JUDGMENT OF THE COURT
12 JUNE 1958[1]

Compagnie des Hauts Fourneaux de Chasse v High Authority of the European Coal and Steel Community

Case 2/57

Summary

1. *Procedure — Application for annulment — Admissibility of new submissions*

A distinction must be drawn between the introduction of new submissions in the course of the proceedings and the introduction of certain new arguments.
There is nothing to prevent the Court from considering new arguments put forward in support of submissions already made in the application
(Treaty, Article 33; Protocol on the Statute of the Court, Article 22).

2. *Procedure — Application for annulment — Time-limit for institution of proceedings — New decision re-establishing a previous scheme*

A new decision may be the subject of an application even in respect of those of its provisions which are incorporated from an earlier decision which has not been impugned within the period laid down in Article 33 of the Treaty
(Treaty, Article 33, third paragraph).

3. *Misuse of powers — Substitution of objective*

The legality of a decision cannot depend on its conformity or otherwise with the provisions of a memorandum published by the High Authority but only on its conformity or otherwise with the provisions of the Treaty. In order to prove a misuse of powers, the contested decision must be shown to have been pursuing an objective other than that for the purposes of which the High Authority was entitled to act
(Treaty, Article 33).

4. *Ferrous scrap — Equalization — Uniform rate for the sake of administrative simplicity — Misuse of powers*

Since the uniform equalization rate was held to be consistent with the provisions of the Treaty, the contested decisions would still be in order even if it were proved that this uniformity was also selected out of concern to avoid administrative complications
(Treaty, Articles 33 and 53).

In Case 2/57

COMPAGNIE DES HAUTS FOURNEAUX DE CHASSE, represented by Pierre Cholat,

1 — Language of the Case: French.

President-Director General, assisted by Roger Levilion, Advocate at the Cour de Paris, with an address for service in Luxembourg at the Chambers of Bernard Delvaux, Advocate, 11 Avenue Pescatore,

applicant,

v

HIGH AUTHORITY OF THE EUROPEAN COAL AND STEEL COMMUNITY, represented by its Legal Adviser, Gérard Olivier, acting as Agent, assisted by Professor André de Laubadère of the Faculté de Droit, Paris, with an address for service in Luxembourg at its offices, 2 Place de Metz,

defendant,

APPLICATION for the annulment of Decision No 2/57 of the High Authority dated 26 January 1957 instituting a financial arrangement to ensure a regular supply of ferrous scrap to the Common Market (JO No 4 of 28. 1. 1957, p. 61/57),

THE COURT

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

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

gives the following

JUDGMENT

Facts

1. Procedure

The application brought by the Compagnie des Hauts Fourneaux de Chasse, a company ('société anonyme') having its registered office in Lyon, is dated 27 February 1957. It was lodged within the period prescribed in the third paragraph of Article 33 of the Treaty and by Articles 84 and 85 of the Rules of Procedure of the Court of Justice. The form of the application calls for no comment.

The documents appointing the applicant's representative are in order and his signature has been verified as genuine.

The applicant's lawyer and the Agent and lawyer of the defendant have been properly appointed.

The statement of defence, the reply and the rejoinder were lodged within the periods prescribed, and all procedural requirements have been complied with.

By order of the President of the Court the application was assigned to the First Chamber for the purposes of any preparatory inquiry. The President of the Court designated Mr van Kleffens as Judge-Rapporteur and, in accordance with the last paragraph of Article 9 of the Rules of Procedure of the Court, designated Mr Lagrange as Advocate General.

In the light of the preliminary report of the

Judge-Rapporteur, the First Chamber decided to conduct certain measures of inquiry and in particular to put certain questions to the parties; the answers to these questions and the final written conclusions have been placed on the file.
At the beginning of the oral procedure the Court decided to deal jointly with the present case and Case 15/57.
The parties submitted their oral observations at the public hearing on 22 February 1958.
At the hearing on 18 March 1958 the Advocate General delivered his opinion, which was that the application be dismissed and that the Compagnie des Hauts Fourneaux de Chasse be ordered to pay the costs.

