OPINION OF ADVOCATE GENERAL DARMON

delivered on 30 June 1993 *

Mr President,
Members of the Court,

1. By this appeal Mr Pincherle, an official of the Commission of the European Communities, asks the Court to overturn the judgment of 12 July 1991 [1] of the Court of First Instance in which that Court dismissed his application for a declaration that, primarily, the reimbursement ceilings for treatment carried out in States in which the costs incurred are high are unlawful.

2. The following is a brief summary of the facts of the case; for the remainder, reference is made to the Report for the Hearing. [2]

3. Mr Pincherle and the members of his family are covered by the joint sickness insurance scheme of Community officials. Although his place of employment is Brussels, his children are following their studies in Italy, where medical expenses are incurred since he and his wife often visit that country.

4. After submitting applications for reimbursement to the office responsible for settling claims, Mr Pincherle received three statements of payment dated 8 June 1988, 10 August 1988 and 23 August 1988. Taking the view that the reimbursements for certain services were inadequate, [3] Mr Pincherle lodged a complaint under Article 90(2) of the Staff Regulations.

5. On 23 February 1989 the Management Committee of the Joint Scheme issued an opinion upholding the decisions taken by the office responsible for settling claims.

6. On the same day the Management Committee also issued Opinion No 3/89 in which it noted the necessity to revise the rules in force owing to an operating loss in the scheme and to the fact that fees expressed in Italian lire were not adequately reimbursed.

7. A fresh opinion, No 35/90, was drawn up by the Management Committee on 20 December 1990. It was aimed at increasing certain reimbursement ceilings and ensuring equal treatment for Community officials irrespective of the country in which medical treatment was given.

8. Following the rejection of his complaint, Mr Pincherle brought an action before the Court of Justice for, as we have seen, a declaration that the reimbursement ceilings were unlawful. He also asked the Court of Justice

* Original language: French.

1 — Case T-110/89 *Pincherle* v *Commission* [1991] ECR II-635.

2 — I. Facts and procedure before the Court of First Instance.

3 — It is apparent from statement of payment No 72 that two items were reimbursed at the rate of 29% and one at the rate of 43%. According to statement of payment No 73, one item was reimbursed at the rate of 79.73% and the other at the rate of 66.5%.

to declare that the decisions on reimbursement were void. By order of 15 November 1989 the Court referred the case to the Court of First Instance.

9. Mr Pincherle relied on Article 72 of the Staff Regulations, which, as the Court is aware, provides that an official and those entitled to claim under him are insured against sickness up to 80% of the expenditure incurred for certain ailments and up to 100% in the event of, *inter alia*, tuberculosis or cancer.

10. Rules on sickness insurance were adopted to implement that provision. Those rules establish a reimbursement ceiling for medical care, beyond which the fees incurred are the responsibility of the member.

11. Certain weightings, the scope of which will be examined below, are envisaged in paragraph 3 of Article 72 and Article 8 of the Insurance Rules.

12. By orders of 12 December 1989 the Court of First Instance granted four trade unions [4] leave to intervene in support of the form of order sought by the applicant; however, that Court dismissed the application on the ground that the Commission had not infringed either the principle of social insurance cover in Article 72 of the Staff Regulations or the general prohibition of discrimination on which Title V of the Staff Regulations is based.

4 — The Unione Sindacale Euratom Ispra, the Sindacato Ricerca della Confederazione Generale Italiana del Lavoro, the Sindacato Ricerca dell'Unione Italiana del Lavoro and the Sindacato Ricerca della Confederazione Italiana Sindacati Liberi.

13. Before examining the pleas in law relied on by the appellant in support of his appeal, it is appropriate to resolve at the outset the preliminary procedural issue raised by the Commission concerning the rules on intervention by third parties.

14. In its rejoinder the Commission challenges the principle of the right of the four trade unions to intervene in this appeal since they did not first apply to the Court of Justice for leave to intervene in the proceedings before it in accordance with Article 37 of the Statute of the Court of Justice and Article 123 of the Rules of Procedure.

15. The question, in other words, is whether a third party who has been granted leave to intervene by the Court of First Instance thereby becomes a 'party' to the dispute and as such, is therefore, not required to apply to the Court of Justice for leave to intervene in the appeal.

16. That question must be examined, first of all, in the light of the Statute of the Court of Justice, whose authority is superior to that of the Rules of Procedure.

