ings, and a plea concerning matters of fact of which the applicant had no knowledge when he lodged his application are thus admissible even though submitted for the first time in the proceedings following the referral of the case back to the Court of First Instance.

5. The existence of an occupational disease as the origin of an official's invalidity for the purposes of the second paragraph of Article 78 of the Staff Regulations must appear clearly and precisely from the conclusions of the Invalidity Committee provided for in Article 13 of Annex VIII to the Staff Regulations.

That is manifestly not the case where those conclusions find that there is little likelihood of any causal link between the disease giving rise to the official's invalidity and his performance of his duties.

## JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
23 March 1993 *

In Case T-43/89 RV,

**Walter Gill,** a former official of the Commission of the European Communities, residing at Stoke-by-Clare, United Kingdom, represented by Aloyse May, of the Luxembourg Bar, with an address for service in Luxembourg at the latter's Chambers, 31 Grand-Rue,

applicant,

supported by

**Union Syndicale-Luxembourg,** represented by J.-N. Louis, of the Brussels Bar, with an address for service in Luxembourg at the office of Fiduciaire Myson Sàrl, 1 Rue Glesener,

intervener,

* Language of the case: French.

**Commission of the European Communities,** represented by Sean van Raepenbusch, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Roberto Hayder, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the annulment of the Commission's decision of 20 May 1988 refusing to apply in the applicant's case the second paragraph of Article 78 of the Staff Regulations of Officials of the European Communities and fixing his invalidity pension on the basis of the third paragraph of Article 78 of those regulations,

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Fourth Chamber),

composed of: C. W. Bellamy, President, H. Kirschner and C. P. Briët, Judges,

Registrar: H. Jung,

having regard to the written procedure and further to the hearing on 14 March 1990,

having regard to the judgment of the Court of Justice of 4 October 1991,

having regard to the written procedure following referral of the case back to the Court of First Instance and further to the hearing on 8 December 1992,

gives the following

## Judgment

1 This judgment is given after referral of the case back to the Court of First Instance by judgment of the Court of Justice of 4 October 1991 in Case C-185/90 P *Commission* v *Gill* [1991] ECR I-4779 ('the judgment on appeal'), following an appeal by the defendant against the judgment of the Court of First Instance of 6 April 1990 in Case T-43/89 *Gill* v *Commission* [1990] ECR II-173 ('the judgment set aside'). In the mean time, an application for revision of the judgment on appeal, lodged by the applicant, has been dismissed by the Court of Justice as inadmissible, by order of 25 February 1992 in Case C-185/90 P-Rev *Gill* v *Commission* [1992] ECR I-993.

### Facts and previous procedure

2 Reference is made to the abovementioned judgments and order for the background to the dispute and the previous stages in the procedure.

3 Article 78 of the Staff Regulations of Officials of the European Communities reads as follows:

'An official shall be entitled, in the manner provided for in Articles 13 to 16 of Annex VIII, to an invalidity pension in the case of total permanent invalidity preventing him from performing the duties corresponding to a post in his career bracket.

Where the invalidity arises from ... an occupational disease ... the invalidity pension shall be 70% of the basic salary of the official.

Where the invalidity is due to some other cause, the invalidity pension shall be equal to the retirement pension to which the official would have been entitled at the age of 65 years if he had remained in the service until that age.

...'

4 The applicant worked in coal mining in the United Kingdom for 26 years, in jobs which required him to go down the mines regularly (on an almost daily basis for the first 23 years, then several times a month). He was recruited by the Commission of the European Communities in 1974 and for seven years held posts which occasionally (four to six times a year) required him to go down mines.

5 On 11 June 1981, the applicant submitted an application to be invalided out of the service by reason of an occupational disease within the meaning of the second paragraph of Article 78 of the Staff Regulations. A medical certificate accompanying that application certified an incapacity for work 'due to obstructive bronchial pneumonopathy probably connected with the inhalation of dust (minework)'.

6 After considerable administrative delays, the Invalidity Committee provided for in Article 13 of Annex VIII to the Staff Regulations drew up its report on 31 March 1987. In the mean time, the Commission's appointing authority had adopted, on 21 October 1983, a provisional decision granting the applicant an invalidity pension calculated on the basis of the third paragraph of Article 78 of the Staff Regulations.