2. Conclusions of the parties

In its application, the *applicant* claims on grounds and submissions set out therein 'which it formally reserves the right to complete, supplement or even amend by subsequent pleadings, that Decision No 2/57, adopted on 26 January 1957 and published on 28 January 1957 by the High Authority of the European Coal and Steel Community, whose offices are at 2 Place de Metz, Luxembourg, be annulled under the second paragraph of Article 33 of the Treaty.

In its reply the applicant claims that the Court should:

'Take note that, both on the grounds set out in its application and those developed and specified in this reply, the applicant continues to pursue the purpose of the application originating the proceedings and to offer evidence in support thereof;
In consequence annul Decision No 2/57 in accordance with the provisions of the second paragraph of Article 33 of the Treaty on the ground that it is vitiated by misuse of powers;
With all legal consequences, including those relating to the costs of the proceedings;
Without prejudice to further submissions and arguments'.

The application states that it is based on Articles 2, 3, 4, 5, 14, 15, 31, 33, 53, 65, 80 and 85 of the Treaty, the Protocol on the Statute of the Court of Justice and the Convention on the Transitional Provisions, in particular Article 29 thereof.

The *defendant* contends that the Court should:

'Dismiss the application brought against Decision No 2/57 inasmuch as the latter is not vitiated by misuse of powers in respect of the applicant;
With all legal consequences, including those relating to the costs of the proceedings'.

In its rejoinder the defendant maintains its conclusions.

3. Summary of the facts

The Compagnie des Hauts Fourneaux de Chasse operates blast furnaces situated in France in the neighbourhood of Lyon and Saint-Etienne. As a producer exclusively of haematite pig-iron and not of steel, it uses scrap only in order to enrich the charge of the blast furnace. It does not possess any ferrous scrap which has been bought or produced by itself but its scrap needs are supplied entirely from purchases of sheet scrap and turnings from regular and long-standing suppliers in the Lyon region.
At the beginning of 1954 it was clear that the equalization arrangement set up between the undertakings producing pig-iron and steel and authorized by Decision No 33/53 was inadequate and could not be replaced on a voluntary basis under conditions which were satisfactory. Accordingly, by Decision No 22/54 of 26 March 1954 (JO No 4 of 30. 3. 1954), the High Authority made, as provided in subparagraph (b) of the first paragraph of Article 53 of the Treaty, a financial arrangement providing for the equalization of ferrous scrap imported from third countries. The operation of this arrangement was entrusted to the Office Commun des Consommateurs de Ferraille (the Joint Bureau of Ferrous Scrap Consumers) and to the Caisse de Péréquation des Ferrailles Importées (the Imported Ferrous Scrap Equalization Fund). All undertakings which were consumers of scrap

were obliged to pay the appropriate contributions. The Fund fixes the amount of the contributions; in default of payment the High Authority, at the request of the Fund, takes an enforceable decision. Decision No 22/54 was valid until 31 March 1955 and, by Decision No 2/55 of 26 January 1955 (JO No 3 of 31. 1. 1955) it was extended until 30 June 1955.

By Decision No 14/55 of 26 March 1955 (JO No 8 of 30. 3. 1955), adopted pursuant to subparagraph (b) of the first paragraph of Article 53, Article 65 (2) and Article 80 of the Treaty and effective until 31 March 1956, the existing arrangement was supplemented so as to take account of the supply position in the different regions of the Community on the basis of comprehensive estimates, adjusted from time to time, relating to demand and supply. With this end in view, the benefit of equalization could be made subject to certain conditions, one of them being that imported ferrous scrap must be used in certain regions of the Community. In order to guarantee regular supplies for the market the Joint Bureau was empowered to purchase on joint account from third countries the quantities intended to be made available subsequently to consumers.

In Decision No 14/55 the High Authority had already provided for measures to reduce the consumption of ferrous scrap by increased use of pig-iron. By Decision No 26/55 of 20 July 1955 (JO No 18 of 26. 7. 1955), which was effective until 31 March 1956, the High Authority fixed the detailed rules for implementation of these measures: with effect from 1 April 1955, the grant from the funds of the Equalization Fund to undertakings which were consumers of scrap iron of a bonus for scrap saved through increased use of pig-iron in open-hearth furnaces, liquid basic Bessemer steel being treated as pig-iron.

