6. *Opinion of the High Authority — Legal nature*

An opinion cannot involve the person to whom it is addressed in any legal obligation; it is a measure by means of which the High Authority exercises its function of giving guidance and constitutes advice given to undertakings. An opinion does not affect the freedom of decision and the responsibility of undertakings any more than those of the High Authority.

In Joined Cases 1 and 14/57

SOCIÉTÉ DES USINES À TUBES DE LA SARRE, having its registered office in Paris, represented by its President and Director-General, Jean Levêque, assisted by Henri Levêque, Advocate at the Cour d'Appel, Paris, with an address for service in Luxembourg at the Chambers of Georges Reuter, 1 avenue de l'Arsenal,

applicant,

v

HIGH AUTHORITY OF THE EUROPEAN COAL AND STEEL COMMUNITY, represented by its Legal Adviser, Gérard Olivier, acting as Agent, assisted by Jean Coutard, Advocate at the Conseil d'État and the Cour de Cassation, Paris, with an address for service in Luxembourg at its offices, 2 place de Metz,

defendant,

Applications lodged on 23 January 1957 for annulment of the High Authority's letter of 19 December 1956 and on 25 March 1957 for annulment of the High Authority's letter of 27 February 1957,

THE COURT

composed of: M. Pilotti, President, Ch. L. Hammes and P. J. S. Serrarens, Presidents of Chambers, O. Riese, L. Delvaux, J. Rueff and A. Van Kleffens, Judges,

Advocate-General: M. Lagrange
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts

1. Procedure

On 23 January 1957 the Société des Usines à Tubes de la Sarre brought an application (Case 1/57) against the High Authority's letter of 19 December 1956, which the applicant considered to be an opinion within the meaning of the fourth paragraph of Article 54 of the Treaty.

By order of 31 January 1957 the President of

the Court assigned the case to the Second Chamber and Judge Serrarens was, on the same date, appointed Judge-Rapporteur.
On 25 March 1957 the applicant lodged a second application (Case 14/57) against the letter of 27 February 1957 which the High Authority considered to be the opinion delivered pursuant to the fourth paragraph of Article 54 of the Treaty.
By order of 8 May 1957 the Court ordered Cases 1/57 and 14/57 to be joined for the purposes of procedures.
The appointment of the lawyers and agents was made in accordance with the requirements of the Rules of Procedure of the Court and the pleadings were lodged within the time-limits.

2. Facts

1. By Decision No 27/55 of 20 July 1955 (JO No 18 of 26.7.1955, p. 873), the High Authority, under the powers conferred on it by the third paragraph of Article 54, required advance notification of the investment programmes concerning:

new plant the total foreseeable cost of which is in excess of 500 000 EPU units of account;

replacements or conversions the total foreseeable cost of which is in excess of 1 000 000 EPU units of account.

2. Decision No 26/56 of 11 July 1956 (JO No 17 of 19.7.1956, p. 209) completed the abovementioned decision by providing that, regardless of the amount of foreseeable expenditure, investment programmes relating to blast furnaces and converters used in steel production must be the subject of advance notification. On the same date the High Authority published an opinion giving guidance on investment programmes for the iron and steel industry.

3. On 28 July 1956, in accordance with the said decisions, the applicant company submitted an investment proposal to the High Authority for the installation of an electric steel mill with a capacity of 80 000 metric tons of liquid steel.

4. On 19 December 1956, the High Authority wrote as follows to the applicant company:

'The High Authority has studied your investment statement of 28 July 1956. In the present circumstances the High Authority has no alternative but to reply to your investment statement with an adverse opinion within the meaning of the fourth paragraph of Article 54 of the Treaty.
This notice is sent to you in this letter in view of the time which has elapsed since your statement of 28 July 1956 and in the light of your letter of 17 November, which reached us on 19 November.
If you have any facts to put forward which might change the High Authority's view we are prepared to consider them.'

5. This letter was considered by the applicant company to be the 'opinion' provided for in the fourth paragraph of Article 54 of the Treaty and on 23 January 1957 it submitted Application 1/57 to the Court.

