The fixing in the implementing provisions of upper limits for reimbursement in order to safeguard the financial equilibrium of the sickness insurance scheme does not constitute an infringement of Article 72 of the Staff Regulations provided that, in establishing those limits, the Community institutions observe the principle of social insurance cover underlying that article.

2. In proceedings brought under Article 91 of the Staff Regulations the Court has jurisdiction only to review the lawfulness of an act adversely affecting the applicant and is not entitled, in the absence of an individual implementing measure, to rule in the abstract on the lawfulness of a provision of a general nature.

3. The principle of equal treatment imposes on the Community institutions an obligation to take steps to provide a remedy for a situation of inequality affecting persons covered by a sickness insurance scheme who, in certain Member States, bear the cost of more expensive medical services.

However, the institutions cannot be required to increase immediately the reimbursements allowed to the officials concerned, all the more so since the financial equilibrium of the scheme must be safeguarded. On the other hand, it is for the institutions to act in concert, with all the diligence necessary, in order to achieve an appropriate revision of the rules relating to sickness insurance cover which ensures that the principle of equal treatment is observed.

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
12 July 1991 *

In Case T-110/89,

Giorgio Pincherle, an official of the European Communities, residing at Brussels, represented by Giuseppe Marchesini, Advocate with the right of audience before the Italian Corte di Cassazione, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 4 Avenue Marie-Thérèse,

applicant,

supported by

* Language of the case: Italian.

Unione Sindicale 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, Advocate with the right of audience before the Italian Corte di Cassazione, 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, a member of its Legal Service, and subsequently by Lucio Gussetti and Guido Berardis, members of its Legal Service, acting as Agents, with an address for service in Luxembourg at the latter's office, Wagner Centre, Kirchberg,

defendant,

APPLICATION for a declaration that the maximum rates of reimbursement laid down in the Rules on Sickness Insurance for Officials of the European Communities are unlawful in so far as they infringe the principle and criteria of insurance cover laid down 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 annulment of various decisions concerning reimbursement to the applicant of medical expenses incurred in Italy,

THE COURT OF FIRST INSTANCE (Fourth Chamber),

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

Registrar: B. Pastor, Administrator,

having regard to the written procedure and further to the hearing on 30 January 1991,

gives the following

Judgment

The facts giving rise to the application

1 The applicant, Giorgio Pincherle, is Head of the 'Staff Regulations' Division of Directorate-General IX, 'Personnel and Administration', of the Commission of the European Communities. As an official of the Commission, Mr Pincherle is affiliated to the Joint Sickness Insurance Scheme for officials of the European Communities (hereinafter 'the Joint Scheme'). His wife and children are covered by the same scheme. Mr Pincherle's place of employment is Brussels. For some time his children have been pursuing their studies in Italy where, for that reason, his wife goes to live for certain periods of time. In those circumstances, medical expenses are incurred in Italy, especially by members of his family.

2 In 1988 the applicant submitted to the office responsible for settling claims ('Claims Office') at Brussels various applications for reimbursement of medical expenses incurred in Italy in respect of services provided to members of his family. In reply, the applicant received three statements of payment dated respectively 8 June 1988, 10 August 1988 and 23 August 1988, as follows:

— Statement No 71 of 8 June 1988 concerns the reimbursement of expenses relating to the medical services provided on eight occasions and paid for in Italian lire; in six cases the expenses were reimbursed at a rate of 85%; in two other cases (two consultations with medical specialists) they were reimbursed to the extent of BFR 1 072 which, at the time, was the maximum amount of reimbursement laid down in Section I, 'surgery visits and home calls', of Annex I to the Rules on Sickness Insurance for Officials of the European Communities (hereinafter referred to as the 'Insurance Rules'). In the last two cases the amount reimbursed represented 63% and 38% respectively of the expenses actually incurred;

— Statement No 72 of 10 August 1988 concerns the reimbursement of expenses relating to medical services provided on 12 occasions. The fees for eight of those provisions of services were paid in Italian lire. Eight reimbursements were made at a rate of 85%; another was made at the rate of 80%; two consultations with Italian specialists were reimbursed within the limit then prescribed in Annex I to the Insurance Rules, namely BFR 1 072, representing 29% of the expenses incurred; lastly, a reimbursement in respect of a home call by an Italian specialist was made within the maximum limit prescribed in the aforesaid Annex I, namely BFR 1 470, representing 43% of the expenses incurred;