By Decision No 3/56 of 15 February 1956 (JO No 4 of 22. 2. 1956), the bonus referred to in Decision No 26/55 was allotted also for ferrous scrap saved through the increased use of liquid basic Bessemer steel in the electric furnaces.

Decisions Nos 14/55, 26/55 and 3/56 were extended until 31 January 1957 by Decisions Nos 10/56 of 7 March 1956, 24/56 of 22 June 1956 and 31/56 of 10 October 1956 (JO No 7 of 15. 3. 1956, No 15 of 27. 6. 1956 and No 23 of 18. 10. 1956).

By Decision No 2/57 of 26 January 1957, which was effective until 31 July 1958 (JO No 4 of 28. 1. 1957), the High Authority kept the existing equalization arrangement in being but it amended the implementing rules so as to encourage the saving of ferrous scrap 'without thereby making it more difficult to raise output capacity'. Undertakings which were consumers of ferrous scrap were henceforth required to pay, in addition to the equalization contribution, a supplementary contribution which was periodically increased in so far as their consumption of scrap exceeded their consumption during a reference period, it being left to the various undertakings to select this period so as to allow for their particular circumstances. The arrangements set up pursuant to Decisions Nos 26/55 and 3/56 in order to save scrap by increased use of both pig-iron and liquid basic Bessemer steel in electric furnaces were provisionally extended for six months.

Decision No 2/57 is the subject of the present application.

4. Summary of the submissions and arguments of the parties

A – *Admissibility of the application*

The *defendant,* after recalling that the application is brought against a general decision and that the undertaking can rely only on a submission of misuse of powers affecting it, points out that the applicant describes as a misuse of powers what is in fact no more than a series of arguments which, for various reasons, do not come within this concept. In these circumstances, the submissions made are inadmissible and the contentions in the application are considered only in the event of the Court's deciding otherwise.

The arguments submitted by the applicant are not concerned with the differences between Decision No 2/57 and the previous arrangements but the very principle of equalization; since this was the same in the case of Decision No 2/57 as in the case of the previous arrangements, the applicant's

arguments are the same as those which it could have put forward against the previous decisions. For this reason the defendant doubts whether the applicant is entitled to submit such arguments since it did not institute proceedings against the previous general decisions within the prescribed period.

In its rejoinder, the defendant reserves the right to contest the admissibility of the new submissions which, in its view, are contained in the reply, namely 'the extent of the High Authority's powers under Article 53 of the Treaty bearing in mind the difference between a normal situation and an exceptional situation' and 'the use of Article 53 instead of Article 59'.

The *applicant,* in its reply, contends that it formally claimed that there had been a misuse of powers affecting it and that in its application it has clearly indicated the reasons which, in its view, demonstrate the misuse of powers.

The applicant has set out its two complaints of misuse of powers more clearly in its reply than in its application; it considers that in so doing it has by no means introduced any new submissions, since misuse of powers was alleged in the application, and the right had been expressly reserved therein to permit the conclusions of the application to be altered if necessary. It agrees that under the Treaty it is compelled to rely solely on the submission of misuse of powers affecting it but this in no way prevents it from alleging and proving in addition certain infringements of the Treaty which, in its opinion, indicate the misuse of powers.

B — *The substance*

First complaint: Decision No 2/57 affects producers of pig-iron just as much as producers of steel and ignores the objects of the Treaty: this amounts to a misuse of powers.

In its application, the *applicant* claims that the misuse of powers arises from the fact that the equalization scheme does not accord with the general objectives of the Treaty, distorts normal competition and tends to encourage the consumption of ferrous scrap to the detriment of pig-iron. Ferrous scrap equalization results in the applicant's having to bear exorbitant charges without any corresponding advantage and is not subject to conditions capable of ensuring that the consequences prohibited by Article 29 of the Convention are avoided. Protective or transitional measures ought to have been adopted in order to make allowance for the applicant undertaking's particular situation, which cannot be compared with that of the steel mills. In view of this and of the local conditions under which it is supplied, the applicant is the victim of discrimination; moreover. the arrangement represents an indirect subsidy for the benefit of the steel industry.