17. Pursuant to Article 55 of the Statute of the Court of Justice, '[t] he rules of procedure ... shall contain, apart from the provisions contemplated by this Statute, any other provisions necessary for applying and, where required, supplementing it'.

18. Article 37 of the Statute does not allow interveners to be recognized as having the capacity of parties in appeal proceedings before the Court of Justice.

19. Article 37 provides that:

'Member States and institutions of the Community may intervene in cases before the Court.

The same right shall be open to any other person establishing an interest in the result of any case submitted to the Court ...'.

20. Therefore any individual desiring to intervene in a case pending before the Court of Justice must establish such an interest.

21. Title IV of the Rules of Procedure does not support any contrary view.

22. Article 123 of the Rules of Procedure provides as follows:

'An application to intervene made to the Court in appeal proceedings shall be lodged before the expiry of a period of three months running from the date on which the appeal was lodged. The Court shall, after hearing the Advocate-General, give its decision in the form of an order on whether or not the intervention is allowed.'

23. Article 123 does not distinguish the situation where the application to intervene is first submitted to the Court of Justice from the situation where leave to intervene has already been granted by the Court of First Instance.

24. It is impossible to infer with sole reference to Article 114 — which requires that notice of appeal be served on 'all the parties to the proceedings before the Court of First Instance' — that as someone on whom the decision appealed against was served pursuant to that article the third party has necessarily and automatically become a 'party'.

25. The requirement that the decision be served on interveners follows by implication from Article 49 of the Statute, which, in providing that the appeal must be brought within two months of service of the decision appealed against, by, *inter alia*, '[the] interveners ... where the decision of the Court of First Instance directly affects them', does not in any way confer a new capacity on the interveners.

26. Lastly, it should be pointed out that, in accordance with Article 118 of the Rules of Procedure, Article 93 (on the intervention procedure) 'shall apply to the procedure before the Court of Justice on appeal from a decision of the Court of First Instance'.

27. When compared with Article 111 *et seq.*, Article 118 allows a distinction to be drawn between the provisions applicable to the parties in the strict sense and those governing third parties intervening before the Court of Justice.

28. The fact that the Court of First Instance has recognized that a third party was entitled to intervene does not therefore suffice to confer the capacity of 'party' on that third party during the proceedings. In short, the capacity of 'party' is not acquired by the fact that the Court of First Instance has granted the person concerned leave to intervene.

29. The statement of the reasons cannot lead to the contrary solution. Such a statement has no normative value but is designed, where appropriate, to reveal the intention of the legislature.

30. It is true that when the Statute was amended the Court expressed the wish that a third party who had been granted leave to intervene before the Court of First Instance should become a 'party' to the dispute without being required to reapply for leave to intervene before the Court of Justice. [5] When the Council adopted Article 48 of the Statute (new Article 49) and Article 114 of the Rules of Procedure, however, it did not incorporate that proposal word for word.

31. Was that merely a change in the wording, or does it show that the legislature intended to avoid treating the intervener as a party to the proceedings, as proposed? There is no basis for concluding one way or the other.

32. All that remains is to ascertain whether or not the interpretation which I envisage is consistent with the ratio legis of the measures.

33. The view might be taken that the trade unions were not required to apply for leave to intervene before the Court of Justice since their interest had already been recognized by the Court of First Instance and their intervention was covered by the recognition.

34. It should be observed, however, that where the Court of First Instance has made an order on an application to intervene an appeal may be brought only where the application has been dismissed, and then only by '[a] ny person whose application to intervene has been dismissed' (Article 50 of the Statute). It follows that where the Court of First Instance has granted a third party leave to intervene in support of one party's submissions, the opposing party can not appeal against that decision.

35. Therefore, in addition to the fact that the Court of Justice may assess the third party's interest in intervening differently from the Court of First Instance, it may be that intervention in the context of the appeal concerns only different points of law from those relied on at first instance.

36. Two possible situations must therefore be distinguished.

37. (1) The appeal concerns a point of law *in the context of* the intervention at first instance: if it is accepted that in such a case the third party who was granted leave to intervene by the Court of First Instance, without any possibility of challenge, has acquired the capacity of 'party', the Court of Justice cannot review the interest in intervening before it. The Court of Justice is therefore bound by the assessment of the court below.