7 In its report, the Invalidity Committee found that it was 'unlikely that the few mine visits since 1974 have contributed to the aggravation of the disease already under way' (p. 3 of the report) and unanimously reached the following conclusions (also on p. 3 of the report):

'Mr Walter Gill continues to suffer from permanent invalidity which is regarded as total ...

Mr Gill is not suffering from one of the diseases referred to in the European Communities' list of industrial diseases. However, the Invalidity Committee is of the opinion that there is a probable relationship of cause and effect and a sufficiently direct relationship with a specific and normal risk inherent in the duties performed

between 1948 and 1971. On the other hand, there is little likelihood of any relationship of cause and effect as regards the period from 1974 to 1981 when Mr Gill was an official of the Commission of the European Communities in Luxembourg.'

8 By decision of 4 November 1987, the Commission informed the applicant that there was insufficient evidence of the existence of an occupational disease within the meaning of the second paragraph of Article 78 of the Staff Regulations and that his invalidity pension would continue to be determined in accordance with the third paragraph of Article 78.

9 The applicant lodged a complaint against the decision of 4 November 1987, which was rejected by the Commission by decision of 20 May 1988. He then, on 18 August 1988, brought an action before the Court of Justice against the decision of 20 May 1988. That action was referred to the Court of First Instance by order of 15 November 1989.

10 In his application, the applicant claimed that the Court should:

— annul the decision of 20 May 1988;

— declare that the applicant is suffering total permanent invalidity arising from an occupational disease within the meaning of the second paragraph of Article 78 of the Staff Regulations;

— declare that the applicant is entitled to an invalidity pension equal to 70% of his basic salary, commencing on the day on which he was invalided out of the service, namely 1 November 1983;

— order the defendant to pay the costs.

11 In its defence, the Commission contended that the Court should:

— declare the application inadmissible or at least unfounded;

— make an order for costs in accordance with the law.

12 At the hearing on 14 March 1990, the Commission withdrew its claim that the application should be declared inadmissible.

13 In its judgment of 6 April 1990, the Court of First Instance annulled the Commission's decision of 20 May 1988.

14 The Commission appealed against that judgment to the Court of Justice. By order of 21 November 1990, the Court of Justice granted Union Syndicale-Luxembourg leave to intervene in support of Mr Gill.

15 In its judgment on appeal of 4 October 1991, the Court of Justice set aside the judgment of the Court of First Instance of 6 April 1990, referred the case back to the Court of First Instance and reserved the costs.

16 On 2 December 1991, the applicant lodged an application for revision of the judgment on appeal. That application was dismissed as inadmissible by the Court of Justice by order of 25 February 1992. In that order, the Court of Justice pointed out that, following the referral of the case back to the Court of First Instance, the proceedings were pending in their entirety before that court.

## Procedure following the referral of the case back to the Court of First Instance

17 In parallel to his application for revision of the judgment on appeal, the applicant had requested that the procedure before the Court of First Instance following the referral of the case back to that court should be suspended. That application was allowed by order of the Court of First Instance of 16 January 1992. Following the order of the Court of Justice of 25 February 1992, the procedure was resumed before the Court of First Instance on 25 March 1992.

18 In accordance with Article 119 of the Rules of Procedure of the Court of First Instance, the applicant, the defendant and the intervener each lodged a statement of observations.

19 Upon hearing the report of the Judge-Rapporteur, the Court decided to open a new oral procedure without any preparatory inquiry.

20 The hearing took place on 8 December 1992. The parties' representatives presented oral argument and answered questions put by the Court.

21 In his statement of observations, the applicant claims that the Court should:

— declare his statement of observations admissible as lodged within the prescribed period;

— annul the Commission's decision of 20 May 1988 refusing to apply in his case the second paragraph of Article 78 of the Staff Regulations and fixing his invalidity pension on the basis of the third paragraph of Article 78 of those regulations;

— confirm the judgment of the Court of First Instance of the European Communities of 6 April 1990;

— accordingly declare that the applicant is suffering from total permanent invalidity arising from an occupational disease within the meaning of the second paragraph of Article 78 of the Staff Regulations;

— declare that the applicant is entitled to an invalidity pension equal to 70% of his basic salary, commencing on the day on which he was invalided out of the service, namely 1 November 1983;

— order the defendant to pay the costs;

in the alternative:

— if the Court were to consider that it did not have sufficient information, order that a new Invalidity Committee be set up to decide on the causal link between the duties carried out by the applicant at the Commission of the European Communities and the deterioration of his state of health, or else, in accordance with Articles 65 and 70 et seq. of the Rules of Procedure, make an order specifying the facts to be proven and order an expert's report on the said causal link.