In its reply, the applicant claims, first, that the effects of Decision No 2/57 reveal a serious lack of foresight or care which jeopardizes the position of industries exclusively producing pig-iron, and is tantamount to disregard of the declared objective of the decision, namely, the regular supply of ferrous scrap to the market at a reasonable price. Under Article 3 of the Treaty, the institutions of the Community are required to act in the 'common' interest, that is to say, they must act in the interests of all and not in furtherance of the 'general' interest, which means giving preference to the interests of some and sacrificing the interests of others, which is contrary to the essential objective of its task. The applicant concludes from this that the High Authority acted under Article 53 in order to avoid making a declaration that there was a shortage and also in order not to be bound by the restrictions of Article 59 and Annex II. In disregarding these restrictions the High Authority demonstrated its intention to avoid them and in this way it used its powers for a purpose other than for that for which they were conferred upon it. In support of its argument the applicant refers to the case-law of national courts and tribunals, especially in France. In addition to these arguments the applicant denies that there is any instrument conferring on the High Authority the right to disregard existing situations in promulgating a general decision.

Secondly, the applicant maintains that the object of Decision No 2/57 was the regular supply of ferrous scrap to the Common Market. This objective differs from the aims described in the High Authority's

memoranda of 6 July 1955 and of April 1957 on the definition of the general objectives, namely, the need to restore the balance between pig-iron production and steel production by increasing the production of pig-iron. The substitution in this manner of the legal objective by a new one is evidence of a misuse of powers. It is further evidenced by the contributions which, owing to the absence of any protective measure, leave pig-iron produced in the Common Market defenceless against imported pig-iron, regardless of the consequences which Article 29 of the Convention states must be avoided. The measures provided for by Decision No 2/57, which are designed to encourage undertakings to economize in the use of ferrous scrap cannot render that decision lawful. They involve limited, theoretical economies which are wholly dependent on the attitude of steel consumers; they are supplementary, indirect measures which are no substitute for direct and effective measures for the maintenance, if not the growth, of pig-iron production in accordance with the objective laid down in the High Authority's memoranda.

Thirdly, on the question of disregard of the lawful objective owing to a serious lack of foresight and care, the applicant states that the High Authority had been faced with the pig-iron/steel problem since 1955; at that time it resolved it by declaring the need to ensure that there was a substantial increase in the consumption of pig-iron. When, at the end of January 1957, it lost sight of this objective and deliberately concentrated on encouraging the production of steel, without regard to the problem of pig-iron, it was bound to result in wholly ineffective measures.

The *defendant* claims that it adopted general decisions in the common interest in order to ensure a regular supply of ferrous scrap to the whole of the Common Market. The applicant does not contend that, instead of pursuing an objective of general interest, the High Authority in fact pursued an objective relating particularly to the applicant but that the individual result of the general decisions did not, as far as the applicant was concerned, correspond to the aim which the High Authority set itself. It is quite possible that the result of the measures adopted may have run contrary to the applicant's interests but that cannot constitute misuse of powers.

The defendant does not rely on the unlimited powers with which it is vested under Article 53 but argues on the basis of the limitation of those powers implied by the wording of that provision, namely, that the arrangements in question must be recognized as necessary for the performance of the tasks set out in Article 3 of the Treaty, a condition which was fulfilled in the present case. In any event the action taken by the High Authority under Article 53 was not based on the consideration that the powers provided for in that provision were unlimited or arbitrary. Furthermore the defendant denies that the applicant has a legally recognizable interest in the possible application of Article 59 and Annex II to the Treaty. On the contrary, the application of Article 59 (3) would have led to a distribution of resources without regard to the place of production; in those circumstances, the applicant could not possibly have claimed any advantage as the result of the availability of ferrous scrap in its supply region.

Secondly, the defendant denies that the objective of Decision No 2/57 is different from that published in its memoranda of 6 July 1955 and April 1957 on the general objectives. Neither the memoranda nor Decision No 2/57 were concerned with trying to strike a balance between the conflicting interests of pig-iron producers and steel producers but with putting into effect a series of measures required by the economic expansion which was to be foreseen. In view of this there is no conflict of interests between pig-iron and ferrous scrap; the High Authority adopted the contested measures with the object of ensuring a supply of ferrous scrap at reasonable prices together with an increase in output capacity for pig-iron. Decision No 2/57 does no more than maintain equalization in order to ensure a reasonable price for steel, correct the equalization in order to avoid increased consumption of ferrous scrap, and stimulate growth in the use of pig-iron.

