JUDGMENT OF THE COURT (Sixth Chamber)

5 October 1999 *

In Case C-327/97 P,

Christos Apostolidis and Others, officials and members of the temporary staff of the Commission of the European Communities, employed in the European Institute for Transuranic Elements, Karlsruhe (Germany), represented by J.-N. Louis, T. Demaseure and A. Tornel, of the Brussels Bar, with an address for service in Luxembourg at the offices of Fiduciaire Myson SARL, 30, Rue de Cessange,

applicants,

APPEAL against the judgment of the Court of First Instance of the European Communities (Third Chamber) of 10 July 1997 in Case T-81/96 *Apostolidis and Others* v *Commission* [1997] ECR-SC I-A-207 and II-607, seeking to have that judgment set aside,

the other party to the proceedings being:

Commission of the European Communities, represented by G. Valsesia and J. Currall, of its Legal Service, acting as Agents, with an address for service in

* Language of the case: French.

Luxembourg at the Chambers of C. Gómez de la Cruz, of the same service, Wagner Centre, Kirchberg,

defendant at first instance,

supported by

Council of the European Union, represented by M. Bishop and D. Canga Fano, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of A. Morbilli, Manager of the Legal Affairs Directorate of the European Investment Bank, 100 Boulevard Konrad Adenauer,

intervener,

THE COURT (Sixth Chamber),

composed of: P.J.G. Kapteyn, President of the Chamber, G. Hirsch, J.L. Murray (Rapporteur), H. Ragnemalm and R. Schintgen, Judges,

Advocate General: J. Mischo,

Registrar: H. von Holstein, Deputy Registrar,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 20 May 1999, at which Mr Apostolidis and others were represented by J.-N. Louis and V. Peere, of

the Brussels Bar, the Commission was represented by G. Valsesia and J. Currall and the Council was represented by M. Bishop and D. Canga Fano,

after hearing the Opinion of the Advocate General at the sitting on 24 June 1999,

gives the following

Judgment

1 By application lodged at the Court Registry on 19 September 1997, Mr Apostolidis and 64 other officials and members of the temporary staff of the Commission lodged an appeal under Article 49 of the EC Statute of the Court of Justice against the judgment of the Court of First Instance of 10 July 1997 in Case T-81/96 *Apostolidis and Others* v *Commission* [1997] ECR-SC I-A-207 and II-607 (the 'contested judgment'), in which that court dismissed their applications for, first, annulment of the Commission's decision rejecting their request that their pay slips for January 1992 be drawn up in compliance with the judgment of the Court of First Instance of 27 October 1994 in Case T-64/92 *Chavane de Dalmassy and Others* v *Commission* [1994] ECR-SC I-A-227 and II-723 and, second, for compensation for the non-material damage which they claimed to have suffered.

2 The factual and legal background to the appeal is set out in the contested judgment as follows:

'1 The applicants are 65 officials and members of the temporary staff of the Commission, employed at the European Institute for Transuranic Elements at Karlsruhe, Germany.

2 They were all also applicants in Case T-64/92 *Chavane de Dalmassy and Others* v *Commission* [1994] ECR-SC II-723, the method of complying with the judgment in which forms the subject-matter of this action.

3 Under Article 64 of the Staff Regulations of Officials of the European Communities ("the Staff Regulations") and Article 20 of the Conditions of Employment of Other Servants of the European Communities, a weighting is applied to the remuneration of officials and members of the temporary staff, determined by reference to living conditions at their place of employment, to ensure that they have equal purchasing power irrespective of those conditions.

4 Until the adoption of Council Regulation (ECSC, EC, Euratom) No 3161/94 of 19 December 1994 adjusting, with effect from 1 July 1994, the remuneration and pensions of officials and other servants of the European Communities and the weightings applied thereto (OJ 1994 L 335, p. 1), the weighting applied to the remuneration of the applicants employed at Karlsruhe was that applicable to officials employed at Bonn, which was the capital of the Federal Republic of Germany until October 1990.

5 After the reunification of Germany, Berlin became the capital in October 1990. That event led the Commission to submit to the Council a draft regulation (SEC (91) 1612 final) on 4 September 1991, proposing that, with retrospective effect from 1 October 1990, a new weighting be calculated for Germany on the basis of the cost of living in Berlin and specific weightings be fixed for Bonn and Karlsruhe.

