JUDGMENT OF THE COURT

4 July 2000 *

In Case C-352/98 P,

Laboratoires Pharmaceutiques Bergaderm SA, in liquidation, established at Rungis, France,

and

Jean-Jacques Goupil, residing at Chevreuse, France,

represented by J.-P. Spitzer and Y.-M. Moray, of the Paris Bar, with an address for service in Luxembourg at the Chambers of A. May, 398 Route d'Esch,

appellants,

APPEAL against the judgment of the Court of First Instance of the European Communities (Third Chamber) of 16 July 1998 in Case T-199/96 *Bergaderm and Goupil* v *Commission* [1998] ECR II-2805, seeking to have that judgment set aside,

* Language of the case: French.

the other parties to the proceedings being:

Commission of the European Communities, represented by P. Van Nuffel, of its Legal Service, acting as Agent, assisted by A. Barav, of the Paris Bar and Barrister, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, of the same service, Wagner Centre, Kirchberg,

defendant at first instance,

supported by

French Republic, represented by K. Rispal-Bellanger, Head of Subdirectorate in the Legal Affairs Directorate at the Ministry of Foreign Affairs, and R. Loosli-Surrans, Chargé de Mission in the same directorate, acting as Agents, with an address for service in Luxembourg at the French Embassy, 8 B Boulevard Joseph II,

intervener in the appeal,

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, J.C. Moitinho de Almeida, L. Sevón (Rapporteur) and R. Schintgen (Presidents of Chambers), P.J.G. Kapteyn, J.-P. Puissochet, P. Jann, H. Ragnemalm, M. Wathelet, V. Skouris and F. Macken, Judges,

Advocate General: N. Fennelly,
Registrar: D. Louterman-Hubeau, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 30 November 1999,

after hearing the Opinion of the Advocate General at the sitting on 27 January 2000,

gives the following

Judgment

1 By application lodged at the Court Registry on 24 September 1998, Laboratoires Pharmaceutiques Bergaderm SA ('Bergaderm'), a company in liquidation, and Mr Goupil, its chief executive, brought an appeal under Article 49 of the EC Statute of the Court of Justice against the judgment of the Court of First Instance of 16 July 1998 in Case T-199/96 *Laboratoires Pharmaceutiques Bergaderm and Goupil* v *Commission* [1998] ECR II-2805 ('the contested judgment'), in which the Court of First Instance dismissed their application for compensation for damage which they purportedly suffered as a result of the preparation and the adoption of the 18th Commission Directive 95/34/EC of 10 July 1995 adapting

to technical progress Annexes II, III, VI and VII to Council Directive 76/768/EEC on the approximation of the laws of the Member States relating to cosmetic products (OJ 1995 L 167, p. 19; 'the Adaptation Directive').

2 By order of the President of the Court of Justice of 12 February 1999, the French Republic was granted leave to intervene in support of the form of order sought by the Commission.

Legislative background

3 In paragraphs 1 to 5 of the contested judgment, the Court of First Instance set out the legislative background in the following terms:

'1 Pursuant to Article 4 of Council Directive 76/768/EEC of 27 July 1976 on the approximation of the laws of the Member States relating to cosmetic products (OJ 1976 L 262, p. 169; hereinafter "the Cosmetics Directive"), as amended in particular by Council Directive 93/35/EEC of 14 June 1993 (OJ 1993 L 151, p. 32), the Member States were required to prohibit the marketing, beyond the limits and outside the conditions laid down, of cosmetic products containing any of the substances specified in the "List of substances which cosmetic products must not contain" (Annex II to the Directive) or the "List of substances which cosmetic products must not contain except subject to the restrictions and conditions laid down" (Annex III, Part 1).

2 Article 9 of the Cosmetics Directive sets up a Committee on the adaptation to technical progress of the directives on the removal of technical barriers to trade in the cosmetic products sector (hereinafter "the Adaptation Commit-

tee"), consisting of representatives of the Member States, with a representative of the Commission as chairman.

