato Ricerca dell'Unione Italiana del Lavoro, the Sindacato Ricerca della Confederazione Generale Italiana del Lavoro and the Sindacato Ricerca della Confederazione Italiana Sindicati Liberi, which had intervened in the proceedings before the Court of First Instance, lodged a statement under Article 115 of the Rules of Procedure of the Court of Justice in support of the appellant's submissions.

15 The Commission infers from the fact that the Court Registry accepted that statement that the Registry regarded interveners before the Court of First Instance as parties to the proceedings before that Court for the purposes of Article 115(1) of the Rules of Procedure of the Court of Justice, which provides that '[a] ny party to the proceedings before the Court of First Instance may lodge a response within

two months after service on him of notice of the appeal'. The Commission disputes that interpretation. The abovementioned trade unions are not automatically entitled to lodge a response before the Court of Justice, but must have express leave to do so. The Commission therefore asks the Court to reject their statements unless it should adopt an express decision granting them leave to intervene in support of the appeal.

16 It should be noted that under the first paragraph and the first sentence of the second paragraph of Article 49 of the EEC Statute of the Court of Justice an appeal may be brought before the Court of Justice within two months of the notification of the decision appealed against by any party which has been unsuccessful, in whole or in part, in its submissions before the Court of First Instance. The final sentence of paragraph 2 of Article 49 provides that 'interveners other than the Member States and the Community institutions may bring such an appeal only where the decision of the Court of First Instance directly affects them'. The limitation introduced by the second sentence of paragraph 2 of Article 49 is necessary only because the word 'party' in the first sentence of that paragraph includes interveners before the Court of First Instance. Accordingly, it follows from Article 49 of the EEC Statute of the Court of Justice that interveners before the Court of First Instance are regarded as parties before that Court. Therefore Article 115(1) of the Rules of Procedure of the Court of Justice is applicable to them, which dispenses them from having to submit a fresh application to intervene before the Court of Justice in accordance with Articles 93 and 123 of the Rules of Procedure.

17 The Commission's objection of inadmissibility must therefore be rejected.

## The appeal

18 In his appeal Mr Pincherle makes various criticisms of the reasoning whereby the Court of First Instance rejected the arguments which he had put forward to establish that the reimbursement ceilings were unlawful. Those criticisms will be divided into two groups, which will be treated as pleas in support of the appeal.

**First plea in law: the criticisms of the Court of First Instance's conclusion that the reimbursement ceilings fixed by the Insurance Rules are compatible with Article 72 of the Staff Regulations**

19 According to the appellant, the Court of First Instance was wrong to take the view that the reimbursement ceilings fixed in the Insurance Rules were not contrary to Article 72 of the Staff Regulations. The rates of reimbursement of between 29% and 66% to which the application of those ceilings led in the present case are too far removed from the rates of 80% or 85% provided for in Article 72.

20 Mr Pincherle also criticizes the Court of First Instance for having taken into consideration, for the purpose of ruling on the compatibility of the reimbursement ceilings at issue with Article 72 of the Staff Regulations, all the reimbursements appearing on the statements produced, whereas his action concerned only some of those reimbursements.

21 Lastly, the appellant maintains that the Court of First Instance misinterpreted Article 8(1) of the Insurance Rules in two ways. First, the application of that provision is excluded for the countries of Europe. Secondly, it is not conditional upon a prior request by the individual concerned.

22 It should be pointed out that Article 72(1) of the Staff Regulations provides that an official, his spouse and his dependants are insured against sickness up to 80% of the expenditure incurred subject to rules drawn up by agreement between the institutions of the Communities; that ceiling is increased to 85% for certain services.

23 That provision establishes the maximum rate of reimbursement to which an official and the members of his family covered by the Joint Scheme are entitled. For the remainder, it leaves it to the institutions to fix the reimbursement ceilings by agreement between them in the context of insurance rules, without prescribing any minimum thresholds.

24 The Court of First Instance was therefore right to consider that the institutions could not be accused of infringing Article 72 of the Staff Regulations by establishing ceilings which led in the present case to reimbursements of between 29% and 66% solely on the ground that those rates were too far removed from the maximum rates of reimbursement of 80% and 85% provided for in Article 72.

25 Consequently, it is irrelevant that the Court of First Instance also found that three-quarters of the reimbursements appearing on statements of payment Nos 71 and 72 were effected at the rates of 80% to 85% provided for in Article 72 of the Staff Regulations. Nor is that Court's interpretation of Article 8(1) of the Insurance Rules relevant either. Since those grounds are superabundant, the appellant's criticisms of them cannot lead the Court to set aside the judgment of the Court of First Instance: they are nugatory. Consequently, there is no need to consider them further.