6 On 19 December 1991, the Council adopted Regulation (ECSC, EEC, Euratom) No 3834/91 adjusting, with effect from 1 July 1991, the remu-

neration and pensions of officials and other servants of the European Communities and the weightings applied thereto (OJ 1991 L 361, p. 13, corrigendum in OJ 1992 L 10, p. 56). That regulation lays down, *inter alia*, a weighting for Germany calculated on the basis of the cost of living in the former capital, Bonn, and a specific weighting for Berlin.

7 In January 1992, each applicant received a supplementary pay slip, which applied the "Bonn" weighting (95.1) laid down by Article 6(2) of Regulation No 3834/91.

8 In its judgment in *Chavane de Dalmassy*, following an action by the applicants challenging their pay slips for January 1992, the Court of First Instance annulled those slips in so far as they applied a weighting calculated by reference to the cost of living in Bonn.

9 In paragraph 56 of its judgment, the Court held that the Council was not entitled to fix a provisional weighting for Germany on the basis of the cost of living in a city other than the capital. The Council should therefore first have fixed a weighting for Germany, provisional if necessary, on the basis of the cost of living in Berlin and then fixed specific weightings, also provisional if necessary, for the various places of employment in that country where a noticeable variation in purchasing power had been determined by comparison with the cost of living in the capital, Berlin.

10 Since no appeal has been brought against that judgment, it has the force of *res judicata*.

11 Following the delivery of the *Chavane de Dalmassy* judgment, on 9 December 1994, the Commission drew up a first amended proposal for a Council regulation (SEC (94) 2024 final) with a view to the "annual adaptation" of officials' remuneration and pensions. It then adopted a second proposal for a regulation (doc. SEC (94) 2085 final) amending proposal SEC (91) 1612 final mentioned above and designed to fix, with retrospective effect from 1 October 1990, a general weighting for Germany and specific weightings for Bonn and Karlsruhe.

12 Then, on the basis of the first amended proposal, the Council adopted Regulation No 3161/94, which, *inter alia*, adapted weightings as from 1 July 1994. Article 6 of that regulation fixes a general weighting for Germany based on Berlin and a specific weighting for the remuneration of officials and other servants employed at Karlsruhe.

13 Under that provision, the Commission drew up revised pay slips for staff employed in Karlsruhe during the period from 1 July to 31 December 1994.

14 The Council took no action following the second amending proposal by the Commission concerning the retrospective fixing of the weightings as from October 1990.

15 On 5 May 1995, the applicants submitted a request under Article 90(1) of the Staff Regulations, first, that their pay slips since January 1992 be drawn up on the basis of the legally applicable weighting, secondly, for a declaration that the Commission erred by not adopting within a reasonable time the measures required by the *Chavane de Dalmassy* judgment pursuant to

Article 176 of the EC Treaty and, thirdly, for the payment of BEF 50 000 to each applicant by way of compensation for non-material damage.

16 That request was implicitly rejected on 5 September 1995, four months after it was submitted.

17 On 18 October 1995, the applicants submitted a complaint against that decision under Article 90(2) of the Staff Regulations.

18 In the absence of a reply within the four-month period laid down by Article 90(2) of the Staff Regulations, an implied decision rejecting it was deemed to come into being on 18 February 1996. Then, on 26 February 1996, the Commission adopted an express decision of rejection, which was served on each applicant by a standard letter with form of acknowledgement of receipt as from 11 March 1996.'

3 It was in those circumstances that the applicants brought an action for annulment before the Court of First Instance in which they put forward two pleas in law.

4 The first alleged infringement of Article 176 of the EC Treaty (now Article 233 EC), in that the Commission had failed to appreciate the scope of that provision, which required it not only to adopt the direct implementing measures required by the *Chavane de Dalmassy* judgment, but also to make good the additional damage resulting from the annulled measure. In that respect, the applicants estimated *ex aequo et bono* at BEF 50 000 the non-material damage which each of them had suffered by reason of the successive faults on the part of the

Commission and of the state of uncertainty in which they had been since the delivery of that judgment as to the determination of their rights.