Thirdly, the defendant states that the applicant seems to be contending that equalization is a measure which cannot be adopted in a so-called normal period or in the ab-

sence of the exceptional circumstances referred to more especially in Articles 58 and 59 of the Treaty; in view of the fact that equalization had been established since 1954, the defendant considers such an argument to be completely contradictory.

Second complaint: For reasons which have nothing to do with the objective of equalization, Decision No 2/57 applies a uniform rate of equalization to heavy and light scrap, which is a misuse of powers.

The *applicant* contends that a misuse of powers arises from the fact that the uniform amount due per metric ton on all categories of ferrous scrap falls more heavily on light scrap, which is the only kind used by the applicant, than on other kinds, whereas before the introduction of equalization the price of sheet scrap and turnings was very much lower than that of heavy scrap used in steel production. Thus, the arrangement introduced represents an indirect subsidy for the benefit of consumers of heavy scrap.

In its reply the applicant emphasizes that the High Authority, in order to justify its failure to provide for different rates according to types of scrap, with the result that one category of those concerned was benefited at the expense of another, the High Authority gives a reason which is evidence of lack of foresight, namely, the administrative complications to which different rates would give rise. It was therefore to avoid organizational difficulties that the High Authority preferred to stick to a uniform rate. While it is true that the High Authority tried to soften the effect of its admission by stating that the importation of light scrap might in future make heavier demands on equalization than the importation of other categories, this is only a hypothetical argument so that the existence of a misuse of powers is not refuted.

In its statement of defence, the *defendant* explains that every category of scrap is taken into account in the calculation of the contributions imposed by way of equalization in order to avoid the dearest scrap being subject to the highest rate of contribution. This method is necessary because, the equalization charge being a variable one, there could be no indication *a priori* which category would incur the heaviest charge. It is impossible to differentiate between the various categories of scrap because substitution is always possible in the various manufacturing processes. For these reasons the defendant draws the conclusion that the same considerations apply to consumers of bought scrap of all kinds and this justifies the uniform equalization rate.

In its rejoinder the defendant states that the applicant cannot compare the price of light scrap (domestic or imported) with that of heavy scrap (domestic or imported) but, at the most, the price of domestic scrap (light or heavy) with that of imported scrap (light or heavy).

As regards the concern to avoid administrative complications which, according to the applicant, was the real reason for imposing a uniform equalization rate, the defendant emphasizes that it never stated that it took such a consideration into account: the decision to impose a uniform rate was made on other grounds, that is to say, as mentioned in the statement of defence, 'apart from any administrative complications'.

Law

A — Admissibility

(a) In the defendant's view, the applicant describes as misuse of powers a series of grounds for complaint which, for various reasons, are germane, not to this ground for annulment, but to an infringement of the Treaty. For this reason the defendant maintains that the applicant cannot put forward these grounds of complaint under Article 33.

The Court rejects this argument.

In the application the applicant claimed that it had been the subject of a misuse of powers and set out a series of arguments which, in its view, supported this claim.

These arguments may not prove misuse of powers but, in order to ascertain whether this is so, consideration must be given to the substance of the case; in these circumstances, according to the case-law of the Court, the objection on which the defendant relies cannot stand in the way of the admissibility of the application.

(b) The defendant considers that the reply contains certain new submissions based on 'the extent of the High Authority's powers under Article 53 of the Treaty, bearing in mind the distinction between a normal situation and an exceptional situation' and 'the use of Article 53 instead of Article 59'.
On this point the Court takes the view that a distinction must be drawn between the introduction of new submissions in the course of the proceedings and, on the other hand, the introduction of certain new arguments. In the present case the Court's view is that the applicant did not introduce new submissions but merely developed those made in its application by invoking a number of arguments some of which were adduced for the first time in the reply. In those circumstances, there is nothing to prevent the Court from considering them.
(c) Again, without definitely invoking the point as a bar to the proceedings, the defendant asks whether the applicant ought not to have impugned the equalization scheme at the time when equalization became compulsory, that is to say in 1954.
This question must be answered in the negative because, although the contested decision re-established an equalization scheme, it became once more subject to the periods prescribed under Article 33 for the institution of proceedings notwithstanding the existence of an earlier decision on the same subject.
For the foregoing reasons the application is admissible.