26 The first plea in law must therefore be rejected in its entirety.

**Second plea in law: the irrelevance of the adaptations effected subsequent to the facts of the case and the failure to take account of essential evidence in examining whether the principle of equality was complied with**

27 Mr Pincherle criticizes two aspects of the Court of First Instance's conclusion that there was no breach of the principle of equality. First, he claims that by relying on the revision of the Insurance Rules which became applicable in 1991 the Court took into consideration elements of fact which occurred subsequent to the case. Secondly, he claims that the Court of First Instance ignored evidence which he produced before it, namely:

— two reports of the Management Committee of the Sickness fund of 30 June 1987 and 30 June 1988 which show that the situation was completely inegalitarian in 1987;

— the report of the Local Staff Committee at Ispra of 3 June 1983, drawn up on the basis of evidence gathered in 1982, which already showed that the

reimbursements granted for services provided in Italy were not adequate at that time and criticized the resulting discrimination for members of staff and the Community institutions.

28 The Court of First Instance considered in essence that the principle of equality did not impose on the Commission an obligation to provide a remedy for a discriminatory situation as soon as it was found to exist but obliged it only to demonstrate diligence in achieving a revision of the rules at issue which took account of the price of medical services in the various Member States of the Community.

29 It follows that there is a defect affecting the lawfulness of reimbursement decisions only where the Commission's lack of diligence in taking the necessary steps to remedy the inequalities had been established when the decisions were adopted.

30 It is implicit from paragraphs 41 and 42 of the judgment of the Court of First Instance that it considered that such lack of diligence had not been established. It is therefore irrelevant that the Court of First Instance also observed that the steps taken prior to the impugned decisions led, subsequent to the adoption of those decisions, to a revision of the Insurance Rules.

31 Since the criticism formulated by the appellant in that regard is directed against a superabundant ground for the judgment of the Court of First Instance it must be rejected as nugatory.

32 Secondly, the appellant criticizes the judgment of the Court of First Instance in so far as, in assessing the diligence shown by the Commission in providing a remedy for the inequalities in reimbursements, it did not take account of two reports of

the Sickness Fund of 1987 and 1988 or of the report of the Ispra Local Staff Committee of 1983. According to the appellant, the failure to take that evidence into consideration distorted the Court's assessment of the diligence shown by the Commission.

33 In that regard, it is sufficient to observe that it has not been established that the Court of First Instance did not examine those reports.

34 The second plea in law must therefore be rejected in its entirety.

35 Since neither of the pleas in law put forward by Mr Pincherle has been upheld, the appeal must be dismissed.

36 Since the Unione Sindicale Euratom Ispra, the Sindacato Ricerca dell'Unione Italiana del Lavoro, the Sindacato Ricerca della Confederazione Generale Italiana del Lavoro and the Sindacato Ricerca della Confederazione Italiana Sindicati Liberi have intervened in support of the appellant's submissions, their intervention must also be dismissed.

## Costs

37 Under to Article 70 of the Rules of Procedure of the Court of Justice, in proceedings between the Communities and their servants the institutions are to bear their own costs. However, by virtue of Article 122 of those rules, Article 70 is not to apply to appeals brought by officials or other servants of the institutions. It follows from Article 69(2) of the Rules of Procedure, first, that the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings and, secondly, that where there are several unsuccessful parties the Court is to decide how the costs are to be shared. It is true that pursuant to the second paragraph of Article 122 of the Rules of Procedure the Court may, in appeals brought by officials, order the parties to share the costs 'where equity so requires'.

38 Since the appellant and the four trade unions which support him have been unsuccessful for the second time in all their claims and all their pleas in law, there is no need to apply the second paragraph of Article 122 and it is appropriate to decide that Mr Pincherle, the Unione Sindicale Euratom Ispra, the Sindacato Ricerca dell'Unione Italiana del Lavoro, the Sindacato Ricerca della Confederazione Generale Italiana del Lavoro and the Sindacato Ricerca della Confederazione Italiana Sindicati Liberi must bear their own costs and jointly and severally pay the Commission's costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

**1. Dismisses the appeal;**

**2. Orders the appellant and the interveners to pay their own costs and jointly and severally to pay the Commission's costs.**

Moitinho de Almeida Joliet

Rodríguez Iglesias Grévisse Zuleeg

Delivered in open court in Luxembourg on 22 December 1993.

J.-G. Giraud, J. C. Moitinho de Almeida

Registrar President of the Fifth Chamber