5 The second plea was based on infringement of Articles 24, 64 and 65 of the Staff Regulations. In the first part of this plea, the applicants argued that the Commission was required to take the measures to comply with the *Chavane de Dalmassy* judgment in accordance with, first, the duty to have due regard to the welfare of officials laid down in Article 24 of the Staff Regulations, and, secondly, its obligation to submit proposals to the Council in the event of a significant variation in the cost of living or of a finding of an appreciable distortion in purchasing power in a given place of employment, as set out in Articles 64 and 65 of the Staff Regulations and Article 9 of Annex XI thereto. In the second part of the plea, the applicants argue that the Commission's proposals after the *Chavane de Dalmassy* judgment to fix a weighting coefficient for Karlsruhe with retrospective effect constituted a fresh service-related fault, in that their consequence was to reduce retroactively the remuneration to which the applicants were entitled on the basis of the weighting coefficient calculated by reference to the capital, Berlin. In the third part of the second plea, the applicants argue that the Commission also committed a fault and infringed the duty of assistance laid down in Article 24 of the Staff Regulations by not submitting for review by the Community judicature, first, Regulation No 3161/94, inasmuch as, in breach of Article 176 of the Treaty, it did not make any retroactive provision with effect as from January 1992, and, secondly, Regulation No 3834/91, which would have made it unnecessary for them to have brought the action which gave rise to the *Chavane de Dalmassy* judgment.

The contested judgment

6 By judgment of 10 July 1997, the Court of First Instance dismissed the action in its entirety and ordered the applicants to pay the costs.

7 After discussing, in paragraphs 37 to 48 of the contested judgment, the Commission's objection that the action was inadmissible on the grounds that

the pre-litigation procedure did not follow the proper course and that the applicants had no interest in bringing an action, the Court dismissed, in paragraphs 60 to 81, the applicants' first plea, claiming infringement of Article 176 of the Treaty. It held that the mere adoption of Regulation No 3161/94 did not, on its own, constitute sufficient compliance with the *Chavane de Dalmassy* judgment, inasmuch as that regulation did not concern the officials' pay slips for the months of January 1992 to June 1994 inclusive and that it was therefore necessary to examine to what extent the *Chavane de Dalmassy* judgment also required the Commission to adopt measures concerning the period from January 1992 until 1 July 1994, the date on which Regulation No 3161/94 took effect. In that respect the Court found that it followed from the *Chavane de Dalmassy* judgment and Articles 64 and 65 of the Staff Regulations that the Council was required to determine, first, a weighting for Germany — provisional if necessary — on the basis of the cost of living in Berlin and, secondly, specific weightings — which might also be provisional, if necessary — for the various places of employment in that country where an appreciable distortion of purchasing power had been recorded by comparison with the cost of living in the capital, Berlin. The Court inferred from the interdependence of those two related obligations imposed on the Council that the applicants were not entitled to rely on the application, for their benefit, of one of those obligations without also taking account, in determining the extent of their rights, of the content of the second obligation. It concluded that the applicants' claim manifestly exceeded their rights under Article 176 of the Treaty.

8 As regards the applicants' claim for compensation to make good the direct and incidental losses arising from the illegality found by the Court of First Instance, that Court held that the adoption of compensatory measures was conditional upon the applicants having suffered a 'disadvantage'. It pointed out that the applicants had, during the period from January 1992 until 1 July 1994, globally obtained the application to their remuneration of a weighting higher than that which they would have obtained if the Council had already amended the rules in force. As the applicants had not suffered any disadvantage, the Commission was under no obligation to adopt compensatory measures. Regarding the claim relating to non-material damage, the Court held that Article 44(1)(c) of the Rules of Procedure requires an application for compensation for damage caused by a Community institution to contain information making it possible to identify, *inter alia*, the damage which the applicant claims to have suffered and its nature and extent, which was not so in this case. It therefore held the claim to be inadmissible.

9 In paragraphs 90 to 105 of the judgment, the Court of First Instance dismissed the second plea, alleging infringement of Articles 24, 64 and 65 of the Staff Regulations, holding that it is not open to officials to plead the duty of the institutions to have regard for their interests as a ground for claiming advantages precluded by the terms of the judgment on which their action is based. As for any infringement by the Commission of its duty of assistance in not submitting Regulations Nos 3161/94 and 3834/91 for review by the Community judicature, the Court pointed out that, since the Commission had a discretion, subject to review by the Community judicature, regarding the choice of measures and methods to be employed for the purpose of discharging that duty, an individual could not compel it to bring an action for failure to act without jeopardising the margin for manœuvre inherent in that discretion.