6. On 5 February 1957 the High Authority informed the applicant company that 'the letter of 19 December 1956 did not constitute the conclusion of the procedure provided for in the fourth paragraph of Article 54 of the Treaty' and asked the company if it was 'in a position to submit to it fresh facts which might smooth out the difficulties...'.

7. By letter of 15 February 1957 the applicant expressed its disagreement with the interpretation placed by the High Authority on the letter of 19 December 1956 and stated that it was unable to 'put forward fresh facts'.

8. On 27 February 1957, the High Authority sent the following letter to the applicant:

'Subject: Your Investment Statement of 28 July 1956. Installation of an Electric Steel Mill

Gentlemen,

In your letter of 15 instant you inform us that you are unable to put forward fresh

facts which would enable your plan for an electric steel mill to be reconsidered. You have not therefore availed yourselves of the final opportunity offered to you by the High Authority in its letter of 19 December 1956. In the letters exchanged between us and in the various meetings which we have had with you we drew your attention to the increasing problems of ferrous scrap supplies and to the reasons which led, first, to publication of the memorandum on general objectives (published on 19 July 1955) and, secondly, to the general opinion giving guidance on investment programmes in the iron and steel industry (published on 19 July 1956). Moreover, your letter of 28 July 1956 referred to that opinion.
In view of the fact that, first, the investment proposals known to the High Authority will, in the coming years, endanger the supplies of ferrous scrap to the open-hearth and electric steel mills and that, secondly, if you put your proposal for an electric mill into effect, this will mean the purchase of substantial quantities of ferrous scrap on the market, the High Authority has no alternative but to deliver, pursuant to the fourth paragraph of Article 54 of the Treaty, an adverse opinion on your investment statement of 28 July 1956.

Yours faithfully,

L. Daum

on behalf of the High Authority'.

9. It was against this opinion that, on 25 March 1957, the applicant company submitted Application 14/57.

3. Conclusions of the parties

In Application 1/57 the applicant claimed that the Court should:

'either rule that the application for annulment is inadmissible, on the ground that the contested opinion is incapable, directly or indirectly, of having any legal effect or, alternatively, annul the contested opinion because it infringes Articles 2, 3, 4, 5, 14, 15 and 54 of the Treaty; and
order the High Authority to pay the costs.'

In its statement of defence, lodged on 30 March 1957, the defendant contended that the Court should:

'dismiss the application lodged on 23 January 1957:
as inadmissible on the ground that it impugns a letter introducing an opinion and not a decision or a recommendation within the meaning of Article 14 of the Treaty,
or, alternatively, that it is without foundation;
with all legal consequences including the settlement of fees, costs and any other charges.'

In Application 14/57, the Société des Usines à Tubes de la Sarre claimed that the Court should:

'either rule that the application for annulment is inadmissible because the act impugned is incapable, directly or indirectly, of having any legal effect or because the letter of 27 February 1957 does not constitute an opinion within the meaning of the fourth paragraph of Article 54 of the Treaty since it was delivered on 19 December 1956; or, alternatively, annul the contested opinion as having been delivered in breach of Decision No 27/55 and contrary to Articles 2, 3, 4, 5, 15 and 54 of the Treaty;
and, in any case, join the present application to that lodged by the applicant company on 23 January 1957 (Case 1/57) and order the High Authority to pay the costs.'

On 15 May 1957 the defendant put in its statement of defence in Case 14/57 and contended that the Court should:

'dismiss the application lodged on 25 March 1957;
as inadmissible on the ground that it impugns an opinion and not a decision or recommendation within the meaning of Article 14 of the Treaty,
or, alternatively, as without foundation;
with all legal consequences, including the settlement of fees, costs and any other charges.'

In the reply and the rejoinder, in Joined Cases 1 and 14/57, the parties contended for their previous conclusions.