38. It might certainly be answered that in the context of questions referred to the Court for a preliminary ruling the Court of Justice is bound by the national court's recognition of a third party's capacity to intervene and is unable to assess the position differently.

39. However, a reference for a preliminary ruling

'... does not envisage contentious proceedings designed to settle a dispute but

5 — Statement of the reasons for Article 114.

prescribes a special procedure whose aim is to ensure a uniform interpretation of Community law by cooperation between the Court of Justice and the national courts and which enables the latter to seek the interpretation of the Community provisions which they have to apply in disputes brought before them'. [6]

40. While that interpretation is necessary in the context of Article 177 of the Treaty, the lack of any review by the Court of Justice in contentious proceedings, such as proceedings on appeal, appears unacceptable.

41. (2) The appeal concerns a point of law outside the context of the intervention at first instance: assuming that the third party did not consider it necessary to intervene *on that point* before the Court of First Instance (which was therefore not called upon to assess in that regard his interest in the result of the proceedings) but considers it necessary to make submissions on that point in the appeal proceedings, it is appropriate that the Court of Justice should give its decision in the form of an order in pursuance of Article 123 of the Rules of Procedure.

42. If an intervener at first instance was recognized as having the capacity of 'party' that would mean that he could extend the scope of his intervention without any control at any level whatsoever.

43. The view might be taken that the intervener has acquired the capacity of 'party' only in so far as his intervention is limited to the pleas already invoked at first instance. If, on the other hand, he intended to intervene in support of the appellant's submissions on pleas other than those developed at first instance, he would be required to seek the authorization of the Court of Justice under Article 123.

44. Consequently, I believe that, both for reasons of principle and in the interests of clarity, any intervention before the Court of Justice falls within the scope of Article 123, irrespective of the stage of the proceedings at which the third party began his intervention.

45. However, although it is undeniable that the four trade unions did not seek leave to intervene from the Court of Justice, it would be inequitable in this particular case to conclude that their submissions were inadmissible.

46. The practice hitherto followed by the Registry consisted in admitting the interveners' submissions without prior leave to intervene being required. Equity therefore requires that the interventions should be admitted exceptionally by a decision to that effect.

47. Since the purpose of their intervention is to protect officials and those entitled to claim under them residing in Italy, it must be accepted that the four trade unions have a direct interest in intervening in the present case.

48. I shall now consider the first plea in law raised by the appellant, which refers to the Commission's infringement of the principle of social insurance cover identified by the Court of First Instance where the reimbursements are lower than the rates set out in Article 72 of the Staff Regulations.

6 — Order of 3 June 1964 in Case 6/64 *Costa* v *ENEL* [1964] ECR 614.

49. Article 72 provides that:

'An official, his spouse, where such spouse is not eligible for benefits of the same nature and of the same level by virtue of any other legal provision or regulations, his children and other dependants within the meaning of Article 2 of Annex VII are insured against sickness up to 80% of the expenditure incurred subject to rules drawn up by agreement between the institutions of the Communities after consulting the Staff Regulations Committee. This rate shall be increased to 85% for the following services ... It shall be increased to 100% in cases of tuberculosis, poliomyelitis, cancer ...'.

50. The Court of First Instance took the view that Article 72 did not imply any obligation to make reimbursement at the rate of 80% or 85%, which were simply maximum limits of reimbursement (paragraph 25). Moreover, fixing upper limits was in conformity with the Staff Regulations for the purpose of ensuring the scheme's financial balance (paragraph 26).

51. However, the Court of First Instance stated in paragraph 27 of its judgment that

'... the institutions are authorized to fix appropriate ceilings while observing the principle of social insurance cover which underlies Article 72 of the Staff Regulations'.

52. After laying down that principle, the decision under appeal states that:

'... 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' (paragraph 27 *in fine*).

53. The applicant therefore expresses surprise in his appeal that the percentages of reimbursements applied to him [7] could be regarded as consistent with the principle of social insurance. [8]

54. It is appropriate to ascertain at the outset whether such a criticism constitutes a 'point of law' or indeed, as the Commission claims, seeks to call into question the findings of the court adjudicating on the substance which are final, in which event the appeal is admissible on that point.

55. Without going right into the delicate issue of the demarcation of fact and law, a distinction which in certain circumstances may prove extremely complex, [9] it appears that in the present case the plea in law falls within this Court's jurisdiction since its subject-matter is the *existence and*, where appropriate, *the scope of the principle* of social insurance.

