JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
25 February 1992 *

In Case T-42/90,

Sergio Bertelli, a member of the temporary staff of the Commission of the European Communities, employed at the Ispra establishment of the Joint Research Centre, represented by Giuseppe Marchesini, Avvocato, with the right of audience before the Corte di Cassazione della Repubblica Italiana (Italian Court of Cassation), with an address for service in Luxembourg at the Chambers of Ernest Arendt, 4 Avenue Marie-Thérèse,

applicant,

supported by

Unione Sindacale Euratom Ispra,

Sindacato Ricerca della Confederazione Generale Italiana del Lavoro,

Sindacato Ricerca dell'Unione Italiana del Lavoro,

Sindacato Ricerca della Confederazione Italiana Sindacati Liberi,

trade-union organizations under Italian law, represented by Giuseppe Marchesini, Avvocato, with the right of audience before the Corte di Cassazione della Repubblica Italiana, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 4 Avenue Marie-Thérèse,

interveners,

v

Commission of the European Communities, represented initially by Sergio Fabro and Lucio Gussetti, members of its Legal Service, acting as Agents, and subsequently by Vittorio di Bucci, also a member of the Legal Service, acting as

* Language of the case: Italian.

Agent, assisted by Alberto dal Ferro, of the Brussels Bar, with an address for service in Luxembourg at the office of Roberto Hayder, a representative of the Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for a declaration that the upper limits and the rates of reimbursement set by the Rules on Sickness Insurance for Officials of the European Communities are unlawful in as far as treatment provided in Italy is concerned, inasmuch as those ceilings infringe the principle of and the criteria for insurance cover set out in Article 72 of the Staff Regulations, and the principle of non-discrimination on which the whole of Title V of the Staff Regulations is based, and for the annulment of the decision regarding reimbursement to the applicant of medical expenses incurred in Italy,

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

composed of: R. García-Valdecasas, President, D. A. O. Edward and R. Schintgen, Judges,

Registrar: B. Pastor, Administrator,

having regard to the written procedure and further to the hearing on 14 January 1992,

gives the following

Judgment

Facts

1 The applicant, Sergio Bertelli, a member of the temporary staff of the Commission of the European Communities employed at the Ispra Establishment of the Joint Research Centre ('JRC Ispra'). In his capacity as a member of the temporary staff of the Commission, Mr Bertelli is affiliated to the Joint Sickness Insurance Scheme of Officials of the European Communities ('the Joint Scheme'). On 22 September

1989, he underwent two surgical operations, coming under categories B and AA respectively in the list of surgical operations classified by category, as set out in Annex II to the Rules on Sickness Insurance for Officials of the European Communities ('the Insurance Rules').

2 The applicant sent to the office responsible for settling claims at Ispra an application for reimbursement of the medical expenses incurred as a result of that surgical operation. In response, the applicant received a settlement statement, numbered '3', drawn up on 12 December 1989, informing him that in respect of the category B surgical operation, he would be reimbursed a sum equivalent to BFR 26 180 which was at the time the maximum amount reimburseable under point II 'surgical operations' of Annex I to the Insurance Rules, and that in respect of the category AA surgical operation he would be reimbursed a sum equivalent to BFR 11 390 which was, and still is, the maximum amount reimbursable for that type of medical treatment. The amount reimbursed in both cases amounted to 13% of the expenses actually incurred, which had amounted to BFR 142 525 for the category B operation and BFR 62 007 for the category AA operation.

3 By memorandum of 1 March 1990, registered on 6 March 1990, Mr Bertelli submitted a complaint against the settlement statement under Article 90(2) of the Staff Regulations of Officials of the European Communities ('the Staff Regulations').

4 On 3 April 1990, the Ispra office responsible for settling claims, in the course of examining Mr Bertelli's complaint, issued an Opinion which confirmed the cost of his surgical operation and the classification of the operation made by the office's medical officer, and concluded that the office's view with regard to reimbursement had not altered.

5 On 18 June 1990, the Joint Scheme's Central Office gave an Opinion on the complaint in which it stated that it agreed with the decision taken by the Ispra office responsible for settling claims.

6 On 5 July 1990, consulted by the administration under Article 16(2) of the Insurance Rules, the Joint Scheme's Management Committee issued Opinion No 13/90 on Mr Bertelli's complaint, in which it considered that the decision taken by the Ispra office responsible for settling claims should be confirmed. It stated however that it had started reviewing the scales and ceilings set out in the Insurance Rules, both generally and from the point of view of the principle of equality of treatment of officials posted to different places of employment, that that review had not yet culminated in proposals capable of being adopted by the competent authorities and that, in the mean time, the rules in force were to be applied.