— Statement No 73 of 23 August 1988 concerns reimbursement of expenses of LIT 1 500 000, incurred for dental treatment, and LIT 100 000, for materials used for the purposes of that treatment. The applicant had submitted a prior estimate which was authorized by the Claims Office. However, the Claims Office had warned the applicant that reimbursement would be subject to the limits laid down in the Insurance Rules. The Claims Office applied the provisions of Section XV, paragraph 2, of Annex I to the Insurance Rules and referred the expenses for the opinion of its medical officer who considered that the fees relating to dental treatment properly so called were excessive and reduced them to LIT 850 000. In respect of the dental treatment the applicant was reimbursed BFR 19 203, representing 79.73% of the accepted amount of LIT 850 000 and, for the materials used, BFR 1 866, representing 66.55% of the LIT 100 000 which he had paid.

3 By memorandum of 13 October 1988, registered on 19 October 1988, Mr Pincherle submitted a complaint under Article 90(2) of the Staff Regulations of Officials of the European Communities (the 'Staff Regulations') in which he drew attention to the rates of reimbursement which he considered led to results which were unfair and discriminatory.

4 On 23 February 1989 the Management Committee of the Joint Scheme, having been consulted by the Administration pursuant to Article 16(2) of the Insurance Rules, issued Opinion No 1/89 concerning Mr Pincherle's complaint in which it confirmed the decisions taken by the Claims Office. The Opinion was forwarded

to Mr Pincherle who received no other reply from the Administration concerning his complaint.

5 On 23 February 1989, the Management Committee also issued Opinion No 3/89, pursuant to Articles 18(6) and 30 of the Insurance Rules, proposing a revision of the Insurance Rules. In that Opinion it argued that, because of a growing imbalance between contributions and expenditure under the Sickness Scheme, an operating loss had arisen within the last few accounting years, and that forecasts suggested that the scheme risked largely exhausting its accumulated surpluses by the end of 1991. It stressed the consequential necessity to restore the balance between contributions and expenditure and to that end it proposed *inter alia* increasing the contributions by members from 1.35 to 1.80% and by the institutions from 2.70 to 3.60%. At the same time it suggested various amendments to the Insurance Rules (in particular, the insertion in Annex III, to be renamed 'Scale of Reimbursement for Dental Treatment and Prostheses', of two Sections, A and B, concerned respectively with dental treatment and fixed prostheses) and various adjustments to the provisions for the interpretation of those Rules:

— as regards the interpretation provisions in Annex I ('Rules governing the Reimbursement of Medical Expenses'), Section I(1) and (2), the Management Committee proposed that 'fees for those services (surgery visits and home calls by general practitioners and specialists), expressed in Italian lire, should be subject to a rate based on and limited to a coefficient of 2';

— as regards the interpretation provisions in Annex III, Section A, it proposed that fees for services expressed in Italian lire should be subject to a rate based on and limited to a coefficient of 1.8 or else higher ceilings should be fixed for reimbursing those services.

6 On 20 December 1990, the Management Committee issued a new Opinion, No 35/90 on the revision of the Insurance Rules. It considered that it was necessary to increase the maximum amounts of reimbursement for certain services and that, as far as possible, the amounts should be fixed in such a way that at least 90% of medical and hospital services provided to members and their dependants could be covered at the rates of 80% and 85% laid down in Article 72 of the Staff

Regulations and in the Insurance Rules. The Management Committee noted that the average rate of reimbursement of services (except those for which the Rules laid down a reimbursement rate of 100%) in 1989 was: 80.01% for the Brussels Claims Office; 80.79% for the Luxembourg Claims Office; 72.73% for the Ispra Claims Office. It was of the opinion that in order to comply with the principle of equal treatment the administrations of the institutions should, in so far as necessary, lay down, pursuant to Article 8 of the Insurance Rules, coefficients for countries in which the cost of medical treatment was particularly high.

Procedure

7 It was in those circumstances that, by an application lodged at the Registry of the Court of Justice on 8 May 1989, Mr Pincherle brought the present action, which was registered under serial number 161/89.

8 By order of 15 November 1989 made pursuant to Article 14 of the Council Decision of 24 October 1988 establishing a Court of First Instance of the European Communities, the Court of Justice referred the case to the Court of First Instance, where it was registered under serial number T-110/89.

9 By four orders of 12 December 1989, the Court of First Instance allowed Unione Sindacale Euratom Ispra, Sindacato Ricerca della Confederazione Generale Italiana del Lavoro, Sindacato Ricerca dell'Unione Italiana del Lavoro and Sindacato Ricerca della Confederazione Italiana Sindacati Liberi to intervene in support of the form of order sought by the applicant. On 23 February 1990 the interveners lodged their written observations at the Court Registry.