B — Substance

First complaint: Decision No 2/57 affects pig-iron producers to the same extent as steel producers and disregards the objectives of the Treaty; this constitutes a misuse of powers.
The applicant claims in its application that equalization does not accord with the general objectives of the Treaty, normal competition tends to encourage the consumption of ferrous scrap to the detriment of pig-iron, imposes exorbitant charges on the applicant without any corresponding benefit and is not subject to detailed rules designed to avoid the consequences prohibited under Article 29 of the Convention. Protective measures ought to have been taken in order to take account of the special situation of the applicant, which cannot be compared with that of steel producers. In these circumstances and having regard to the local condition governing its supplies, the applicant is the victim of discrimination, which gives rise to the alleged misuse of powers.
Against this background, and in more detail, the applicant explained that the alleged misuse of powers arises from the following circumstances.

First the applicant considers that by introducing equalization under Article 53 (b) of the Treaty, the High Authority demonstrated its intention to avoid the safeguards, such as those in Article 59 of the Treaty, laid down in the provisions of the Treaty to deal with exceptional situations.

On this point it must be recognized that there might have been a misuse of powers if, faced with a situation covered by the procedure in Article 59, the High Authority had nevertheless, in order to avoid the safeguards in Article 59, deliberately preferred to act in accordance with Article 53 (b) and the financial arrangements provided for therein. But it has not been established that, when the contested decision was taken, the High Authority was faced with such a situation. In these circumstances, there is no evidence that, as a financial arrangement within the meaning of Article 53 (b), the equalization scheme was vitiated by misuse of powers. This ground of complaint is unfounded.

Secondly, the applicant has contended that, according to the wording of the contested decision, its objective was the regular supply of ferrous scrap to the Common Market but that this objective was substituted for the objective set out in the High Authority's memoranda of 6 July 1955 and of April 1957 defining the general objectives, published in the Journal Officiel of 19 July 1955 and of 20 May 1957, namely, the attempt to balance the pig-iron/steel market. The applicant contends that this substitution is evidence of misuse of powers. The defendant replied that neither the memoranda nor Decision No 2/57 involved any attempt to strike a balance between the conflicting interests of pig-iron and steel producers but to put into effect a series of measures which, in the High Authority's view, were necessary to provide for the economic expansion which was to be foreseen. Against this background, the object of the High Authority's decision was to establish reasonable prices for scrap with a view to ensuring a regular supply in this field and an increase in output capacity for pig-iron.

This ground of complaint must be rejected because the legality of the contested decision cannot depend on its conformity or otherwise with the memoranda published by the High Authority but only on its conformity or otherwise with the Treaty. In no sense do the memoranda contain the only possible definition of the legal objective which the High Authority is entitled to pursue. To prove a misuse of powers the applicant would have had to demonstrate that the decision itself was in fact pursuing an objective other than that for the purposes of which the High Authority was entitled to act; the variation which the applicant has pointed out between the wording of the memoranda and that of the contested decision does not suffice to constitute such evidence.

Thirdly, the applicant considers that there has been a serious lack of foresight and care, amounting to disregard of the legal objective, in the fact that, in adopting Decision No 2/57 the High Authority failed to take account of the unbalancing effect which equalization would have on pig-iron despite the fact that it had been faced with the same problem since 1955.

The defendant concedes that equalization tended to encourage an increase in the consumption of scrap and that there was a possibility of consequential disadvan-

tages for producers of pig-iron; for this reason it tried to correct the situation, first of all by the introduction of a bonus payable for increased consumption of pig-iron and, later, by the supplementary rate introduced by Decision No 2/57.

There can be no dispute that the High Authority introduced the bonus and the supplementary rate as an indirect method of reducing the volume of scrap consumption; it is equally beyond dispute that these two measures encouraged an increase in pig-iron consumption. Neither in the course of the written procedure nor during the hearing was it established that the High Authority adopted the two measures referred to with any object in view than that for which the equalization scheme was established and lawfully completed.

Nor furthermore was it established that the alleged ineffectiveness of the arrangements for the bonus and the supplementary rate involved a disregard of the lawful objective of the decision.