4. Submissions and arguments of the parties

A — *Admissibility*

I — Admissibility of Application 1/57

A. The *defendant* contends that the application is inadmissible because the letter of 19 December 1956 does not constitute an opinion within the meaning of the fourth paragraph of Article 54 of the Treaty. This is demonstrated by the fact that the purported opinion was not a reasoned one and was not brought to the attention of the government concerned or published as required by the said article. Application 1/57 in fact impugns a decision which led to the adverse opinion of 27 February 1957.

B. The *applicant* on the other hand is of the opinion that only the letter of 19 December 1956 can be regarded as an opinion notified pursuant to the fourth paragraph of Article 54 of the Treaty. This is clear from the terms of the letter, the form in which the letter was sent, the discussions before and after the letter was sent and the fact that the period within which the High Authority had to deliver its opinion expired on 19 December 1956.

II — Time-limit for delivery of the opinion provided for in the fourth paragraph of Article 54

A. The *applicant* considers that Article 4 of Decision No 27/55, which prescribes a period of 3 months for the lodging of investment programmes, implies an obligation on the High Authority to give its opinion within the same period. This time-limit was moreover recognized by the High Authority in the correspondence which it exchanged with the applicant before 19 December 1956.

B. In reply to this, the *defendant* states that neither the Treaty nor Decision No 27/55 obliges the High Authority to give its opinion on an investment programme within a period which commences to run from the time when the programme has been notified and in the absence of any indication in the legal provisions there is nothing to justify the applicant's assumption.

III — Admissibility of Application 14/57

A. In the *applicant's* view, this application is inadmissible since it impugns a non-existent act which is devoid of any basis in law or regulations. The letter of 27 February 1957 cannot be regarded as a true opinion since it constitutes no more than a communication consequent upon the opinion of 19 December 1956.

B. The *defendant* takes the contrary view that the letter of 27 February 1957 certainly constitutes the opinion provided for in the fourth paragraph of Article 54 of the Treaty.

IV — Admissibility of an application for annulment of an opinion

A. The *applicant* takes the view that if 'the adverse opinion delivered pursuant to the fourth paragraph of Article 54 is incapable of having any legal effect, either directly on its own account or by means of a subsequent decision or recommendation (a conclusion which appears to accord with Article 54, literally interpreted)', the application for annulment must be declared inadmissible. There remains however the possibility that the said opinion 'may have an effect in particular on the levies relating to equalization of ferrous scrap in which case the opinion has, by implication, the force of a decision, to use the words of the fifth paragraph of Article 54'. In effect, the High Authority informed the representatives of the applicant company that undertakings whose investments were the subject of an adverse opinion would receive treatment which compared unfavourably with that extended to other undertakings as regards the detailed rules for the equalization of ferrous scrap.
The applicant contends that, even if Article 33 of the Treaty does not provide for proceedings for annulment except in the case of decisions and recommendations of the High Authority, to leave infringements of the Treaty free of liability to any penalty would be to ignore Article 31 of the Treaty.

B. In the *defendant*'s view, the dilemma described by the applicant arises from an erroneous interpretation of the provisions of the Treaty and ignores the real meaning of the letter of 19 December 1956. Article 14 differentiates very clearly between decisions, recommendations and opinions, whereas Articles 33 and 35 provide for annulment proceedings only in the case of decisions and recommendations. The Treaty rules out any possibility of proceedings for annulment of an opinion and this is the reason for the exception expressly provided for in the fifth paragraph of Article 54.
On the other hand Article 31 is not in itself a sufficient foundation for the admissibility of an application for which no provision is made under any of the other articles of the Treaty. In the High Authority's view, there can be no question here of analogy. As for the statements made by certain officials of the High Authority regarding the consequences which would result from an adverse opinion, the defendant contends that this is not a situation in which the administration of the High Authority has reached a conclusion in the circumstances provided for under the Treaty.
There is nothing approaching a decision in the words, taken by themselves, of the two letters of 19 December 1956 and of 27 February 1957. The High Authority has never claimed for itself the right to attach actual obligations to an opinion given under the fourth paragraph of Article 54 of the Treaty. The defendant contends that opinions have their own place and importance in the general structure of the Treaty and to allow the possibility of an application to have an opinion annulled would upset the balance established by the Treaty between action taken by the High Authority to give guidance and the responsibility of undertakings. The underlying reasons which led to Article 54 would, as a result, be distorted if responsibility were placed upon the authority and not on the undertakings.