3 Commission Decision 78/45/EEC of 19 December 1977 (OJ 1978 L 13, p. 24) established a Scientific Committee on Cosmetology (hereinafter "the Scientific Committee") attached to the Commission. Under Article 2 of that decision, the Committee's task is to give the Commission an opinion on any problem of a scientific or technical nature in the field of cosmetic products and particularly on substances used in the preparation of cosmetic products and on the conditions of use of these products. The decision also provides that the members of the Scientific Committee are to be appointed by the Commission from among "highly qualified leading scientific figures with competence in the field [of cosmetic products]" (Article 4); that the representatives of the Commission departments concerned are to attend the meetings of the Committee (Article 8(2)); that the Commission may also invite "leading figures with special qualifications in the subjects under study" to attend those meetings (Article 8(3)); and that the Scientific Committee may also form working parties which are to meet when convened by the Commission (Articles 7 and 8).

4 Article 8(2) of the Cosmetics Directive provides that the amendments necessary for adapting Annex II to technical progress are to be adopted in accordance with the procedure laid down in Article 10.

5 That procedure comprises the following stages:

— the Adaptation Committee is convened by its chairman;

— the representative of the Commission submits a draft of the measures to be adopted;

— the Adaptation Committee delivers an opinion on the draft, to be adopted by a qualified majority vote, in which the chairman does not take part;

— where the proposed measures are in accordance with the opinion of the Committee, they are adopted by the Commission;

— where the proposed measures are not in accordance with the opinion of the Committee, or if no opinion is adopted, the Commission must without delay propose to the Council — which acts by a qualified majority — the measures to be adopted; if, however, within three months of the proposal being submitted to it, the Council has not acted, the proposed measures are to be adopted by the Commission.'

The facts and the contested judgment

4 Bergaderm carried on business in the field of para-pharmaceutical and cosmetic products. It produced, *inter alia*, Bergasol, a sun oil containing, in addition to vegetable oil and filters, bergamot essence. Some of the molecules to be found in bergamot essence are psolarens, otherwise known as 'furocoumarines'. One of these is bergapten, also referred to in scientific circles as '5-methoxypsoralen' (hereinafter '5-MOP').

5 In its chemically pure state, 5-MOP is suspected of being potentially carcinogenic. The question arose as to whether that molecule was also potentially carcinogenic

as an ingredient of the bergamot essence used in association with filters in a bronzing product.

6 That question was the subject of scientific controversy. In March 1987, the German Government asked the Commission to submit to the Adaptation Committee a proposal to restrict to 1 mg/kg the maximum level of naturally occurring psoralens in sun oils.

7 The Commission sought the opinion of the Scientific Committee. At its meeting on 2 October 1990, that committee recommended restricting to 1 mg/kg the maximum level of 5-MOP in sun oils. After hearing numerous experts, the Scientific Committee confirmed its initial opinion on 4 November 1991, 2 June 1992 and 24 June 1994.

8 The Adaptation Committee met for the first time on 17 December 1991 but, at that time, did not reach any conclusions. At its meeting on 1 June 1992, it was divided on the question. Finally, on 28 April 1995, it recommended a maximum level of 1 mg/kg, since all the delegations had voted in favour of that opinion save for the French delegation, and the Finnish delegation which was absent.

9 On 10 July 1995, the Commission adopted the Adaptation Directive. Point 1(a) of the Annex thereto replaced reference number 358 in Annex II to the Cosmetics Directive, the original text of which was

'Furo [3.2-g] chromen-7-one and its alkyl-substituted derivatives (e.g. trioxysalan and 8-methoxypsoralen), except for normal content in natural essences used',

with the following text:

'Furocoumarines (e.g. trioxysalan, 8-methoxypsoralen, 5-methoxypsoralen) except for normal content in natural essences used.