22 In its statement of observations, the defendant contends that the Court should:

— declare the application unfounded;

— make an order on costs in accordance with the law.

23 In its statement of observations, the intervener claims that the Court should:

— before ruling, order that a new Invalidity Committee be set up to decide on the causal link between the duties carried out by the applicant and the condition from which he suffers, taking into consideration, in particular, the medical certificate issued by Dr Schneider on 1 October 1991;

— reserve the costs in accordance with the law.

## The intervention

24 Union Syndicale-Luxembourg was granted leave to intervene in support of Mr Gill before the Court of Justice, under Article 123 of that Court's Rules of Procedure. Before the Court of Justice, Mr Gill claimed, *inter alia*, that the forms of order which he had sought at first instance should be granted. In its judgment on appeal, the Court of Justice did not rule on the intervener's costs but referred the case back to the Court of First Instance in its entirety. Union Syndicale-Luxembourg has therefore retained its status as intervener in the procedure following the referral of the case back to the Court of First Instance.

## The claims and pleas put forward by the parties at first instance

### *Admissibility*

25 In the second and third heads of claim submitted in his application (see paragraph 10 above), the applicant seeks certain legal declarations the import of which is in fact to find that certain of the pleas in law put forward in support of his application are well founded. It is not for the Court, when exercising its powers of review of the legality of a decision under Article 91 of the Staff Regulations, to make such declarations. Those heads of claim must therefore be dismissed as inadmissible.

*Substance*

26 Although the pleadings submitted by the applicant at first instance do not explicitly distinguish between the different pleas in law put forward, the Court considers that they are to be interpreted as relying on four pleas alleging, first, that the second paragraph of Article 78 of the Staff Regulations does not require a causal link to be proved between an occupational disease and the performance of duties with the Communities; secondly, that the terms of reference of the Invalidity Committee were imprecise; thirdly, that the Invalidity Committee's report contained an insufficient statement of reasons and/or was vitiated by errors of fact and law; and, fourthly, that the applicant was not informed of the results of the medical examinations which he underwent.

*The plea alleging that the second paragraph of Article 78 of the Staff Regulations does not require a causal link to be proved between an occupational disease and the performance of duties with the Communities*

27 In his reply, the applicant argued, in the alternative, that a distinction must be drawn between the conditions for the application of Article 73 of the Staff Regulations and those for Article 78. The second paragraph of Article 78 of the Staff Regulations, he claimed, does not require a causal link to be established between an occupational disease and duties carried out in the service of the Communities.

28 In its judgment on appeal (paragraphs 14 to 17), the Court of Justice held that the chronic bronchial pneumonopathy from which the applicant suffers cannot be regarded as an occupational disease within the meaning of the second paragraph of Article 78 of the Staff Regulations unless it is established that the disease itself, or its aggravation, arose in the course of or in connection with the performance of his duties with the Communities.

29 In the statement of observations which he submitted following the referral of the case back to the Court of First Instance, the applicant accepted that interpretation.

30 This plea in law must therefore be dismissed.

*The plea alleging that the terms of reference of the Invalidity Committee were imprecise*

Arguments of the parties

31 In his application, the applicant, referring to Case 189/92 *Seiler* v *Council* [1984] ECR 229, claimed that the terms of reference of the Invalidity Committee were insufficiently precise. In reply, the defendant pointed out that the Invalidity Committee itself defined the scope of its terms of reference by referring, on the first page of its report, to paragraph 10 of the judgment in Case 76/84 *Rienzi* v *Commission* [1987] ECR 315, according to which its task was to determine the cause of the incapacity for work and to verify whether the applicant's pathological condition had a sufficiently direct relationship with a specific and normal risk inherent in the duties which he performed. At the hearing, the intervener argued in favour of the applicant's view.

Findings of the Court

32 It is clear from its report of 31 March 1987 that the task assigned to the Invalidity Committee was to 'determine whether there is an occupational disease and, if so, what relationship it bears to the duties which Mr Gill performed with the Communities, to the exclusion of his previous occupational activities'.