V – Consequences of a declaration of inadmissibility

A. In the view of the *applicant*, a declaration of inadmissibility would give it an assurance that conclusions would not subsequently be drawn from the opinion which were incompatible with the true character of that act. It would be wrong for the High Authority to have the right to attach penalties to the opinion as the result of a general decision of later date.
B. On the other hand, the *defendant* contends that no indication of the subsequent consequences of an opinion can be attached to inadmissibility. There can be no question of the High Authority being prohibited from taking subsequent action in accordance with an opinion which it has previously delivered.
The argument to this effect produces the contradictory conclusion that the High Authority would not only be unable to take any positive action when delivering an opinion but, in delivering it, would lose its freedom of action for the future. In circumstances where, in the applicants' view, a later decision is vitiated by a reference to an opinion in conditions which are inconsistent with the nature of the opinion, they can institute proceedings under Article 33 of the Treaty.

B – *Substance*

If the adverse opinion were to 'have the force of a decision', the following submissions are advanced in support of the application for annulment. '

I. The claim that the opinion of 27 February 1957 was delivered out of time

The *applicant* contends that under Article 4 of Decision No 27/55, as it has always been interpreted by the High Authority and as confirmed by the terms of the correspondence between the parties, the High Authority undertook to issue its opinions within a period of 3 months following the notification of the programmes. In the present case, this period ended on 19 December 1956.
The *defendant* contends, on the other hand, that neither the Treaty nor Decision No 27/55 ties it down to a time-limit for the delivery of an opinion pursuant to the fourth paragraph of Article 54 of the Treaty. It disputes the relevance of the correspondence on this point.

II — Statement of reasons

(a) The letter of 19 December 1956 (Application 1/57)

A. The *applicant* submits that the words 'in the present circumstances' are insufficient, by themselves, to satisfy the requirements of Article 15 and the fourth paragraph of Article 54 of the Treaty. The High Authority ought to have 'referred to the essential considerations among the findings of fact on which the measure depends for its legal justification'. The opinion of 19 December 1956 should therefore be annulled because it is on no account a reasoned one.

B. The *defendant* comments that the High Authority did not feel obliged to give more explicit reasons for its letter of 19 December 1956 because, in the interests of the undertaking itself, it had no wish to place a time-limit on the procedure provided for under the fourth paragraph of Article 54 of the Treaty. In any case the applicant company was perfectly well aware of the reasons why the High Authority had no alternative but to give an adverse opinion.

(b) Letter of 27 February 1957 (Application 14/57)

A. The *applicant* claims that this opinion was not only issued out of time but did not contain an adequate statement of reasons since the High Authority makes no reference to the special considerations advanced by the applicant company. Moreover, the grounds indicated by the High Authority are of too general a character to justify the decision adopted.

B. The *defendant* draws attention to the case-law of the Court on the question of statement of reasons (judgments in Cases 6/54 and 2/56) and considers that it has fulfilled all requirements.
As for the general nature of the reasons indicated, the defendant states that the opinion was given against a background of overall policy relating to the supply of ferrous scrap on the common market and that the general opinion of 19 July 1956 specified the conditions under which the High Authority would have to adopt a point of view on investment programmes.

III — Investment programme and adverse opinion

A. The *applicant* claims that it based its investment programme on the information contained in the general opinion of 19 July 1956 on guidance for investment programmes in the coal and steel industry.
On the other hand there is no provision in the general opinion of 19 July 1956 for the exclusion of any investment proposal involving purchases of ferrous scrap. Moreover the Mannesmann company's letter of 8 November 1956 demonstrates that the applicant tried to satisfy the High Authority by establishing a direct link between its programme and that of the Mannesmann company, which holds 40% of the company's capital. Furthermore, the alternative solutions looked into at the request of the High Authority proved to be impracticable.