Procedure

7 It was in those circumstances that, by an application lodged at the Registry of the Court of First Instance on 4 October 1990, Mr Bertelli brought the present action, which has been registered under serial number T-42/90.

8 By letter of 22 November 1990 the Commission communicated to him its decision of 14 November 1990 not upholding his complaint. The Commission added that its decision would be re-examined in the light of the judgment which the Court was to give in Case T-110/89 *Pincherle* v *Commission.*

9 By order of 28 January 1991, the Court granted Sindacato Ricerca dell'Unione Italiana del Lavoro, Sindacato Ricerca della Confederazione Generale Italiana del Lavoro, Unione Sindacale Euratom Ispra and Sindacato Ricerca della Confederazione Italiana Sindacati Liberi leave to intervene in support of the form of order sought by the applicant. The interveners lodged their written observations at the Court Registry on 16 April 1991.

10 The Court decided to take measures of organization of procedure consisting of putting questions to the parties and requesting them to lodge certain documents. In response to the Court's request, the Commission lodged, on 11 December 1991,

the Opinion of 3 April 1990 of the office responsible for settling claims in Ispra, the Opinion of 18 June 1990 of the Central Office and the text of the amended version of the Insurance Rules which entered into force on 1 December 1991.

Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Fourth Chamber) decided to open the oral procedure.

The oral procedure took place on 14 January 1992. The representatives of the parties presented oral argument and replied to the questions put to them by the Court. The Commission lodged Opinion No 7/91 of 24 April 1991 of the Management Committee, on equality coefficients applying to reimbursement ceilings for certain services, the Report of 4 December 1991 of the Central Office and the Memorandum of 6 January 1992 addressed to the Heads of Administration by the Secretariat of the Heads of Administration by which they were informed that the quality coefficients had been approved and had been in force since 1 January 1991.

The applicant claims that the Court should:

— declare that the upper limits and the rates of reimbursement laid down in an annex to the Joint Rules are unlawful with regard to the treatment at issue administered in Italy, in so far as they infringe the principle and criteria of social insurance cover contained in Article 72 of the Staff Regulations and the principle of non-discrimination on which the whole of Title V of the Staff Regulations is based;

— annul the measure by which reimbursement was made to him of expenditure incurred in respect of the treatment at issue;

— order the defendant to pay the costs.

14 The defendant contends that the Court should:

— dismiss the action;

— make an appropriate order as to costs.

15 The interveners claim that the form of order sought by the applicant should be granted and that the Commission should be ordered to pay the interveners' costs.

Substance

16 In support of his application the applicant puts forward two pleas in law alleging, first, infringement of Article 72 of the Staff Regulations and, secondly, breach of the general principle of non-discrimination inherent, according to the applicant, in the provisions of Title V of the Staff Regulations.

17 Before setting out the parties' arguments, the provisions constituting the general legal framework of these proceedings should be recalled. In that connection, it should be stated that the present case, like Case T-110/89 *Pincherle* v *Commission*, which the Court has already decided, is closely linked to the antecedents and the *travaux préparatoires* which led to the revision of the Insurance Rules. In considering the course of that revision procedure, the Court took account, of its own motion, of matters contained in the file in Case T-110/89.

18 Article 72(1) of the Staff Regulations provide 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 rate is to be increased to 85% for visits and consultations, surgical operations, hospitalization, pharmaceutical products, laboratory tests, radiology, analyses and prostheses on medical prescription (with the exception of

dental prostheses). Paragraph 3 of the article provides that 'where the total expenditure not reimbursed for any period of twelve months exceeds half the official's basic monthly salary or pension special reimbursement shall be allowed by the appointing authority, account being taken of the family circumstances of the person concerned, in manner provided for in the rules referred to in paragraph 1.'