33 It must first be noted that it is difficult for those terms of reference to bear a logical analysis; in particular, the Invalidity Committee could not decide whether Mr Gill's disease was an occupational disease without first examining what relationship it might bear to the duties which he had performed. Nevertheless, the Court notes that the report makes it clear that Invalidity Committee examined, within the confines of a medical assessment, the questions of the origin of the applicant's disease and of the possible relationship between that disease or its aggravation and the duties which he performed with the Commission. The way in which the Invalidity

Committee's terms of reference were phrased did not, therefore, prevent it from seeing clearly the scope of its task and carrying it out.

34 This plea must therefore be dismissed.

*The plea alleging that the Invalidity Committee's report contained an insufficient statement of reasons and/or was vitiated by errors of fact and law*

Arguments of the parties

35 The applicant argued in his application that the Invalidity Committee expressed itself in ambiguous and particularly vague terms in its report. He claims that it failed to mention the type of activity which he carried out with the Commission or the possible effects of that activity on his disease or its aggravation. Its conclusions contradicted those of previous medical reports, in particular those of Dr McLintock, who had taken part in the previous medical procedure. The defendant replied that, although it was not bound by previous medical reports or opinions, the Invalidity Committee had in fact taken note of the previous medical reports and that its medical assessment, reached in full knowledge of the medical records, was final and definitive.

Findings of the Court

36 Whilst the Court's powers of review may not extend to medical appraisals properly so-called, it nevertheless has jurisdiction to examine whether the opinion of an Invalidity Committee contains reasons enabling the reader to assess the considerations on which the conclusions which it contains were based (see, most recently, Case T-165/89 *Plug* v *Commission* [1992] ECR II-367, paragraph 75, and the case-law cited there).

37 It is clear from its report of 31 March 1987 that the Invalidity Committee saw the previous medical reports, heard and examined the applicant, paying attention in

particular to the evolution of his disease since 1981, took into consideration the results of examinations carried out by Dr Schneider, one of its members, who had been examining the applicant regularly, assessed the part played by the applicant's working conditions between 1948 and 1971 and considered the possibility that the mine visits which he had continued to make since 1974 might have contributed to the aggravation of his disease.

38 The report of the Invalidity Committee thus contains reasons enabling the reader to assess the considerations on which the conclusions which it contains were based.

39 As regards the allegation that the Invalidity Committee's conclusions contradict those of previous medical reports, it need only be pointed out that, in accordance with consistent case-law relating to Medical Committees, which may be applied by analogy to an Invalidity Committee, it is for the Committee to decide to what extent account should be taken of medical reports drawn up in advance (see, in particular, Case 2/87 *Biedermann* v *Court of Auditors* [1988] ECR 143, paragraph 19). The fact that the Invalidity Committee reached a different conclusion from that expressed by one of the doctors who had previously examined the applicant — namely Dr McLintock — is not in itself sufficient to cast doubt on the legality of the Invalidity Committee's conclusions.

40 This plea must therefore be dismissed.

*The plea alleging that the applicant was not informed of the results of the medical examinations which he underwent*

Arguments of the parties

41 In his written pleadings, the applicant claimed that, although the X-ray examinations of his chest carried out on his entering the Commission's service and

thereafter on a yearly basis revealed a pulmonary disease, he was never informed of that finding; that omission, as a result of which he was unable to undertake any preventive treatment which might have halted the progress of his disease, constitutes a fault on the part of the institution. He also maintained, however, that the medical examination carried out prior to his recruitment was not properly conducted inasmuch as it did not reveal that he was suffering from a serious disease or that he could only be assigned to duties compatible with his disease. The Commission replied, on the one hand, that the Invalidity Committee found that the applicant's chronic bronchial pneumonopathy had appeared in early 1974 and, on the other hand, that the 1973 X-ray mentioned in the Invalidity Committee's report did not reveal any specific disease, whether progressive or declared.

Findings of the Court

42 The question whether the administration may incur liability in respect of the communication to an official of information regarding his state of health is quite separate from the question whether he is suffering from an occupational disease within the meaning of the second paragraph of Article 78 of the Staff Regulations. The existence of a causal link between an occupational disease or its aggravation and the duties performed by an official with the Communities, as required under that provision, cannot be proved by a mere assertion by the official that he was not informed of the results of X-ray examinations carried out in the course of medical examinations which he underwent before or after entering the service, even if the truth of that assertion and the validity of the official's interpretation of those X-rays — which are challenged by the defendant in the present case — were to be established.