B. The *defendant* rejects the applicant's argument on the basis of the following considerations: the letter of the Mannesmann company contains no guarantee that the investment contemplated would not involve any additional purchase of ferrous scrap, nor does it demonstrate that the Mannesmann company and the applicant company form a single economic unit such as to make it possible to produce a unified statement on the pig-iron/ferrous scrap relationship as a whole.

IV — Treatment meted out to the applicant

A. The *applicant* submits that the treatment meted out to it places it in a position which is, in the first place, flatly discriminatory compared with other undertakings and, in the second place, inconsistent with a system of economic freedom and development. This is clear from various justifications supplied to or suggested to the High Authority and is contrary to Articles 2, 3, 4 and 5 of the Treaty.

B. The *defendant* is unable to understand on what grounds the applicant company is relying in alleging that the treatment which

was meted out to it is flatly discriminatory and inconsistent with a system of economic freedom and development. This line of argument apears to the defendant all the more astonishing in view of the fact that the High Authority has, in a way which does not prevent the undertaking from realizing its investment programme, done no more than apply a policy the validity of which is not even questioned by the undertaking.

Law

A — Admissibility of Applications 1/57 and 14/57

Since the parties have impugned the very nature of the acts which are the subject of the present applications the Court must *first of all* ascertain whether the contested letters really constitute opinions within the meaning of the fourth paragraph of Article 54 of the Treaty.
The defendant considers Application 1/57 to be inadmissible because it impugns a letter introducing an opinion whilst the applicant seeks a declaration from the Court that Application 14/57 is inadmissible because the letter of 27 February 1957 did not constitute an opinion and was delivered on 19 December 1956.

I — *Does the letter of 19 December 1956 constitute an opinion within the meaning of the fourth paragraph of Article 54 of the Treaty?*

The unequivocal terms and the form of the letter of 19 December 1956, together with the correspondence and discussions which preceded its communication, clearly demonstrate that, in sending this letter, the High Authority undoubtedly intended to deliver an 'opinion' within the meaning of the fourth paragraph of Article 54 of the Treaty on the investment proposal submitted by the applicant on 28 July 1956. However, the Court finds that, under the said provision, the delivery of an opinion on investment programmes is subject to certain requirements: the opinion must be a reasoned one, it must be communicated to the undertaking and notified to the government concerned, and the fact that it has been delivered must be published.
It is clear from the file that, although the letter of 19 December 1956 was in fact communicated to the applicant, it did not form the subject of a notification to the government concerned or of any reference in the *Journal Officiel*. The Court concurs with the opinion of the Advocate-General that the statement of reasons is non-existent. The words 'in the present circumstances' cannot in fact be regarded as a statement of the essential findings of the fact upon which the legal justification of the measure depends.
Several of the conditions laid down by the Treaty have not been fulfilled; although some of them are formal requirements which cannot affect the character or the existence of an act, it is clear that a statement of reasons for an opinion is not only required by Articles 5 and 15 and the fourth paragraph of Article 54 of the Treaty but that it is an essential, indeed constituent element of such an act, with the re-

sult that in the absence of a statement of reasons the act cannot exist. In consequence, the letter of 19 December 1956 does not constitute an opinion within the meaning of the fourth paragraph of Article 54 of the Treaty and Application 1/57 is inadmissible for want of subject-matter since the act which it impugns is, in law, non-existent.

II — *Does the letter of 27 February 1957 constitute an opinion within the meaning of the fourth paragraph of Article 54 of the Treaty?*