In implementation of the provisions of Article 72 of the Staff Regulations, the institutions of the Communities adopted the Rules on Sickness Insurance for Officials of the European Communities, cited above. Those rules set ceilings for reimbursement of the medical expenses set out in the annexes thereto. In particular, point II of Annex I sets the maximum reimbursement for Category B surgical operations at BFR 26 180. Articles 8(1), (2) and (5) of the Insurance Rules in force at the material time provided as follows:

'1. When the expenses incurred are for treatment of the member or of a person covered by his insurance in a country where the cost of medical treatment is particularly high and the portion of expenses not reimbursed by the Scheme places a heavy financial burden on the member, special reimbursement may be granted, on the basis of the opinion of the medical officer of the office responsible for settling claims, who shall assess the cost of medical treatment, either by decision of the appointing authority of the institution to which the member belongs or by decision of that office if the requisite powers have been delegated to it by the said authority.

2. When the non-reimbursed portion of the expenses covered by the scales annexed to these Rules which are incurred by a member in respect of himself and in respect of persons covered by his insurance exceeds during any twelve-month period half the average basic monthly salary or pension or, in the case of the members referred to in Article 2, points 3, 5, 6, 7, 8, 12, 17, 18, 19 and 20 of these Rules, half the average allowance received during the said period, the special reimbursement provided for in Article 72(3) of the Staff Regulations shall be determined as follows:

The non-reimbursed portion of the above expenses which is in excess of half the average basic monthly salary, pension or allowance shall be reimbursed at the following rates:

— 90% in the case of a member by whose insurance no other person is covered;

— 100% in other cases.

(...)

5. Decisions on requests for special reimbursement shall be taken by:

— either the appointing authority of the applicant's institution, on the basis of an opinion delivered by the office responsible for settling claims in accordance with general criteria adopted by the Management Committee after consulting the Medical Council for determining whether the expenses incurred are excessive;

— or the office responsible for settling claims, on the basis of the same criteria, where it has been empowered by the appointing authority to do so.'

20 On 9 May 1983, the local staff committee at the JRC in Ispra issued a proposal for adapting the Insurance Rules for staff posted to Ispra, which stated, *inter alia*, that it was necessary to adapt the reimbursement ceiling for surgical operations, pointing out that 'the reimbursement scales were not commensurate with the costs of medical treatment and health expenses in Italy', suggested the possibility of adapting the ceilings by weighting them according to the place of employment, and proposed a new maximum reimbursement of BFR 40 800 for Category B surgical operations.

21 On 20 December 1990, the Joint Scheme's Management Committee issued Opinion No 35/90 on the revision of the Insurance Rules. It considered it

necessary to increase the maximum reimbursements for certain services. It further stated that, as far as was possible, those maximum amounts should be set so that at least 90 out of 100 medical and hospital services actually provided to persons affiliated to the scheme and to their dependants could be covered up to the rate of 80% or 85% respectively, as provided by Article 72 of the Staff Regulations and by the Insurance Rules. The Joint Scheme's Management Committee observed that the average rate of reimbursement of services — apart from those which the Insurance Rules provide are to be reimbursed at the rate of 100% — had amounted in 1989, in the case of the Brussels office responsible for settling claims, to 80.01%; in the case of the Luxembourg office responsible for settling claims, to 80.79%; and in the case of the Ispra office responsible for settling claims, to 72.73%. In particular, with regard to the trend for the cost of surgical operations, especially those in Categories B and D, the Opinion pointed out that there had been a significant, steady increase, due to the use of new techniques and of more efficient equipment. It noted that the maximum amount of reimbursement of Category B surgical operations had not been changed since 1 January 1982 (apart from the technical change made on 28 July 1983, resulting from the increase in the rate of reimbursement from 80% to 85%) and that the average yearly increase for such treatment came to 7.86%, taking all currencies into account, which justified the increase, at first sight a large one, in the maximum amount of reimbursement for such treatment. The Opinion included a series of tables breaking down the prices paid by persons affiliated to the sickness insurance fund for certain types of treatment and the number of persons covered at the 85% rate. With regard to expenses incurred in Italian lire for Category B operations, it appeared that the 'ceiling' in force enabled the cover laid down in the Staff Regulations to be attained in the case of only 282 out of every 1 000 requests for reimbursement. The Management Committee proposed that the maximum reimbursable amount for Category B operations should be raised from BFR 26 180 to BFR 37 273 with effect from 1 January 1990. Furthermore, it considered that, in order to comply with the principle of equality of treatment, the administrative authorities of the institutions should, in so far as it was necessary, adopt, under Article 8 of the Insurance Rules, coefficients for countries in which the cost of medical care was particularly high.