43 Furthermore, in paragraphs 19 and 20 of its judgment on appeal, the Court of Justice held that the fact that the Commission may have been aware of the applicant's disease, in the light of the results of his pre-recruitment medical examination, cannot affect the legal concept of 'occupational disease', even if that knowledge were to be considered to be established.

44 The applicant's assertions in support of this plea in law are therefore insufficient to call into question the legality of the medical conclusions of the Invalidity Committee or of the Commission's decisions of 4 November 1987 and 20 May 1988, taken on the basis of those conclusions.

45 This plea must therefore be dismissed.

**The claims and pleas put forward by the parties following the referral of the case back to the Court of First Instance**

46 In his statement of observations lodged following the referral of the case back to the Court of First Instance, the applicant put forward three further pleas in law relating, first, to the finding of the causal link required in the judgment set aside, secondly, to the finding of the causal link required in the report of the Invalidity Committee and, thirdly, to the occurrence of new facts.

*Admissibility*

47 Under Article 48(2) of the Rules of Procedure of the Court of First Instance, which also applies, by virtue of Article 120 of those Rules, to the procedure following the referral of a case back to the Court of First Instance, no new plea in law may be introduced in the course of proceedings unless it is based on matters of law or fact which have come to light in the course of the procedure. The Court must therefore determine whether the additional pleas and/or arguments submitted in the applicant's statement of observations following the referral of the case back to the Court remain within the context circumscribed by the application or, if not, whether they are pleas based on matters of law or fact which have come to light in the course of the procedure.

48 As explained in greater detail below, the first of these additional pleas concerns the findings of fact made by the Court of First Instance in the judgment set aside. The

second plea is based in part on observations made by the Court of Justice in its judgment on appeal and the remainder of it constitutes a reformulation of one of the arguments put forward by the applicant at the beginning of the proceedings, relating to the existence of the required causal link. The third plea concerns further medical assessments of which the applicant had no knowledge when he lodged his application.

49 These three pleas in law are therefore admissible.

**Substance**

*The plea based on the finding of a causal link in the judgment set aside*

Arguments of the parties

50 The applicant claims that, as the court with final jurisdiction to determine issues of fact, the Court of First Instance was entitled to find (in paragraph 26 of the judgment set aside) that the fact that the existence of the disease was known to the Commission from the outset and the fact that its aggravation was foreseeable constituted a 'set of concordant presumptions which [were] sufficient' to enable it to conclude that the aggravation of his disease arose in the course of or in connection with the performance of his duties in the service of the Communities. The defendant considers that this argument is irrelevant in the light of the legal considerations expressed by the Court of Justice in the judgment on appeal.

Findings of the Court

51 In its judgment on appeal, the Court of Justice set aside the judgment of the Court of First Instance in its entirety. As a result, the findings of fact contained in the judgment set aside no longer exist. The applicant's argument is therefore unfounded in so far as it is based on findings of fact made in the judgment set aside.

52 Even if it were to be assumed that this plea in law could be interpreted as requesting the Court to find again facts identical to those found in the judgment set aside, it must be borne in mind that the Court of Justice stressed, in paragraphs 22 to 26 of its judgment on appeal, that it is not for the Court to make findings of fact as to the origin of a disease.

53 This plea must therefore be dismissed.

*The plea based on the finding of a causal link in the report of the Invalidity Committee*

Arguments of the parties

54 The applicant challenges the statement made by the Court of Justice in paragraph 26 of its judgment on appeal, that 'the Invalidity Committee ... found no causal relationship between Mr Gill's condition and his duties with the Communities'. The Invalidity Committee merely stated that 'there is little likelihood of any relationship of cause and effect as regards the period from 1974 to 1981 when Mr Gill was an official of the Commission of the European Communities in Luxembourg.' At the most, he claims, the Invalidity Committee merely found that the relationship of cause and effect seemed to be in doubt and thus did not formally exclude any absence of a causal link. The existence of a probability of a causal relationship, no matter how slight, should always benefit the victim. In the defendant's view, the Invalidity Committee's report unambiguously concludes that there was no causal link between the condition suffered by Mr Gill and the duties he performed with the Communities. The applicant himself, it states, had never previously cast any serious doubt on that reading of the report.

Findings of the Court

55 The Court of Justice has consistently held that the existence of an occupational disease must appear clearly and precisely from the conclusions of the Invalidity Committee (see, in particular, Case 107/79 *Schuerer* v *Commission* [1980] ECR 1845, paragraph 7).