In sun protection and in bronzing products, furocoumarines shall be below 1 mg/kg.'

10 By judgment of the Tribunal de Commerce (Commercial Court), Créteil, of 6 July 1995, a procedure was initiated with a view to placing Bergaderm in liquidation. Bergaderm was formally put into liquidation on 10 October 1995.

11 By application lodged at the Registry of the Court of First Instance on 4 December 1996, Bergaderm and Mr Goupil brought an action against the Commission pursuant to Articles 178 and 215, second paragraph, of the EC Treaty (now Articles 235 EC and 288, second paragraph, EC), claiming that the Commission had, during the preparation and the adoption of the Adaptation Directive, committed wrongful acts which had caused them significant financial damage and had resulted in Bergaderm's going into liquidation.

12 The appellants claimed that, since it concerned exclusively Bergasol, the Adaptation Directive was to be regarded as an administrative act. The wrongful acts of which the Commission was accused were procedural errors (disregard for the procedure for the adoption of the Adaptation Directive and for the appellants' rights of defence), manifest error of assessment and breach of the principle of proportionality, and finally misuse of powers.

13 In the contested judgment, the Court of First Instance recalled that, as regards liability arising from legislative measures, the conduct with which the Community is charged must constitute a breach of a higher-ranking rule of law for the protection of individuals (paragraph 48). It held that the Adaptation Directive was a measure of general application (paragraph 50) and concluded that it was necessary therefore to determine whether the Commission had disregarded a higher-ranking rule of law for the protection of individuals (paragraph 51).

14 Without deeming it necessary to determine whether the provisions governing the procedure for the adoption of the Adaptation Directive contained higher-ranking rules of law for the protection of individuals, the Court of First Instance concluded that the Commission had not infringed those provisions (paragraph 56). It stated that they did not provide for the protection of certain rights of the defence (paragraph 59) and that, in any event, the appellants had had the opportunity to express their views before the adoption of the Adaptation Directive (paragraph 60).

15 As regards the plea alleging manifest error of assessment and breach of the principle of proportionality, the Court of First Instance held that, in the light of the evidence before the Court, the Commission's conduct and the measure adopted by it could not be regarded as vitiated by a manifest error of assessment or as disproportionate (paragraph 67).

16 Finally, as regards the plea alleging misuse of powers, the Court of First Instance held that the appellants had failed to provide evidence such as to show that the Adaptation Directive had been adopted with the exclusive or main purpose of achieving an end other than that stated (paragraphs 69 and 70).

17 Consequently, the Court of First Instance dismissed the application.

The appeal

18 By their appeal, the appellants claim that the Court should:

— set aside the contested judgment and, giving judgment itself,

— order the Commission to pay Bergaderm the sum of FRF 152 867 090 and Mr Goupil, personally, the sum of FRF 161 309 995.33, by way of damages, and

— order the Commission to pay the costs.

19 The Commission, supported by the French Republic, contends that the Court should dismiss the appeal as inadmissible or, in the alternative, as unfounded and order the appellants to pay the costs.

20 The appeal is based on three grounds. The first is that the Court of First Instance erred in law in declaring that the Adaptation Directive was a legislative measure. The second is that the Court of First Instance committed a manifest error of assessment as regards the exercise, by the Commission, of its powers. The third, in the alternative, is based on breach of higher-ranking rules of law.

21 It is appropriate to examine the first and second grounds of appeal together.

The first two grounds of appeal based, first, on an error of law in respect of the legal nature of the Adaptation Directive and, second, on a manifest error of assessment as regards the exercise, by the Commission, of its powers

22 By their first ground of appeal, the appellants claim that the Court of First Instance erred in law in considering that the Adaptation Directive was a legislative measure. They criticise, in this respect, paragraph 50 of the contested judgment and claim that the Court of First Instance erred in looking merely at the official name of the measure when it should have categorised it by taking account of its purpose and its content and, therefore, have regarded it as an individual decision.