It is clear from the file that this second letter was communicated to the applicant and notified to the governments concerned and that its issue was the subject of an entry in the *Journal Officiel.* Moreover, the Court considers that, although the statement of reasons is brief, the letter of 27 February 1957 is sufficiently reasoned.
In the first place the High Authority refers to the memorandum of 19 July 1955 concerning the general objects and to the general opinion of 19 July 1956 giving guidance on investment programmes in the iron and steel industry and, secondly, it claims that the investment contemplated will result in the purchase of substantial quantities of ferrous scrap on the market. The act consequently fulfils the conditions laid down in the fourth paragraph of Article 54 of the Treaty and, on this account, constitutes an opinion within the meaning of that provision.
The applicant claims that the opinion of 27 February 1957 was delivered out of time because Article 4 of Decision No 27/55 of the High Authority of 20 July 1955 requires the High Authority to deliver its opinion within a period of three months following the submission of the investment programme. Allowing for a deferment agreed between the parties this time-limit expired on 19 December 1956.
Without wishing to construe the wording of Article 4 of Decision No 27/55 of the High Authority as, by implication, imposing on the authority an obligation to deliver its opinion within a period of three months from the submission of programmes and the commencement of work on them, the Court considers that the principles of sound administration require that the delivery of an opinion within the meaning of the fourth paragraph of Article 54 of the Treaty should take place within a reasonable time.
In requiring undertakings to lodge their investment proposals not less than three months before the signature of contracts, the High Authority hopes to act in such a way as to prevent work of which it disapproves from being undertaken. From this it follows that the undertakings concerned must of necessity know the opinion prior to the date fixed for work to begin.
On a reasonable view, these arrangements therefore require the High Authority to deliver its opinion, in normal circumstances, before the expiry of the three months laid down in Article 4 of Decision No 27/55.
Furthermore, a time-limit expressly recognized by a public authority may not be disregarded. It is clear from the file that, in the correspondence which preceded the delivery of the opinion, the High Authority on several occasions recognized that it was bound by a time-limit in delivering its opinion.

The letter of 27 February 1957 was therefore despatched out of time. This irregularity does not, however, affect the nature of the act which, in fact, constitutes an opinion within the meaning of the fourth paragraph of Article 54 of the Treaty.

B — Admissibility of an application for annulment of an opinion delivered pursuant to the fourth paragraph of Article 54 of the Treaty

Since the parties have, although for different reasons, contested the admissibility of an application for annulment of an opinion delivered pursuant to the fourth paragraph of Article 54 of the Treaty, consideration must be given to this question after first establishing the nature of the letters of 19 December 1956 and of 27 February 1957.

Under Article 33 of the Treaty and the precedents established by the Court only acts of the High Authority which, regardless of their form, constitute decisions or recommendations within the meaning of Article 14 of the Treaty may be the subject of an application for annulment.

Subject to the exception provided for under paragraph 5 of Article 54 of the Treaty an opinion cannot, in principle, be the subject of such an application.

Nevertheless the Court must consider whether the contested act does not constitute a disguised decision, as the applicant considers it to be. As the Court ruled in its judgment of 16 July 1956 in Case 8/55, an act of the High Authority constitutes a decision when it lays down a rule capable of being applied, in other words, when by the said act the High Authority unequivocally determines the position which it decides to adopt if certain conditions are fulfilled. There can be no doubt that, first, there is, in the opinion of 27 February, no rule capable of being applied since it imposes no legal obligation on the applicant and, secondly, there is nothing in the file on the case justifying the conclusion that, in issuing the said opinion, the High Authority had clearly laid down what attitude it had forthwith decided to adopt towards the undertaking in the event of its ignoring the adverse opinion. The warnings given by certain officials are no proof that the High Authority had already reached a conclusion in the matter.

The opinion of the High Authority of 27 February 1957 cannot, therefore be regarded as a decision within the meaning of Article 14 of the Treaty with the result that the application for annulment of that opinion is inadmissible since it impugns an act which cannot be reviewed by the Court.

C — Effect of a ruling that the application is inadmissible

The applicant seeks a declaration from the Court that, *inter alia*, Application 14/57 is inadmissible because the act is capable, neither directly nor indirectly, of having any legal effect. It considers that a ruling that it is inadmissible would provide it with an assurance that no conclusions will later be drawn from the opinion which are inconsistent with the true nature of that act.