10 Upon hearing the report of the Judge-Rapporteur, the Court (Fourth Chamber) decided to open the oral procedure without any preparatory inquiry.

11 The oral proceedings took place on 30 January 1991. The representatives of the parties presented oral argument and replied to questions put to them by the Court. The defendant lodged the text of the Management Committee's Opinion No 3/89 and the interveners lodged the text of the same committee's Opinion No 35/90, both of which concerned revision of the Insurance Rules and are referred to above.

12 The applicant claims that the Court of First Instance should:

(i) declare that the maximum rates of reimbursement laid down in the Annex to the Rules of the Joint Sickness Insurance Scheme for medical expenses in respect of visits, consultations and dental treatment — having regard to the treatment provided in States in which costs are found to be high — are unlawful in so far as they infringe the principle and criteria of 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;

(ii) annul the decisions reimbursing the applicant's expenses in respect of the medical services at issue, as set out in Statement No 72 of 10 August 1988 and Statement No 73 of 23 August 1988 drawn up by the Claims Office;

(iii) order the defendant to pay the costs.

13 The defendant contends that the Court of First Instance should:

(i) dismiss the application;

(ii) make an appropriate order as to costs.

14 The interveners apply for the same form of order as that sought by the applicant.

Substance

15 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.

16 Before setting out the parties' arguments, it is necessary to recall the provisions constituting the general legal background to the proceedings.

17 Article 72(1) of the Staff Regulations provides that an official, his spouse and 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. This rate is to be increased to 85% for consultations and visits, surgical operations, hospitalization, pharmaceutical products, radiology, analyses, laboratory tests and prostheses on medical prescription with the exception of dental prostheses.

18 In implementation of the provisions of Article 72 of the Staff Regulations the Community Institutions adopted the Rules on Sickness Insurance for Officials of the European Communities, cited above. Article 9(1) of the Insurance Rules states that 'persons covered by this Scheme shall be free to choose their practitioners and hospitals or clinics'. However, the Insurance Rules fix upper limits for the reimbursement of medical expenses appearing in Annex I, for medical expenses in the strict sense of the term, and in Annex III, for dental prostheses. Furthermore, Annex I, Section XV, ('Miscellaneous'), paragraph 2 provides:

'Expenses relating to treatments considered by the office responsible for settling claims, after the medical officer has been consulted, to be non-functional or unnecessary shall not be reimbursed.

Expenses considered by the office responsible for settling claims, after the medical officer has been consulted, to be excessive shall not be reimbursed.'

19 The Insurance Rules have been revised with effect from 1 January 1991. Annex III has been amended in accordance with the Management Committee's proposals (see paragraph 5 above). Furthermore, the Interpretation of Sickness Insurance Rules has been amended as follows:

— the provisions for the interpretation of paragraphs (1) and (2) of Section I of Annex I now state:

'A weighting of 2 will be applied to the maximum reimbursement of the fees for surgery visits and home calls by general practitioners and specialists billed in Italian lire or pounds sterling pursuant to Article 8(1) of the Rules'.

— the provisions for the interpretation of Annex III, Sections A and B now provide different weightings, increased for reimbursing dental treatment and certain fixed dental prostheses where the price and fees are expressed in Italian lire.

The plea in law alleging infringement of Article 72 of the Staff Regulations

20 The applicant does not deny that Article 72 of the Staff Regulations fixes the upper limit of reimbursement to which an official and members of his family covered by the Joint Scheme are entitled, nor that Article 72 provides for the detailed implementing rules to be established in the Insurance Rules drawn up by agreement between the institutions. However, in his opinion, it is incontestable that cover for medical expenses must, at the very least, aim at ensuring reimbursement of 80% or 85% of the expenses incurred, even if it has to be accepted that the implementing provisions have to lay down quantitative criteria.

21 He states that, even though it is becoming increasingly necessary in national schemes to attribute a modest share of the expenses to insured persons, a management of the system 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.

22 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 are in practice far removed from the 80% and 85% rates adopted in Article 72 itself. According to the applicant that is the situation with respect to the reimbursements contested in the present case which range from 29% to 66% of the expenses incurred. In the applicant's opinion such results call into question the very principle of social insurance cover set out in Article 72 of the Staff Regulations.

23 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 levels represent only the maximum that can be reimbursed and therefore do not imply any obligation to reimburse that proportion to members and insured persons in every case.