23 By their second ground of appeal, they criticise the Court of First Instance for having, in paragraph 62 of the contested judgment, inferred from the terms of the Adaptation Directive, in particular from the first recital in the preamble thereto, that the Commission had made a correct assessment of the scientific arguments. According to the appellants, contrary to the wording of that recital, which states that 'the Scientific Committee on Cosmetology has not been able to conclude from the available scientific, technical and epidemiological data that the association of protective filters with furocoumarines would guarantee the safety of sun protection and bronzing products containing furocoumarines above a minimum level', all the available scientific studies on Bergasol fully demonstrated its safety and its effectiveness.

24 They also claim that the case-law relied on by the Court of First Instance in paragraph 66 of the contested judgment concerning the institutions' right to take protective measures without having to wait until the reality and the seriousness of those risks become fully apparent is not relevant (Case C-157/96 *National Farmers' Union and Others* [1998] ECR I-2211, paragraph 63).

25 They conclude that the Court of First Instance wrongly assessed both the facts and the law and that the contested provision of the Adaptation Directive is indeed a decision which can have been adopted only by the Commission's failing to take

account of the rights and interests of Bergaderm and Mr Goupil, and that it cannot be justified by requirements linked to the protection of public health.

26 The Commission contends that the appellants have merely reiterated the arguments already submitted to the Court of First Instance and that, for that reason, they are manifestly inadmissible.

27 In the alternative, it contends, as regards the first ground of appeal, that the Adaptation Directive is of general legislative scope and concerns the appellants as manufacturers of sun protection products, that is to say by reason of a business activity which may be pursued at any time by any person.

28 As regards the second ground of appeal, the Commission points out that, in so far as the appellants challenge the findings of fact of the Court of First Instance, their argument is manifestly inadmissible in the context of the appeal.

29 In the event of the Court's none the less taking that argument into consideration, the Commission contends that the appellants have not shown that the 5-MOP contained in sun protection and bronzing products presents no risk to public health and have not refuted the opinions of the Scientific and Adaptation Committees that the association of 5-MOP with sun filters does not enable all risk for human health to be avoided where they are used in sun protection products and spread on skin exposed to ultraviolet rays.

30 The Commission submits that the Court of First Instance was right in holding, in paragraph 65 of the contested judgment, that 'the Commission cannot be criticised for placing the matter before the Scientific Committee or for complying with that body's opinion, which was drawn up on the basis of a large number of

meetings, visits and specialist reports', after it had noted, in paragraph 64, that 'the Scientific Committee has the task of assisting the Community authorities on scientific and technical issues in order to enable them to determine, in full knowledge of the facts, which adaptation measures are necessary'.

31 The French Government, which submits a single argument in response to the first and second grounds of appeal, also takes the view that, in so far as they merely reiterate the arguments advanced before the Court of First Instance, those grounds of appeal should be declared manifestly inadmissible.

32 The French Government also notes that there were doubts about the protective effect for public health of the association of filters with furocoumarines and about the safety, in general, for human health, of sun protection products containing 5-MOP. In the light of the serious risk for human health, namely skin cancer, it submits that the Court of First Instance was right to refer to the precautionary principle as asserted by the Court in its case-law.

33 The French Government therefore takes the view that the Court of First Instance was right in holding, in paragraph 67 of the contested judgment, that 'the Commission's conduct and the measure adopted by it cannot be regarded as vitiated by a manifest error of assessment or as disproportionate'.

Findings of the Court

34 As regards the objection of inadmissibility raised by the Commission and the French Government, it follows from Article 168a of the EC Treaty (now Article 225 EC), the first paragraph of Article 51 of the EC Statute of the Court of Justice and Article 112(1)(c) of the Rules of Procedure of the Court of Justice that an appeal must indicate precisely the contested elements of the judgment

which the appellant seeks to have set aside, and also the legal arguments specifically advanced in support of the appeal (Case C-7/95 P *Deere* v *Commission* [1998] ECR I-3111, paragraphs 34 to 35; order of 16 December 1999 in Case C-170/99 P *Clauni and Others* v *Commission*, not reported in the ECR, paragraph 15).