But although Article 14 of the Treaty makes it clear that an opinion cannot directly involve the person to whom it is addressed in any legal obligation, an opinion is, on the other hand, distinguished from a decision and from a recommendation both by its nature and by its function within the general framework of the Treaty. In addition to the High Authority's powers of direction, which enable it, by means of its decisions and recommendations, to intervene positively and directly in the organization of the Common Market, the Treaty has invested the High Authority with responsibility for giving guidance, which it discharges by means of, *inter alia*, opinions. These opinions are, therefore, merely advice given to undertakings. The latter thus remain free to pay regard to or ignore it but they must understand that in ignoring an adverse opinion they accept the risks with which they may be faced as the result of a situation which they themselves have helped to create. In other words, the freedom of decision and the responsibility of the undertakings remain, like those of the High Authority, unchanged. There is therefore no need for the Court to give a ruling on possibilities the nature and form of which it has no means of foretelling.

D — Costs

The applicant has been unsuccessful in Applications 1/57 and 14/57 and accordingly, under Article 60 of the Rules of Procedure of the Court, must be ordered to bear the costs of the defendant.

The applicant must bear its own costs.

Upon reading the pleadings;
Upon hearing the parties;
Upon hearing the opinion of the Advocate-General;
Having regard to Articles 5, 14, 15, 33 and 54 of the Treaty;
Having regard to the Protocol on the Statute of the Court of Justice;
Having regard to the Rules of Procedure of the Court and as well as the Rules of the Court concerning costs,

THE COURT

hereby:

1. **Declares Applications 1/57 and 14/57 to be inadmissible;**

2. **Orders the applicant to pay the costs of the proceedings.**

Delivered in open court in Luxembourg on 10 December 1962.

Pilotti Hammes Serrarens

Riese Delvaux Rueff Van Kleffens

M. Pilotti
President

P. J. S. Serrarens
Rapporteur

A. Van Houtte
Registrar

OPINION OF MR ADVOCATE-GENERAL LAGRANGE[1]

Mr President,
Members of the Court,

The two parties are agreed at least upon one point, the importance of the judgment which you are called upon to deliver in the present case regarding the legal effect of the opinions of the High Authority on the subject of investments as provided for under the fourth paragraph of Article 54 of the Treaty. Although this view of the importance of the case (or rather this opinion), does not bind the Court, I myself fully concur with it.

The arguments developed by the parties both in the written procedure and in the very remarkable submissions which you have heard are a measure of this importance. But their breadth and quality have considerably simplified my own task because it really does seem that everything has been said.

First of all I think I can dispense with any statement of the facts, which were admirably set out in the report of the Judge-Rapporteur, were the subject of detailed consideration in the pleadings, and will be fresh in your minds.

I need only recall that Application 1/57 is brought against a letter of 19 December 1956 which the applicant company regards as the opinion delivered by the High Authority pursuant to the fourth paragraph of Article 54 of the Treaty concerning the statement of investments submitted on 28 July 1956 and that, since the High Authority refused to recognize this letter of 19 December 1956 as being in the nature of an opinion given under Article 54 and, in consequence, on 27 February 1957, delivered a second opinion which, in its view, alone is in the nature of an opinion, the company, in order to cover all eventualities, brought a second application against this opinion: this was Application 14/57.

These two applications taken together (for that is obviously how they must be dealt with) give rise to a number of alternative conclusions.

In the first place, the two parties are by implication agreed that only one of the two letters really constitutes an opinion delivered under the fourth paragraph of Article 54, so, if one of these applications is entertained, the inadmissibility of the other follows as a matter of course. This is certainly the view of the applicant which regards the conclusions in the second application as being merely an alternative to the conclusions in the first.

The conclusions in the first application are themselves alternatives, for the applicant claims

'that the Court should:

either rule that the application for annulment is inadmissible on the ground that the contested opinion is incapable, directly or indirectly, of having any legal effect;

or, alternatively, annul the contested opinion because it infringes Articles 2, 3, 4, 5, 14, 15 and 54 of the Treaty.'

The basic issue raised in this case is a question of principle, which is whether opinions delivered by the High Authority pursuant to the fourth paragraph of Article 54 of the Treaty can or cannot be the subject of an application for annulment. I propose to deal

1 – Translated from the French.