56. The existence of such a principle depends on the interpretation of Article 72 and on the special nature of a social insurance scheme.

7 — See above, note 3.

8 — P. 4 of the French translation of the appeal.

9 — Cf. Third Franco-German Legal Proceedings (Paris, 10-11 October 1980) on the theme 'The review of findings of fact by courts of cassation', *Revue internationale de droit comparé*, Special Issue, Vol. 2, 1980.

57. Article 72 does not place the Community institutions under an obligation to reimburse fees at the rates indicated. That is clearly shown by the use of the expression 'up to 80% of the expenditure incurred'.

58. That can only fix a maximum limit for reimbursement, but no minimum rate is envisaged.

59. That interpretation is also supported by the nature of the scheme. The resources of the social insurance scheme are strictly limited to the contributions paid by officials and other servants and to those paid by the institutions, so that the financial balance of such a scheme is necessarily complex and fragile, since it depends on a perfect correlation between health expenditure and contributions paid.

60. Since the Staff Regulations do not provide for any minimum rate, it is for the Community institutions to regulate the percentages at which expenditure for health care is reimbursed within the limit of the only resources available, while taking care to maintain the coherence of the system. It would be paradoxical to apply to a case of tuberculosis — where the rate of reimbursement may reach 100% — a rate of 5% of the expenditure incurred and to a benign disease a rate of 80%.

61. It is therefore, within those limits that the Community institutions must, subject to a manifest error of assessment, exercise their power to fix reimbursement ceilings and rates, while there is nothing in Article 72 to indicate a principle fixing a minimum threshold rate of social insurance cover.

62. It is true, as the Court of First Instance accepted, that members benefit from social insurance cover against sickness, which must be reconciled with the amount of resources available. However, the fact that in an isolated case medical treatment is reimbursed at a low rate cannot suffice to demonstrate a manifest error of assessment.

63. Only a general inadequacy of reimbursements would demonstrate the dysfunction of the scheme and, consequently, a manifest error of assessment by the Community institutions, which should have taken all measures to remedy the breach of the principle of social insurance cover.

64. That interpretation is supported by the principle recognized by the Staff Regulations that officials are free to choose practitioners.

65. Article 9(1) of the Rules on Sickness Insurance provides:

'Persons covered by this Scheme shall be free to choose their practitioners and hospitals or clinics'.

66. Since that free choice, and its consequences for the amount of fees paid, could lead — without an increase in contributions — to insurmountable budgetary imbalances, maximum rates of reimbursement, fixed objectively, were laid down, and these were recognized as lawful in the *Ooms* judgment. [10]

10 - Case 115/83 *Ooms* v *Commission* [1984] ECR 2613.

67. The facts in that case were as follows: the applicant challenged the method for the special reimbursement of sickness expenses, which consisted in not 'applying to the "basic monthly salary", which serves as a basis for that calculation pursuant to Article 72(3) of the Staff Regulations, the weighting referred to in Article 64 thereof'. [11]

68. The Court took the view that

'... the ordinary reimbursements provided for in Article 72(1) are based on objective circumstances and in particular on the application of upper limits and rates of reimbursement fixed by the Staff Regulations and identical for all Community officials, whilst special reimbursement is based on circumstances which are peculiar to the official's own situation ...'. [12]

69. Since the financing of health expenditure is ensured solely by the contributions paid by the members and the institutions, the Community is empowered to determine the rate of reimbursement and also the reimbursement ceilings according to the resources of the scheme; accordingly, Mr Pincherle's claim that there has been an infringement of Community law is ill-founded on that point.

70. The first plea in law must therefore be rejected.

71. I now turn to the second plea in law, in which Mr Pincherle complains that the Court of First Instance has infringed the principle of non-discrimination in Article 72.

72. Here Mr Pincherle appears to challenge first the finding by the Court of First Instance that the Commission acted diligently in ensuring that the rules concerned were revised and second the Commission's refusal to provide a remedy for a discrimination found to exist.

73. The first part of the plea calls for the following observations.

74. Pursuant to Article 51 of the Statute of the Court of Justice, where, in the context of an appeal, criticism is directed not at an interpretation of a legal rule but at an appraisal of the facts, it must be declared inadmissible.