24 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 contributions from the persons covered, and accordingly it has only limited resources. Since the general interest of insured persons is to obtain the best possible reimbursement of medical expenses incurred, it is necessary, in order to arrive at an optimal situation, for limits to be laid down by the Staff Regulations and the Rules relating to them.

25 The Court considers that it is not possible to deduce 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 services provided. Those rates fix the maximum reimbursable limit. They are not minimum rates and therefore do not imply any obligation to reimburse members and insured persons to the extent of 80% or 85% in all cases.

26 The Court considers that fixing upper limits for reimbursement in the implementing provisions is in conformity with the Staff Regulations, all the more so because the scheme's resources are limited to the contributions from members and institutions and the scheme's financial balance has to be safeguarded.

27 As regards the applicant's argument to the effect that the reimbursement ceilings fixed by the implementing provisions are unlawful inasmuch as, as in the case of the reimbursements which he contests, they are far removed from the rates of 80% and 85% adopted in Article 72 of the Staff Regulations, the Court considers that, in the absence of upper reimbursement limits laid down in the Staff Regulations, the institutions are authorized to fix appropriate ceilings while observing the principle of social insurance cover which underlies Article 72 of the Staff Regulations. In the present case it should be noted that the reimbursements appearing on Statements of payment Nos 71 and 72, referred to above, were mostly (in 15 out of 20 cases) effected at a rate of 80% or 85%, with only a limited number of reimbursements not reaching that level. As regards Statement No 73, it should be noted that the procedure laid down in the Insurance Rules, in particular in Section XV of Annex I, concerning expenses considered to be excessive, has been observed. Accordingly, the circumstances of the present case do not permit the upper limits fixed by agreement between the institutions to be characterized as unlawful or unjust.

28 It should be added that during the written procedure the applicant and interveners recalled that Article 8(1) of the Insurance Rules states:

'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.'

29 They maintained that Article 8(1), which allows the possibility of remedying cases in which the medical expenses incurred are particularly high, was neutralized by

the provisions of the Interpretation Sickness Insurance Rules which, for the purpose of defining its scope, 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.

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 purpose of this paragraph "expenses incurred" are assessed item by item.'

30 In that regard, the Court notes that Article 8(5) of the Insurance Rules makes every request for special reimbursement subject to a prior request and to compliance with a particular procedure:

'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;

1 — Translator's note The French text uses the term 'en principe' and the other language versions contain a similar expression

— 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.'

In the present case, the applicant did not seek the benefit of the provisions of Article 8(1) of the Insurance Rules before bringing the present proceedings. In proceedings 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 is not entitled, in the absence of an individual implementing measure, to rule in the abstract on the lawfulness of a provision of a general nature. It follows in the present case that, in the absence of an individual decision on the application of Article 8(1) of the Insurance Rules, it is not open to the applicant and the interveners to plead the unlawfulness of that provision.

31 However the Court considers it appropriate to point out that neither the wording of the Staff Regulations nor of Article 8(1) of the Insurance Rules allow the conclusion that Community countries are excluded from the scope of the provisions of Article 8(1). The use of the expression 'in principle' [2] in the interpretation provisions relating to it enables the application of Article 8(1) to be extended to the Member States of the Community. The Court notes, moreover, that the new interpretation provisions which entered into force on 1 January 1991 take account of the situation of Member States in which the cost of medical treatment is particularly high. As has already been indicated (see paragraph 19), the new interpretation provisions have established, for the purpose of implementing Article 8(1) of the Insurance Rules, higher weightings for reimbursements in respect of medical services, where the fees are expressed in Italian lire or pounds sterling, and in respect of dental services where the fees are expressed in Italian lire. Article 8(1) of the Insurance Rules has thus been applied to the Member States of the Community.

32 Finally, the interveners referred to Article 72(3) of the Staff Regulations which 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', and maintained that that special reimbursement was

2 — Translator's note: see note to paragraph 29, above.

subject to such great restrictions in Article 8(2) of the Insurance Rules and the relevant interpretation provisions that in practice it ceased to have any function.

33 In that regard, the Court notes, as it has already observed, that, in accordance with Article 8(5) of the Insurance Rules, every special reimbursement, including that provided for in Article 72(3) of the Staff Regulations, must be the subject of a prior request and is subject to compliance with a particular procedure, conditions which were not satisfied in the present case. That being so, the interveners' argument to the effect that the provisions implementing Article 72(3) of the Staff Regulations (in particular Article (8)(2) of the Insurance Rules) are unlawful cannot, in any event, be relied on in support the form of order sought by the applicant, since it does not relate to the unlawfulness of the contested decisions; for that reason the argument is inadmissible in proceedings brought under Article 91 of the Staff Regulations.