In these circumstances a misuse of powers has not been established and this ground of complaint must be rejected.

Second complaint: For reasons which have nothing to do with the object of equalization, Decision No 2/57 makes heavy and light scrap subject to a uniform equalization rate and this constitutes misuse of powers.

The applicant claims that the application of a uniform equalization rate is an example of misuse of powers. It considers that there was no need for this uniformity in order to attain the objective pursued but that it was decided upon in order to avoid the administrative complications which would have been created by the application of a graduated rate, which would have had a balanced effect on the price of the various qualities of scrap, particularly those used exclusively by independent pig-iron producers.

Before a decision is taken on this ground of complaint, consideration must be given to the question whether the application of a uniform charge is compatible with the provisions of the Treaty. On this question the applicant contends that the application of such a rate gives rise to discrimination contrary to the provisions of Article 4 (b) of the Treaty. It claims to use only light scrap, which it obtains cheaply and on which the uniform equalization rate falls relatively more heavily than in the case of the heavy scrap used by the steel mills. The Compagnie de Chasse is accordingly not in a position which compares with that of the steel mills and in those circumstances the application of uniform rules is alleged to constitute unlawful discrimination.

On the other hand the defendant states that there is much in common between the various categories of ferrous scrap as a result of the fact that they are interchangeable and that they are used jointly by the various consumers. Accordingly, the different effects of the equalization rate on the various categories of scrap put the applicant in a position comparable to that of other consumers so that there can be no question of the scheme's being discriminatory.

It is clear from the documents put in by the parties during the preparatory inquiry that neither the applicant nor any other scrap consumer exclusively uses one cate-

gory of scrap. For example, in its consumption of scrap, the applicant uses, according to the nomenclature established by the High Authority (Decision No 28/53, JO No 5 of 15. 3. 1953, pp. 98 and 99), approximately 80% of 'turnings' and 20% of bales coming under the category of 'light scrap', whereas the steel mills in the same region use between 10% and 25% of 'turnings' and, in addition, 'heavy' and 'light' scrap in varying proportions.

There are, therefore, two groups of purchasers using to some extent the same categories of scrap. However, inasmuch as the steel mills have, as far as 75% of their purchases are concerned, bought certain categories which the applicant does not use, it is conceivable that a uniform rate may have different effects. But the preparatory inquiry did not reveal any specific evidence that such a difference exists. Considering that any difference could only make itself felt in the case of a proportion of the purchases and bearing in mind the general tendency towards the alignment of prices applicable to the categories of scrap of foreign and domestic origin the applicant has not advanced sufficient legal proof that the application of a uniform rate constituted discrimination to its detriment.

As regards the misuse of power alleged by the applicant, the Court finds that the defendant, in its pleadings and also during the preparatory inquiry, described the difficulties and administrative complications which would have ensued if a system of graduated rates had been applied. There is nothing however to justify the statement that the main reason which led the High Authority to introduce a uniform rate was the desire to avoid complications of that nature; since this rate was consistent with the provisions of the Treaty, the contested decision would still be in order even if it were proved that a uniform rate was also selected out of concern to avoid administrative complications.

This ground of complaint must therefore be rejected.

Costs

Under Article 60 of the Rules of Procedure of the Court of Justice, the unsuccessful party shall be ordered to pay the costs; the applicant must therefore be ordered to pay the costs of the action.

Upon reading the pleadings;
Upon hearing the parties;
Upon hearing the opinion of the Advocate General;
Having regard to Articles 2, 3, 4, 5, 33, 53, 59 and 80 of the Treaty, Annex II to the Treaty and Article 29 of the Convention;
Having regard to the Protocol on the Statute of the Court of Justice;
Having regard to the Rules of Procedure of the Court of Justice, including that relating to costs,

THE COURT

hereby:

1. **Dismisses the application for annulment of Decision No 2/57 of the High Authority dated 26 January 1957;**

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

Pilotti van Kleffens Delvaux

Serrarens Riese Rueff Hammes

Delivered in open court in Luxembourg on 13 June 1958.

M. Pilotti
President

A. van Kleffens
Judge-Rapporteur

A. Van Houtte
Registrar

OPINION OF MR ADVOCATE-GENERAL LAGRANGE
(See page 233)