The appeal

10 In their appeal, the applicants request the Court, first, to set aside the contested judgment and annul the decision rejecting their request for the drawing up of their pay slips for January 1992, and, secondly, to order the Commission to pay each of them BEF 50 000 in compensation for non-material damage and to pay the whole of the costs, including those relating to the proceedings at first instance.

11 The Commission contends that the appeal should be dismissed as unfounded.

12 In support of their appeal, the applicants put forward three pleas in law. The first alleges infringement by the Court of First Instance of the second paragraph of Article 215 of the EC Treaty (now the second paragraph of Article 288 EC) and of Article 44(1)(c) of its Rules of Procedure. They state that the *Chavane de Dalmassy* judgment was delivered at the time when the Council was studying a proposal for a Commission regulation fixing a higher weighting for Karlsruhe than that applicable to Bonn. Only after the delivery of that judgment was a new proposal for a regulation submitted, fixing a lower weighting for Karlsruhe. The

applicants submit that the Court of First Instance, which was not in a position to take account of that factor when it delivered its judgment in *Chavane de Dalmassy*, erred in holding that the conditions laid down by Article 44(1)(c) of its Rules of Procedure were not fulfilled.

13 The applicants next submit that the Court of First Instance infringed the second paragraph of Article 215 of the Treaty by holding that they had not sufficiently specified their damage. They argue that the Treaty, the Rules of Procedure and the case-law do not require that an exclusively financial disadvantage be shown to exist, as the judgment of the Court suggested. The applicants contend that their interest in obtaining compensation for their non-material damage was proved to the requisite legal standard in the proceedings which resulted in the contested judgment.

14 By this second plea they allege that the Court of First Instance infringed Article 176 of the Treaty and the case-law concerning its application and misinterpreted the *Chavane de Dalmassy* judgment when it held that the Commission was not required to draw up new pay slips for the applicants by applying the weighting of the country in which they were employed, calculated by reference to the cost of living in the capital, in the absence of a specific weighting for their place of employment.

15 The third plea alleges infringement of Articles 63 to 65a of the Staff Regulations. The applicants maintain that the Court of First Instance was wrong to hold that they could in no circumstances require the Berlin weighting to be applied in the absence of a specific weighting for the place of employment.

Findings of the Court

16 Of the pleas advanced in support of the appeal, it is appropriate to examine the third plea first.

The third plea

17 The applicants submit that in the absence of a specific weighting for the place of employment, in this case Karlsruhe, pay slips had to be drawn up on the basis of the weighting applicable in the capital. Since the Commission had, in the exercise of its discretion, decided not to bring an action for failure to act against the Council, it should have applied to their remuneration the weighting calculated by reference to the cost of living in Berlin.

18 The Commission states that the purpose of the weightings affecting officials' remuneration under Articles 64 and 65 of the Staff Regulations is to ensure that equivalent purchasing power is maintained for all officials, whatever their place of employment, in accordance with the principle of equal treatment. To uphold the applicants' claims would amount to distorting the principles of equal treatment and of equivalent purchasing power of officials employed in Germany which lie at the very basis of the concept of weightings.

19 As the Commission points out, it is clear from settled case-law of the Court of Justice that the purpose of Articles 64 and 65 of the Staff Regulations is to ensure that all officials of the same grade and step have equivalent purchasing power, wherever their place of employment, in accordance with the principle of equality of treatment (see, in particular, Case 194/80 *Benassi* v *Commission* [1981] ECR 2815, paragraph 5; Case C-301/90 *Commission* v *Council* [1992] ECR I-221,

paragraph 22). As the Advocate General has pointed out at paragraph 101 of his Opinion, it is undisputed that, during the period in question, the cost of living in Karlsruhe was considerably lower than that in Berlin. Therefore, to apply to the remuneration of staff employed in Karlsruhe a weighting calculated by reference to the cost of living in Berlin would be contrary to the purpose of those articles of the Staff Regulations.

20 The Court of First Instance did not therefore infringe Articles 63 to 65a of the Staff Regulations by deciding that the applicants were not entitled to demand that the Berlin weighting be applied to their remuneration.