75. That must be the case here. Mr Pincherle confines himself to attributing to the Commission a lack of diligence in providing a remedy for a discriminatory situation, stating in particular that 'the measures in question prove the contrary'. [13]

76. That is borne out, he states, by the report by the local staff committee at Ispra dated 3 June 1983, whereas the weightings were adapted with effect only from 1 January 1991.

11 — Paragraph 2.

12 — Paragraph 14.

13 — P. 9 of the French translation of the appeal.

77. As Mr Pincherle acknowledges, that report was communicated to the Court of First Instance.

78. The decision whether or not a period of one year or five years is reasonable is a matter for the court dealing with the substance of the case. It is for the Court of First Instance to determine whether or not the period is reasonable in the light of the narrow factual context of the dispute. Since the Court of Justice determines only points of law, such an appraisal falls outside its jurisdiction.

79. I now turn to the second part of the plea in law.

80. In its decision, the Court of First Instance held that in the event of discrimination the Commission was under a duty to '[act] in concert with the other institutions for the purpose of making appropriate adjustments to the scheme' and not to 'bring the inequality to an end forthwith' (paragraph 39).

81. That interpretation was justified by fact that resources were limited and by the need to safeguard the financial equilibrium of the scheme (paragraph 40).

82. The Court of First Instance went on to say that

'[t] he principle of legal certainty requires that the date from which a provision takes effect must be determined with precision ...'

and that the provision in question (i. e. the new Insurance Rules)

'cannot, in the absence of a provision to the contrary, be applied retroactively to reimbursements made before that date' (paragraph 43).

83. It is appropriate to consider that line of reasoning in the light of the general principle of public service law, firmly established in a line of decisions of the Court of Justice, of equal treatment of officials, irrespective of their place of employment.

84. Thus in Case 48/70 *Bernardi* v *Parliament* [14] the Court held that

'[t] he conferring of such advantages on certain officials, which is not justified in the interests of the service, is capable of adversely affecting their immediate colleagues because it infringes the principles of equality of treatment and of objectivity which must govern the public service'. [15]

85. It was on the basis of that principle that the Court found against the Commission in the *Misenta* judgment. [16]

86. In *Misenta* the applicant challenged the arrangement for the reimbursement of health expenditure because up-to-date exchange rates had been applied. Owing to currency fluctuations between the time when the expenses had been incurred in German marks and the time when reimbursement

14 — Case 48/70 *Bernardi* v *Parliament* [1971] ECR 175

15 — Paragraph 27.

16 — Case 256/78 *Misenta* v *Commission* [1980] ECR 219

was effected in Italian lire Mr Misenta had not been reimbursed at the rates then applicable.

87. The Court held that

'the principle of equal treatment of officials requires that the rate of exchange to be applied in the reimbursement of sickness expenses should be as close as possible to the rate on the date of reimbursement'. [17]

88. The Court upheld

'... the right of the claimant to receive the same amount of actual reimbursement irrespective of the country to which he is posted'. [18]

89. In the *Newth* judgment, the principle of non-discrimination was described as a 'superior rule of law'. [19]

90. Mr Newth, who had been recruited to work at Ispra, had been retired and therefore received an allowance paid in Italian lire. After settling in Belgium following the termination of his employment, however, he asked that his allowance be paid to him in Belgian francs without being converted from Italian lire: he maintained, primarily, that because the relevant weighting was taken into consideration his allowance was lower than that of an official employed in Brussels.

91. The Court held that

'[t] he fifth paragraph of Article 50 (of the Staff Regulations) [20] must ... be interpreted to mean that where, as in the present case, its application is likely to result in a breach of a superior rule of law, the Commission is obliged, in order to avoid such a result, not to apply the weighting fixed for the place where the official was last posted'. [21]

92. It is therefore for the Community institutions to remedy a discriminatory situation as soon as it is established. In the present case, furthermore, the discrimination was acknowledged by the Commission, as may be seen from the judgment of the Court of First Instance, where it was stated that

'the institutions began to take steps with a view to resolving the problem as early as 1987 ... [and] undertook a thorough revision of the Insurance Rules' (paragraph 38).

93. However, the inequality ceased only when the new rules became applicable with effect from 1 January 1991.

17 — Paragraph 12.

18 — Paragraph 11.

19 — Case 156/78 *Newth* v *Commission* [1979] ECR 1941.