34 It follows from the foregoing that the plea based on infringement of Article 72 of the Staff Regulations must be rejected.

The second plea in law: infringement of the general principle of non-discrimination inherent in the provisions of Title V of the Staff Regulations

35 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.

36 Accordingly, he considers that it is clear that insured persons who have to obtain treatment in Italy, where medical services are more costly, 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 more modest rates. The fact that the reimbursement ceilings, which apply to all officials, are calculated on the basis of the rates applied by Belgian doctors, results in a difference in treatment in favour

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

37 The defendant recognizes 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 Central Office proposed to the Management Committee of the Joint Scheme that correcting mechanisms should be introduced with respect to certain of those services.

38 The defendant maintains 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, the revision has had to pass through a number of institutional stages and procedures which were prescribed by the rules in force and which the institutions could not disregard. At the same time, it has also been necessary to adopt the appropriate financial measures for putting an end to the operating losses that have been shown in the most recent accounting periods and, more particularly, to cover the increase in costs generated by the new proposals to increase weightings.

39 The Court of First Instance considers that, faced with a situation involving inequality between members and their dependants covered by the Joint Scheme, who pay higher medical costs in some Member States of the Community, 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 an answer to the question whether the defendant was under a duty to bring the 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 making appropriate adjustments to the scheme.

40 The Court of First Instance considers that the first approach cannot be accepted in the context of a scheme whose resources are limited to contributions from members and the institutions and whose financial equilibrium must as a matter of necessity be safeguarded. That being so, the applicant's arguments can be upheld only if it can be established that the measures adopted by the defendant were belated or unlawful.

41 In that regard, the Court finds that the Management Committee of the Joint Scheme, in Opinion No 3/89 of 23 February 1989 (see paragraph 5 above), proposed introducing correcting mechanisms for certain services where the fees were expressed in Italian lire. That opinion was the result of work begun by the committee two years previously for the purpose of revising the Insurance Rules. On 20 December 1990, the Management Committee proposed in its Opinion No 35/90 (see paragraph 6) that, in order to comply with the principle of equal treatment, the institutions should lay down, in so far as necessary, coefficients for the countries in which the cost of medical services was particularly high. Lastly, since 1 January 1991, the Insurance Rules have been revised as mentioned above (see paragraph 19). The Court notes that, with the entry in force of the new Insurance Rules, special measures for ensuring equal treatment between all members and their dependants covered by the Sickness Scheme have been inserted in the new provisions for the interpretation of Sickness Insurance Rules, in order to resolve the problem created by the imbalance in the matter of fees charged by doctors and dentists in the different places of employment or residence of Community officials and the members of their families.

42 In the face of that body of measures whose clear purpose is to put an end to the inequality adversely affecting members and their dependants who have to pay higher medical fees in some Community Member States, the Court considers that the institutions, in particular the Commission, have demonstrated the necessary diligence in achieving a revision of the rules at issue regarding doctors' and dentists' fees which takes account of the reimbursement requirements in each Member State of the Community, and have also complied with the stages and procedures prescribed by the rules in force and adopted the appropriate financial measures for safeguarding the equilibrium of the scheme.

43 It must, furthermore, be pointed out that amending a body of rules necessarily implies that the date on which the amended rules take effect must be determined. The principle of legal certainty requires that the date from which a provision takes effect must be determined with precision. Since the new Insurance Rules entered into force on 1 January 1991, they cannot, in the absence of a provision to the contrary, be applied retroactively to reimbursements made before that date. In

those circumstances, the fact that similar cases have been treated differently, before and after the entry into force of the revised Rules, cannot be regarded as discriminatory.

44 It follows from all of the foregoing considerations that the plea must be rejected.

Costs

45 Under Article 69(2) of the Rules of Procedure of the Court of Justice, which are applicable *mutatis mutandis* to proceedings before the Court of First Instance, the unsuccessful party is to be ordered to pay the costs if they are asked for in the successful party's pleadings. However, Article 70 of the Rules of Procedure provides that institutions are to bear their own costs in proceedings brought by servants of the Communities.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby:

1. Dismisses the application;

2. Orders the parties to bear their own costs.

Schintgen Edward García-Valdecasas

Delivered in open court in Luxembourg on 12 July 1991.

H. Jung
Registrar

R. Schintgen
President