On 24 April 1991 the Management Committee of the Joint Scheme issued Opinion No 7/91 in which it proposed laying down equality coefficients applicable to the maximum amounts for the reimbursement of certain treatment the cost of which is incurred in Community currencies other than Belgian or Luxembourg francs. Those coefficients were to be different for each type of treatment, in each currency, in order to ensure that reimbursement was at the rate laid down in the Staff Regulations in nine cases out of ten and, accordingly, to achieve equal treatment of services paid for in all Community currencies. The Management

Committee proposed that such coefficients should be introduced with effect from the date chosen for entry into force of revision of the maximum amounts for reimbursement, covered by Opinion No 35/90.

23 The Insurance Rules were revised on 1 December 1991 with effect from 1 January 1991. The ceilings for the reimbursement of several medical expenses set out in Annexes I and IV were amended in accordance with the proposals issued by the Management Committee in Opinion No 35/90 of 20 December 1990 (see paragraph 21, above). In particular, the maximum reimbursable amount for Category B surgical operations was raised to BFR 37 273. Furthermore, Article 8(1) of the Insurance Rules was replaced by the following:

'1. Special reimbursements may be granted when the expenses incurred are for treatment of the member or of a person covered by his insurance in a country where the cost of medical treatment is particularly high and the portion of expenses not reimbursed by the Scheme places a heavy financial burden on the member.

Under the third paragraph of Article 110 of the Staff Regulations, the institutions shall consult each other concerning the application of this paragraph on the basis of a report from the Central Office accompanied by the opinion of the Management Committee.

This paragraph shall not apply to insured persons covered by the supplementary sickness insurance provided for in Article 24 of Annex X to the Staff Regulations.'

24 The preamble to the new Rules refers to the fact that certain reimbursement ceilings have not been revised since 28 July 1983 and that observance of the principle of equality of treatment for all members, regardless of where expenditure is incurred, requires that Article 8 of the Rules be adapted so that the institutions may proceed with appropriate reimbursement of the said expenditure.

On 4 December 1991, the Joint Scheme's Central Office proposed to the Heads of Administration that they should approve the equality coefficients applying to the reimbursement ceilings set by the Insurance Rules, in accordance with the scheme proposed in the Management Committee's Opinion No 7/91.

Further to the Report of the Joint Scheme's Central Office, the Heads of Administration, in accordance with the second subparagraph of the revised Article 8(1) of the Insurance Rules, approved, with effect from 1 January 1991, equality coefficients applicable to the new ceilings which had come into force on 1 December 1991. The equality coefficient applying to the existing ceiling for Category B surgical operations the cost of which is expressed in Italian lire was set at 223%.

The first plea, based on infringement of Article 72 of the Staff Regulations

The applicant does not deny that Article 72 of the Staff Regulations fixes the upper limit of the reimbursement to which the official and the members of his family covered by the Joint Scheme are entitled or that Article 72 provides for the detailed implementing rules to be determined in the Insurance Rules drawn up by agreement between the institutions of the Communities. However, in his opinion, it is undeniable that cover for medical expenses must, at the very least, aim at ensuring reimbursement of 80% or 85% of the expenses incurred, even though it has to be accepted that the implementing provisions have to lay down certain quantitative criteria.

He states that, even though it is gradually becoming necessary in national schemes to make insured persons bear a modest part of the expenditure, a management of the scheme which, in the absence of the provision of direct assistance, entails reimbursement rates far removed from the concept and aim of 'social insurance cover', is entirely unlawful.

He considers that the general provisions for implementing Article 72 of the Staff Regulations, namely the Insurance Rules and, in the present case, Annex I to those

Rules, must be regarded as unlawful whenever they establish reimbursement ceilings which, in the circumstances, are very far removed from the rates of 80% and 85% adopted in Article 72 itself. In the applicant's opinion such results call in question the very principle of social insurance cover laid down in Article 72 of the Staff Regulations.

30 The Commission observes that Article 72 of the Staff Regulations does not confer on persons covered by the Joint Scheme the right to obtain reimbursement of 80% or 85% according to the type of services provided. Those rates represent merely the maximum amounts that can be reimbursed and consequently do not imply any obligation to reimburse that proportion to members and persons covered by their insurance in every case.

31 The Commission adds that the Joint Scheme is based on a system of reimbursement of medical expenses which can only function with the assistance of members' contributions and consequently has only limited resources. Since it is in the general interests of insured persons to obtain the best possible reimbursement of medical expenses incurred, it is necessary, in order to arrive at an optimum situation, for limits to be laid down by the Staff Regulations and the relevant Rules.