35 That requirement is not satisfied by an appeal which, without even including an argument specifically identifying the error of law allegedly vitiating the contested judgment, confines itself to reproducing the pleas in law and arguments previously submitted to the Court of First Instance. Such an appeal amounts in reality to no more than a request for re-examination of the application submitted to the Court of First Instance, which the Court of Justice does not have jurisdiction to undertake.

36 In the present case, however, the appellants' first ground of appeal specifically challenges paragraph 50 of the contested judgment and includes an argument intended to show that the Court of First Instance erred in law in regarding the Adaptation Directive as a legislative measure. The second ground of appeal also indicates precisely the elements of the contested judgment which it criticises and includes a legal argument intended to demonstrate that the Court of First Instance committed an error in the assessment of the way in which the Commission exercised its powers.

37 The plea of inadmissibility based on the repetition, by the appellants, of arguments already submitted to the Court of First Instance must therefore be rejected.

38 By their first two grounds of appeal, the appellants essentially claim that, in the light of the nature of the measure adopted by the Commission, the Court of First Instance erred in law in concluding, in paragraph 67 of the contested judgment, that the Commission's conduct and the measure adopted by it to restrict to 1 mg/kg the maximum level of psoralens in sun protection products cannot be regarded as vitiated by a manifest error of assessment or as disproportionate.

39 The second paragraph of Article 215 of the Treaty provides that, in the case of non-contractual liability, the Community is, in accordance with the general principles common to the laws of the Member States, to make good any damage caused by its institutions or by its servants in the performance of their duties.

40 The system of rules which the Court has worked out with regard to that provision takes into account, *inter alia*, the complexity of the situations to be regulated, difficulties in the application or interpretation of the texts and, more particularly, the margin of discretion available to the author of the act in question (Joined Cases C-46/93 and C-48/93 *Brasserie du Pêcheur and Factortame* [1996] ECR I-1029, paragraph 43).

41 The Court has stated that the conditions under which the State may incur liability for damage caused to individuals by a breach of Community law cannot, in the absence of particular justification, differ from those governing the liability of the Community in like circumstances. The protection of the rights which individuals derive from Community law cannot vary depending on whether a national authority or a Community authority is responsible for the damage (*Brasserie du Pêcheur and Factortame*, paragraph 42).

42 As regards Member State liability for damage caused to individuals, the Court has held that Community law confers a right to reparation where three conditions are met: the rule of law infringed must be intended to confer rights on individuals; the breach must be sufficiently serious; and there must be a direct causal link between the breach of the obligation resting on the State and the damage sustained by the injured parties (*Brasserie du Pêcheur and Factortame*, paragraph 51).

43 As to the second condition, as regards both Community liability under Article 215 of the Treaty and Member State liability for breaches of Community law, the decisive test for finding that a breach of Community law is sufficiently

serious is whether the Member State or the Community institution concerned manifestly and gravely disregarded the limits on its discretion (*Brasserie du Pêcheur and Factortame*, paragraph 55; and Joined Cases C-178/94, C-179/94, C-188/94, C-189/94 and C-190/94 *Dillenkofer and Others* v *Germany* [1996] ECR I-4845, paragraph 25).

44 Where the Member State or the institution in question has only considerably reduced, or even no, discretion, the mere infringement of Community law may be sufficient to establish the existence of a sufficiently serious breach (see, to that effect, Case C-5/94 *Hedley Lomas* [1996] ECR I-2553, paragraph 28).

45 It is therefore necessary to examine whether, in the present case, as the appellants assert, the Court of First Instance erred in law in its examination of the way in which the Commission exercised its discretion when it adopted the Adaptation Directive.