56 In the present case, the Invalidity Committee stated that it was 'unlikely that the few mine visits since 1974 have contributed to the aggravation of the disease already under way' and reiterated, in its conclusion, that there was 'little likelihood of any relationship of cause and effect as regards the period from 1974 to 1981 when Mr Gill was an official of the Commission of the European Communities in Luxembourg.'

57 The Invalidity Committee did not, therefore, find in its report of 31 March 1987 that there was any causal link or any occupational disease, and the plea based on the existence of such a finding must be dismissed.

*The plea based on the occurrence of new facts*

Arguments of the parties

58 During the course of the proceedings following the referral of the case back to the Court of First Instance, the applicant has referred to two medical certificates issued by Dr Schneider, who has examined him regularly since 1981. The first certificate, dated 24 February 1989, which had already been lodged at the hearing on 14 March 1990, states that the applicant's respiratory condition had remained stable since he had stopped working. The second, dated 1 October 1981, states: 'Since 1981 his irreversible lung condition has not deteriorated, in fact a slight amelioration has occurred. The time is now sufficiently long to say that his condition has stabilized. This stabilization can be attributed to his ceasing work and his medical treatment and way of life since ceasing work.'

59 In the applicant's submission, the attested stabilization clearly supports the affirmation that there was a causal link between the deterioration of his state of health

and the duties which he performed with the Commission. In the defendant's view, however, it is established that the Invalidity Committee took fully into account the evolution of the applicant's symptoms, even after the date of his retirement. Nor is it unusual that the state of health of a person invalided out should improve slightly after he ceases to carry out his duties, a factor in no way capable of having had a decisive influence on the contested opinion of the Invalidity Committee.

60 In the view of the intervener, which supports the applicant's position, those certificates demonstrate at the very least that a new Invalidity Committee should be appointed.

Findings of the Court

61 The Court of Justice has consistently held that the conclusions duly arrived at by an Invalidity Committee may not be disputed in the absence of any new matter of fact arising. That new matter of fact may not consist in the production by the applicant of medical certificates calling in question the conclusions of the Invalidity Committee but putting forward no ground which would suggest that the committee did not have knowledge of the principal facts contained in the applicant's medical records (*Schuerer*, cited above, paragraphs 10 and 11).

62 In the present case, as has already been found (see paragraph 37 above), it is clear from its report that the Invalidity Committee, of which Dr Schneider was the member appointed by the applicant himself, heard and examined the applicant, paying attention in particular to the evolution of his disease since 1981, and took into consideration the results of examinations carried out by Dr Schneider, who had been examining him regularly. It must further be stressed that Dr Schneider signed the Invalidity Committee's report without making any reservation.

63 In those circumstances, the certificates lodged by the applicant cannot be considered to constitute a new matter of fact. They do not provide any evidence suggesting that the Invalidity Committee did not have knowledge of the principal facts contained in the applicant's medical records and thus cannot call in question the committee's conclusions. The plea based on them must therefore be dismissed.

*The requests for a new Invalidity Committee to be set up or a medical expert's report to be ordered to examine the causes of the applicant's disease*

64 Even if it is assumed that the first of these requests, made by the applicant and the intervener, is admissible, there is no need, in the light of the foregoing considerations, to order a new Invalidity Committee to be set up. Nor is there any need to order a medical expert's report, as would be possible under the Rules of Procedure.

65 It follows from all the foregoing that the application must be dismissed in its entirety.

## Costs

66 The judgment of the Court of First Instance of 6 April 1990, which ordered the Commission to pay the costs, has been set aside. In its judgment on appeal, the Court of Justice reserved the costs. In its order of 25 February 1992 on the application for revision of the judgment on appeal, the Court of Justice ordered the parties to bear their own costs. This Court must therefore now rule on all the costs relating to the various stages of the procedure, with the exception of those relating to the application for revision of the judgment on appeal.

67 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. However, under Article 88 of those Rules, in proceedings between the Communities and their servants the institutions are to bear their own costs. All the parties, including the intervener, must therefore be ordered to bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby:

**1. Dismisses the application;**

**2. Orders all the parties, including the intervener, to bear all their own costs relating to the proceedings before both the Court of First Instance and the Court of Justice, with the exception of those on which the Court of Justice has already ruled.**

Bellamy Kirschner Briët

Delivered in open court in Luxembourg on 23 March 1993.

H. Jung
Registrar

C. W. Bellamy
President