32 The Court considers, as it has already held in its judgment in Case T-110/89 *Pincherle* v *Commission* [1991] ECR II-635, that it is not possible to infer from the terms of Article 72 of the Staff Regulations that it confers on persons entitled to benefit under the Joint Scheme the right to obtain reimbursement of 80% or 85% of the expenses incurred, according to the type of service provided. Those rates fix the maximum reimbursable amount. They are not minimum rates and therefore do not imply any obligation to reimburse members and persons covered by their insurance to the extent of 80% or 85% in all cases.

33 The Court considers that, in the absence of ceilings for reimbursement laid down in the Staff Regulations, the institutions are empowered to fix appropriate ceilings in the implementing provisions whilst observing the principle of social insurance cover underlying Article 72 of the Staff Regulations, all the more so because the scheme's resources are limited to the contributions from members and the institutions and that the scheme's financial balance has to be safeguarded.

As regards the applicant's argument to the effect that the reimbursement ceilings fixed by the implementing provisions are unlawful in so far as, as in the case of the contested reimbursement, they are far removed from the rates of 80% and 85% adopted in Article 72 of the Staff Regulations, the Court observes that, in the present case, reimbursement was effected at the rate of 31.5% of the expenses incurred and that such a rate of reimbursement is indeed far removed from the rates of 80% and 85% adopted in Article 72 of the Staff Regulations. It should therefore be considered whether, as the applicant maintains, reimbursement at a rate so far removed from 80% or 85% can cause ceilings fixed by joint agreement of the institutions to be regarded as unlawful and unfair.

The Court considers that that argument cannot be upheld because the Staff Regulations and the Insurance Rules, by providing for certain corrective measures, presuppose *ipso facto* that, in certain cases, medical expenses will not be reimbursed at a rate of 80% or 85%. Article 72(3) of the Staff Regulations provides for special reimbursement where the total expenditure not reimbursed for any period of 12 months exceeds half the official's basic monthly salary or half pension paid to the member. Similarly, Article 8(1) of the Insurance Rules provides that special reimbursement may be granted when the expenses were incurred in a country where the cost of medical treatment is particularly high and the portion of expenses not reimbursed by the Scheme places a heavy financial burden on the member.

The applicant and the interveners have themselves observed that Article 8(1) of the Insurance Rules affords a possible remedy in cases in which the medical expenses incurred are particularly high; they consider, however, that that possibility is neutralized by the provisions of the Interpretation of Sickness Insurance Rules which, for the purpose of defining the scope of Article 8(1), provide as follows:

'Article 8(1) is not [in principle [1]] applicable in Community countries.

The countries where the cost of medical treatment is particularly high have been determined by the administrative heads of the institutions. At present they are in the USA, Canada, Chile, Uruguay, Japan and Venezuela.

1 — Translator's note: the French and Italian texts (Italian being the language of this case) contain respectively the terms 'en principe' and 'in linea de principio'. The English text contains no corresponding term.

Expenses incurred in those countries will be reimbursed up to double the maximum amounts set out in the Annexes to the Rules, where appropriate, on a proposal from the Central Office and subject to approval by the Management Committee.

The condition of "a heavy financial burden" is deemed to be met when the portion of expenses not reimbursed amounts to 60% of the expenses incurred.

For the purposes of this paragraph "expenses incurred" are assessed item by item.'

The applicant and the interveners argue that those interpretation rules preclude the application of Article 8(1) in Community countries and are unlawful because they are contrary to Article 8.

37 On that point, the Commission notes that the application to Community countries of the mechanism of special reimbursement provided for in Article 8(1) of the Insurance Rules, in cases where the portion of expenses not reimbursed is substantial, is in no way precluded by the relevant Interpretation Rules, as was decided by the Court in its judgment in Case T-110/89 *Pincherle* v *Commission*, cited above. It also states, moreover, that the applicant has made no request for reimbursement under Article 8 and, consequently, has no interest in having recourse to arguments based on the application of that provision.

38 In that connection, the Court notes that Article 8(5) of the Insurance Rules makes any special reimbursement conditional on obtaining prior authority and on compliance with a special procedure. In the present case, the applicant did not request, prior to bringing this action, the benefit of the provisions of Article 8(1) of the Insurance Rules. However, in the context of an action brought under Article 91 of the Staff Regulations, the Court has jurisdiction only to review the lawfulness of an act adversely affecting an official and cannot, in the absence of an

individual implementing measure, rule in the abstract on the legality of a provision of a general nature (judgment of the Court in Case T-110/89 *Pincherle* v *Commission*, cited above). It follows that in the present case, in the absence of an individual decision relating to the application of Article 8(1) of the Insurance Rules, the applicant and the interveners may not plead that the provisions interpreting that article are unlawful.