20 — That article provides, in substance, that where an official is retired his allowance and the remuneration last received by him are to be weighted at the rate fixed for the place where he was last posted.

21 — Paragraph 13.

94. It was incumbent on the institutions to remedy any discrimination from the time when it became apparent.

95. The Court of Justice has reaffirmed that obligation in connection with officials' salaries, and in particular in the context of Article 64, which provides that an official's remuneration is to be weighted, depending on the living conditions in the various places of employment. That article does not require that the measures adopted to implement such weighting be given retroactive effect.

96. In Case 7/87 *Commission* v *Council*, [22] however, the Court held that:

'the principle of equality of treatment underlying that provision requires the effect of the new weightings to be made retroactive to the date to which the verification relates. If the adjustment were not retroactive, inequalities in the purchasing power of officials found to exist with respect to periods which may extend over several years would never be eliminated, which would be incompatible with the principle of equality of treatment'. [23]

97. It is therefore that principle, and that principle alone, which required that a discriminatory situation be brought to an end as soon as it became apparent.

98. Although Article 72 makes no provision for retroactive effect, that principle also means that when discrimination becomes apparent the institutions must not only take joint steps but also make good *ab initio* an inequality found to exist.

99. As the Court has held in a consistent line of decisions, in particular in the *Adam* case, [24]

'discrimination in the legal sense consists in treating in an identical manner situations which are different or treating in a different manner situations which are identical'. [25]

100. Since the official scales of Italian doctors' fees were significantly higher than those of their Belgian counterparts, it was necessary to provide for different weightings so that officials posted in Italy would receive reimbursement corresponding to that effected in other States.

101. According to the Commission, Mr Pincherle cannot rely on such illegality where he has not applied for the special reimbursements provided for in Article 8 of the Rules on Sickness Insurance.

102. It is sufficient to point out in that regard that neither that provision nor Article 72(3) seeks to remedy an objectively discriminatory situation; they are designed to ensure that the purchasing power of a specific

22 — Case 7/87 *Commission* v *Council* [1988] ECR 3401.
23 — Paragraph 25.
24 — Case 828/79 *Adam* v *Commission* [1982] ECR 269.
25 — Paragraph 39.

official who has incurred heavy health fees is not too seriously affected.

103. At the hearing the Commission's representative did not call in question such an interpretation, which the Court expressed in the following words in the *Ooms* case:

'It is clear from the aforementioned provisions that the ordinary reimbursements provided for in Article 72(1) are based on objective circumstances and in particular on the application of upper limits and rates of reimbursement fixed by the Staff Regulations and identical for all Community officials, whilst special reimbursement is based on circumstances which are peculiar to the official's own situation and which are related to the fact, according to the circumstances provided for in Article 8 of the Rules on Sickness Insurance, that the portion of expenses not reimbursed places a "heavy financial burden" on him'. [26]

104. Accordingly, the judgment appealed against must be set aside on that point.

105. Pursuant to the first paragraph of Article 54 of the EEC Statute of the Court of Justice, '[i] f the appeal is well founded, the Court of Justice shall quash the decision of the Court of First Instance. It may itself give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to the Court of First Instance for judgment'.

106. It is for the Court alone to decide whether to exercise that power to determine the substantive issues of the case; to my mind, however, that power should not extend to the discussion of facts which were not argued at first instance.

107. What falls to be determined in the present case is the date from which the discrimination took effect, since during the oral procedure the Commission mentioned differences in the reimbursements around 1988 but did not give precise details. The natural court for findings of fact is the Court of First Instance, whose decision on the facts is final.

108. The case should therefore be referred back to the Court of First Instance and the decision as to costs reserved, in pursuance of the first paragraph of Article 122 of the Rules of Procedure.

109. Accordingly, I propose that the Court should:

(1) grant the trade unions Unione Sindacale Euratom Ispra, Sindacato Ricerca della Confederazione Generale Italiana del Lavoro, Sindicato Ricerca dell'Unione Italiana del Lavoro and Sindacato Ricerca della Confederazione Italiana Sindacati Liberi leave to intervene in support of the form of order sought by Mr Pincherle;

26 — Paragraph 14.

(2) set aside the judgment delivered by the Court of First Instance of the European Communities on 12 July 1997 in Case T-110/89;

(3) refer the case and the parties back to the Court of First Instance;

(4) reserve the decision as to costs.