21 The applicants' third plea must therefore be rejected.

22 The second plea should next be examined.

The second plea

23 The Court of First Instance held that the *Chavane de Dalmassy* judgment imposed two inseparable obligations on the Council, namely the adoption of one specific weighting for Berlin and another for Karlsruhe. The applicants maintain that in so doing the Court of First Instance infringed Article 176 of the Treaty by holding that the Commission was not required to draw up new pay slips applying the weighting for the country of employment, calculated by reference to the cost of living in the capital in the absence of a specific weighting for their place of employment. They submit that the Court of First Instance could not, without encroaching upon the Council's discretion, require the Council to adopt a specific regulation for Karlsruhe, since the Council was free to assess whether such a regulation was necessary, having regard to the information at its disposal.

24 The applicants add that it was for the Commission to take the measures required in order to comply with the *Chavane de Dalmassy* judgment. In that context, they contend that three possibilities were open to the Commission:

— either bring an action against the Council for failure to act, since it had failed to adopt a regulation although the legal conditions for this were satisfied;

— or apply the weighting adopted for the capital to the applicants;

— or, if it considered that the *Chavane de Dalmassy* judgment presented particular difficulties as regards compliance, establish a dialogue with the applicants in order to explain those difficulties to them and attempt to find an agreed solution.

25 The Commission challenges the applicants' argument. It maintains that Karlsruhe was undoubtedly one of the places where an appreciable distortion in purchasing power existed by comparison with that in the capital. Having regard to the two inseparable obligations recognised by the Court of First Instance, the fixing of a specific weighting appropriate to reflect the cost of living in Karlsruhe became a duty, unavoidable as a matter of principle, for the Council once it had established a weighting for Germany at the level of the cost of living in Berlin.

26 It should be pointed out that, following the reasoning of the case-law of the Court of Justice, it is for the Council, pursuant to Article 65(2) of the Staff Regulations, to determine whether there is an appreciable difference in the cost of living between the various places of employment and, if so, to draw the appropriate conclusions (see Case 59/81 *Commission* v *Council* [1982] ECR 3329, paragraph 32; Case C-301/90 *Commission* v *Council* [1992] ECR I-221, paragraph 24). In

that respect, it should be noted that the Council does not have any margin of discretion as to the need to introduce a specific weighting for a place of employment if, as in this case, the cost of living there is appreciably lower than in the capital.

27 As regards the first of the three possibilities which, in the applicants' submission, were open to the Commission in order to comply with the *Chavane de Dalmassy* judgment, this Court finds that the Court of First Instance was right in holding, at paragraphs 99 to 103 of the contested judgment, that the applicants could not oblige the Commission to bring an action for failure to act without jeopardising the margin for manœuvre inherent in the discretion which the Commission has under Article 175 of the EC Treaty (now Article 232 EC) (see, by analogy, Case 247/87 *Star Fruit* v *Commission* [1989] ECR 291, paragraphs 10 to 14).

28 As regards the second possibility, this Court has already held, at paragraph 20 of this judgment, that application to the applicants of the weighting adopted for the capital, Berlin, would be contrary to the purpose of Articles 63 to 65*a* of the Staff Regulations.

29 As for the third possibility open to the Commission, namely to establish a dialogue with the applicants concerning the implementation of the *Chavane de Dalmassy* judgment, the Court of First Instance rightly found, at paragraph 74 of the contested judgment, that, failing the adoption of new rules by the Council, the Commission was unable to apply a weighting to the applicants' remuneration other than that laid down by the rules in force. That inability, as the Court of First Instance found, undoubtedly constituted a 'particular difficulty' in implementing the *Chavane de Dalmassy* judgment, and, in such a situation, it is for the institution concerned to take a decision of a nature such as to provide fair compensation for the disadvantage which has resulted for the persons concerned by the decision which has been annulled (see Case C-412/92 P *Parliament* v *Meskens* [1994] ECR I-3757, paragraph 28). The Court of First Instance was therefore right in holding, at paragraph 75, that, as it was not disputed that the applicants had obtained overall, during the period from January 1992 until 1 July

1994, the application to their remuneration of a weighting higher than that which they would have obtained if the Council had already amended the rules in force, such a disadvantage had not been demonstrated.

30 It follows from all the foregoing considerations that the Court of First Instance did not infringe Article 176 of the Treaty by holding that the applicants' demands manifestly exceeded their rights under that provision, and the second plea must therefore be dismissed.