However, the Court considers it appropriate to point out, as it has already held in its judgment in Case T-110/89 *Pincherle* v *Commission*, cited above, that neither the wording of the Staff Regulations nor that of Article 8(1) of the Insurance Rules allow the conclusion that Community countries are excluded from the scope of the provisions of the said Article 8(1). The use of the expression 'in principle' in the interpretation provisions relating to it enable the application of Article 8(1) to be extended also to the Member States of the Community. The Court observes, furthermore, that the interpretation provisions which entered into force on 1 January 1991 take into consideration the situation of Member States in which the cost of medical treatment is particularly high and, pursuant to Article 8(1), laid down correcting coefficients raising the reimbursement of certain services (see the provisions interpreting Annex I, point 1). Article 8(1) of the Insurance Rules has therefore been applied to the Member States of the Community.

The applicant also drew attention to Article 8(2) of the Insurance Rules, which provides for special reimbursement where the non-reimbursed portion of the expenses exceeds, during any twelve-month period, half the average basic monthly salary. He maintains that its content is neutralized by the relevant interpretation provisions and according to which 'expenses will be reimbursed up to double the maximum amounts specified in the Annexes to the Rules . . . '. He argues that, apart from the important restriction contained in Article 8 of the Rules, which limits the reimbursement to the portion of the expenses which exceed half the average monthly salary of the member and from which it therefore follows that a substantial amount is never recoverable, the interpretation provisions introduce another limit for reimbursement, namely double the maximum amounts laid down. He considers that, as a result, the interpretation provisions are unlawful.

41 In that connection, the Court reiterates, that, in accordance with Article 8(5) of the Insurance Rules, any special reimbursement must have been requested in advance and is subject to compliance with a specific procedure, which was not the case here. In those circumstances, the applicant's argument based on the unlawfulness of the interpretation provisions relating to Article 8(2) of the Insurance Rules cannot, in any event, be invoked, since it does not relate to an illegality vitiating the contested decisions, and, therefore, is inadmissible in the context of an action brought under Article 91 of the Staff Regulations.

42 The Court further observes that the new interpretation provisions, which entered into force on 1 January 1991, no longer contain the limitation contested by the applicant.

43 It therefore follows that the plea alleging infringement of Article 72 of the Staff Regulations must be rejected.

The second plea, based on infringement of the general principle of non-discrimination inherent in the provisions of Title V of the Staff Regulations

44 The applicant states that the provisions of Title V of the Staff Regulations, entitled 'Emoluments and Social Security Benefits of Officials', seek to ensure equal remuneration and social security benefits for officials of the various institutions, regardless of their place of employment or the place where they have to incur medical expenses.

45 Accordingly, he considers that it is clear that members who have to obtain treatment in Italy, where medical services are more expensive, are treated less favourably than those who, because of their employment or residence in a different place, are able to obtain the same services at cheaper rates. The fact that reimbursement ceilings, which apply to all officials, are calculated on the basis of the rates applied by Belgian practitioners, results in a difference in treatment in favour

of those who, for reasons of employment or residence, are able to obtain less expensive medical services in Belgium or other Member States.

The applicant claims that Annex I to the Joint Rules is therefore unlawful with regard to the discrimination which it entails amongst the staff of the Communities, a situation which is contrary both to the general principle of non-discrimination and to the provisions of Title V of the Staff Regulations, which aim to guarantee equality of treatment for all officials as regards their emoluments and social security benefits.

Moreover, the applicant argues that the new ceilings and equality coefficients which apply to expenses incurred in Italian lire entered into force with effect from 1 January 1991 and therefore cannot relate to expenses incurred, as in this case, before that date.

The defendant acknowledges that considerable increases in the cost of certain medical services have recently been recorded in Italy and the United Kingdom. It adds that that is precisely the reason for which the institutions approved new higher reimbursement ceilings and the introduction of equality coefficients applying to those ceilings.