46 In that regard, the Court finds that the general or individual nature of a measure taken by an institution is not a decisive criterion for identifying the limits of the discretion enjoyed by the institution in question.

47 It follows that the first ground of appeal, which is based exclusively on the categorisation of the Adaptation Directive as an individual measure, has in any event no bearing on the issue and must be rejected.

48 By the first limb of the second ground of appeal, the appellants challenge the finding, by the Court of First Instance, that there existed disputed scientific

studies and data as regards the risk for human health caused by the use of furocoumarines present in natural essences, even when associated with sun filters.

49 Article 168a of the Treaty and Article 51 of the EC Statute of the Court of Justice state that an appeal is to be limited to points of law and, therefore, the Court of First Instance has exclusive jurisdiction, first, to establish the facts except where the substantive inaccuracy of its findings is apparent from the documents submitted to it and, second, to assess those facts (Case C-7/95 P *Deere* v *Commission* [1998] ECR I-3111, paragraphs 18 and 21).

50 Before the Court, the appellants have not shown either by their arguments or by the documents they have submitted that the Court of First Instance distorted the nature of the evidence submitted to it by holding, in paragraph 63 of the contested judgment, that 'there is nothing in the documents before the Court to support the conclusion that the Commission misunderstood the scientific arguments'.

51 Therefore, since the first limb of the second ground of appeal contests a finding of fact, without showing that the facts were distorted, it must be declared inadmissible.

52 By the second limb of that ground of appeal, the appellants dispute the reference to the precautionary principle in paragraph 66 of the contested judgment.

53 However, paragraph 66 of the contested judgment, which begins with the word 'furthermore', is a statement of reasons added for completeness, since the Court of First Instance had already concluded its reasoning in paragraph 65 by stating

that the Commission could not be criticised for placing the matter before the Scientific Committee or for complying with that body's opinion, which was drawn up on the basis of a large number of meetings, visits and specialist reports.

54 It follows that the second limb of the second ground of appeal is irrelevant and must be rejected.

The third ground of appeal based on breach of higher-ranking rules of law

55 The appellants claim that the Court of First Instance misinterpreted the legislation in considering that the Commission did not infringe a higher-ranking rule of law for the protection of individuals.

56 According to the appellants, the Court of First Instance has, first, infringed such a rule by failing to condemn the procedural errors and by considering, in paragraph 52 of the contested judgment, that the Adaptation Committee had not, at its meeting on 1 June 1992, given an unfavourable opinion on the Commission's proposal to restrict the maximum level of psoralens in sunbathing products, which was incorrect since the two proposals had been examined and voted against.

57 They claim, second, that, even if the Court were to follow the interpretation of the Court of First Instance, it should find that the provisions of Article 10(3) of the Cosmetics Directive were applicable and that, therefore, where no opinion had been delivered, the Commission should have submitted a proposal to the Council.

58 Third, the Court of First Instance failed to condemn a flagrant breach of the principle that the procedure must be *inter partes*.

59 Lastly, the appellants claim that the Commission infringed the principle of proportionality by excluding Bergasol from the Community market although that measure was not justified on the ground of public health since, on the contrary, Bergasol ensures effective protection of the skin against the ultraviolet rays of the sun, and that that breach itself constitutes a breach of the principle of the protection of legitimate expectations. There is a sufficiently serious breach of a higher-ranking rule of law when Community institutions manifestly and gravely disregard the limits on their discretion without showing a higher-ranking public interest.

60 The Commission contends that the appellants have merely reiterated the arguments already submitted to the Court of First Instance against the procedure followed by the Commission when it adopted the Adaptation Directive and that, for that reason, those arguments are manifestly inadmissible.