31 Finally, the first plea must be examined.

The first plea

32 The applicants state that the *Chavane de Dalmassy* judgment was delivered at a time when a proposal for a Commission regulation, fixing a higher weighting for Karlsruhe than that applicable to Bonn, was being studied by the Council. It was only after the delivery of that judgment that a new proposal for a regulation, fixing a lower weighting for Karlsruhe, was submitted. The Court of First Instance, in giving its judgment in the *Chavane de Dalmassy* case, was not in a position to take account of that factor.

33 The applicants also maintain that the Court of First Instance infringed the second paragraph of Article 215 of the Treaty by holding that they had not sufficiently specified their damage. They contend that the Treaty, the Rules of Procedure and the case-law do not require that an exclusively financial disadvantage be shown

to exist, as the judgment of the Court of First Instance suggested, and that, by not drawing up new pay slips for the period from January 1992 to June 1994, despite the *Chavane de Dalmassy* judgment, the Commission left them in a state of uncertainty and incomprehension. They maintain that they assessed their non-material damage *ex aequo et bono* taking account of the successive faults on the part of the Commission and that their interest in obtaining compensation for such damage was proved to the requisite legal standard in the proceedings which resulted in the contested judgment.

34 The Commission maintains that the applicants' aim following the *Chavane de Dalmassy* judgment was essentially to secure the straightforward extension of the Berlin weighting, for their benefit, from October 1991. While it is true that, in paragraph 56 of that judgment, the Court of First Instance found that the Council was not entitled to fix a provisional weighting for Germany on the basis of the cost of living in a city other than the capital, it supplemented its finding in the same paragraph by pointing out that, in those circumstances, the Council should have fixed, first, a weighting for Germany, provisional if necessary, on the basis of the cost of living in Berlin and, secondly, specific weightings, also provisional if necessary, for the various places of employment in that country where an appreciable distortion in purchasing power had been recorded in relation to the cost of living in the capital.

35 The Commission submits that, in Karlsruhe, the applicants enjoyed a weighting higher than that which they would have been able to claim if the Council had accepted the rectifying proposal of the Commission on the basis of statistics from the Statistical Office of the European Communities. It concludes that the applicants have no basis for maintaining that they have suffered financial loss. As regards non-material damage, the Commission accepts that it may be assessed *ex aequo et bono*. However, it is still necessary for there to have been damage. The applicants having failed to provide evidence of damage, the Court of First Instance did not commit any error of law.

36 As a preliminary point, it must be established, for the purposes of determining the applicants' interest in this case, whether the damage which they claim to have suffered existed at the date on which their action was brought, taking into account the legal situation arising from the changes introduced following the *Chavane de Dalmassy* judgment.

37 As regards material damage, the applicants have not challenged the figures put forward by the Commission, according to which, during the period in question, the cost of living in Karlsruhe was lower overall than in Bonn. It follows that through the application to their remuneration of the weighting calculated by reference to the cost of living in Bonn, rather than a specific weighting for Karlsruhe, the applicants obtained a slight financial advantage. They have therefore not suffered any material damage. As regards non-material damage, it is clear from paragraphs 77 to 81 of the contested judgment that the Court of First Instance did not at any time state, either expressly or by implication, that only an exclusively financial disadvantage could give rise to compensatory payments. It merely indicated that, in order to satisfy the requirements of Article 44(1)(c) of its Rules of Procedure, an application seeking compensation for damage caused by a Community institution must contain information making it possible to identify, in particular, the nature and extent of the damage. Since the applicants did not produce such information, the Court of First Instance was right in holding that, since the applicants' action for compensation did not satisfy the conditions imposed by that provision of its Rules of Procedure, the claims for compensation based on alleged non-material damage were inadmissible.

38 The applicants' first plea must therefore be dismissed.

39 It follows from all the above considerations that the appeal must be dismissed in its entirety.

Costs

40 Under Article 69(2) of the Rules of Procedure, applicable to the appeals procedure by virtue of Article 118, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Under Article 69(4), Member States and institutions which intervene in the proceedings are to bear their own costs. Since the Commission has not asked for costs, and the applicants have been unsuccessful, each party must be ordered to bear its own costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1. Dismisses the appeal in its entirety;

2. Orders the applicants, the Commission of the European Communities and the Council of the European Union to bear their own costs.

Kapteyn Hirsch Murray

Ragnemalm Schintgen

Delivered in open court in Luxembourg on 5 October 1999.

R. Grass

Registrar

P.J.G. Kapteyn

President of the Sixth Chamber