The defendant states that the institutions began to take steps with a view to resolving the problem as early as 1987 when they undertook a thorough revision of the Insurance Rules. However, that revision has had to pass through a number of stages and to comply with institutional procedures prescribed by the rules in force and which the institutions could not disregard. At the same time, it proved necessary to adopt the appropriate financial measures for putting an end to the operating losses recorded in the most recent financial years and, above all, to cope with the increase in costs brought about by the new proposals for increasing corrective coefficients.

50 The Court considers that, faced with a situation involving inequality affecting members and persons covered by their insurance under the Joint Scheme who, in some Member States of the Community, bear the costs of higher medical expenses, the institutions were under an obligation to take steps to provide a remedy. It is therefore necessary to define the nature and scope of that obligation in the form of a reply to the question whether the defendant institution was under a duty to bring that inequality to an end forthwith by immediately increasing the reimbursements allowed to the officials concerned or whether, on the other hand, its obligation was limited to acting in concert with the other institutions for the purpose of undertaking an appropriate revision of the scheme.

51 The Court considers that the first approach cannot be accepted, in so far as the Commission is obliged to comply with the rules in force and is not authorized to act outside the legal framework defined by the Insurance Rules. In particular, the Commission may not apply reimbursement ceilings different from those fixed by the Insurance Rules, which can only be amended by agreement between the institutions recorded in accordance with Article 32 of those Rules. It should be added that this is all the more necessary in the context of a scheme whose resources are limited to contributions from members and the institutions and whose financial equilibrium must necessarily be safeguarded.

52 The Court therefore considers, that the defendant was under a duty to undertake and to pursue diligently the necessary concertation with the other institutions with a view to an appropriate revision of the scheme.

53 In that connection, the Court observes, first, that as early as 9 May 1983, the local staff committee of the JRC at Ispra had issued a proposal in favour of increasing the reimbursement ceiling for Category B surgical operations (see paragraph 20, above); secondly, that it was only on 20 December 1990 (see paragraph 21, above), that the Management Committee of the Joint Scheme issued Opinion No 35/90, in which, on the one hand, it proposed, *inter alia*, to raise the reimbursement ceiling to BFR 37 273 for Category B surgical operations, and, on the other hand, it invited the administrative authorities of the institutions to adopt, in so far as was necessary, coefficients for countries in which the cost of medical treatment is particularly high, in order to comply with the principle of equal

treatment; thirdly, that agreement between the institutions on the revision of the Insurance Rules, which entered into force on 1 December 1991 and took effect as from 1 January 1991 (see paragraphs 23, 24, 25 and 26, above), was not reached until November 1991.

Assuming that the period of time which elapsed in this manner could be described as excessive, it would be necessary to examine the possible implications for the present case. From that point of view, the Court notes that the members, including the applicant, who had to bear medical expenses which were not covered at the rate of 80% or 85% had the option of requesting the special reimbursement provided for in Article 8(1) of the Insurance Rules, which confers considerable discretion to that effect on the appointing authority. The Court considers that only if the procedure laid down by Article 8 of the Insurance Rules had not enabled the differences between the amounts of medical expenses borne by members of the Joint Scheme in the different Member States of the Community to be entirely offset and that procedure had been exhausted before the action was brought, would it be necessary to consider the question of compensation for loss stemming from the possible unjustified continuation of a situation of inequality. However, since the remedy afforded by Article 8 was not exhausted in the present case, it is not appropriate to consider that question.

It follows from all the foregoing considerations that this plea must also be rejected.

It follows that the application must be dismissed in its entirety.

Costs

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. However, Article 88 of those Rules provides that in proceedings brought by servants of the Communities, the institutions are to bear their own costs. Moreover, under Article 87(3), where the circumstances are exceptional, the Court

of First Instance may order that the costs be shared. In that connection, it should be noted that these proceedings arose because of a situation of inequality affecting certain members and persons covered by their insurance, and that the defendant institution recognized that it was necessary to remedy that situation (see paragraph 48, above), which was also noted in the statement of reasons for the new Rules (see paragraph 24, above). It would therefore seem equitable to order the defendant institution to bear, in addition to its own costs, one half of the costs of the applicant and interveners. The applicant and the interveners are each to bear one half of their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby:

1. **Dismisses the application;**

2. **Orders the Commission to bear its own costs and one half of those of the applicant and the interveners, each of whom is ordered to bear the other half of his, or its, costs.**

García-Valdecasas Edward Schintgen

Delivered in open court in Luxembourg on 25 February 1992.

H. Jung
Registrar

R. García-Valdecasas
President