61 In the alternative, the Commission contends that there was no procedural error and that the appellants had the opportunity to submit their observations, in particular before the Scientific Committee. It concludes accordingly that the Court of First Instance was right in rejecting the appellants' arguments in this respect and to consider that, in the light of the risk for human health, the Commission's conduct and the measure adopted by it could not be regarded as vitiated by a manifest error of assessment or as disproportionate.

Findings of the Court

62 Having regard to the conditions, set out in paragraphs 41 and 42 above, that must be met for Community liability to be incurred, the third ground of appeal must be interpreted as alleging that the Court of First Instance misinterpreted the

legislation in considering that the Commission did not infringe a rule of law intended to confer rights on individuals.

63 As regards the criticism, by the appellants, of paragraph 52 of the contested judgment, that first limb of this ground of appeal is inadmissible since it contests a finding and an assessment of the facts which the Court does not have jurisdiction to review.

64 In paragraph 52, the Court of First Instance examines the minutes of a meeting of the Adaptation Committee in order to determine whether that committee did, or did not, issue an opinion at that meeting.

65 As regards the second limb of this ground of appeal and the Commission's alleged obligation to submit a proposal to the Council where no opinion has been delivered, the Court has held, in relation to a legislative procedure analogous to that laid down in the Cosmetics Directive, that where the measures proposed by the Commission are not in conformity with the opinion of the Adaptation Committee, or where no opinion is delivered, the Commission is not obliged to submit the same measures, without amendment, to the Council (Case C-151/98 P *Pharos* v *Commission* [1999] ECR I-8157, paragraph 23).

66 It follows that the Court of First Instance was right to hold, in paragraphs 54 and 55 of the contested judgment, that in delicate and controversial cases the Commission had to have a sufficiently broad discretion and enough time and that it was therefore entitled to withdraw its proposal for measures even after the Adaptation Committee had met.

67 Consequently, the second limb of this ground of appeal is unfounded.

68 As regards the third limb of this ground of appeal according to which the Court of First Instance failed to condemn a flagrant breach of the principle that the procedure must be *inter partes*, it is based on the presumption that such a breach existed.

69 In paragraph 61 of the contested judgment, the Court of First Instance held that the plea alleging breach of the principle that the procedure must be *inter partes* had to be rejected, after it had stated, in paragraph 60, that 'it is clear from the facts that the applicants had ample opportunity to express their views to the members of the Scientific Committee and the Commission, and that they were allowed to address the *ad hoc* group of experts'.

70 Since it involves a finding of fact which is not subject to review by the Court, the third limb of this ground of appeal must be declared inadmissible in so far as it contests that finding and manifestly unfounded in so far as it contests the legal inferences drawn from that finding by the Court of First Instance.

71 As regards the fourth limb of this ground of appeal based on breach, by the Commission, of the principle of proportionality, this is not a criticism of the contested judgment but a repetition of a plea advanced before the Court of First Instance and, on that basis, this limb of the ground of appeal is inadmissible.

72 It follows from the foregoing that the appeal is in part inadmissible and in part unfounded, and that it must be dismissed.

Costs

73 Under Article 69(2) of the Rules of Procedure, which applies to the appeals procedure pursuant to Article 118, the unsuccessful party is to be ordered to pay the costs, if they are applied for in the successful party's pleadings. Since the appellants have been unsuccessful, they must be ordered to pay the costs. In accordance with Article 69(4) of those rules, the French Republic, intervener, shall bear its own costs.

On those grounds,

THE COURT,

hereby:

1. Dismisses the appeal;

2. Orders Laboratoires Pharmaceutiques Bergaderm SA, in liquidation, and Jean-Jacques Goupil to pay the costs;

3. Orders the French Republic to bear its own costs.

Rodríguez Iglesias Moitinho de Almeida Sevón

Schintgen Kapteyn Puissochet

Jann Ragnemalm Wathelet

Skouris Macken

Delivered in open court in Luxembourg on 4 July 2000.

R. Grass G.C. Rodríguez Iglesias

Registrar President