10. (a) A legal decision conferring on the person concerned subjective rights or similar benefits cannot be withdrawn retroactively.

(b) On the other hand, if a decision of this nature is illegal, it may be withdrawn with retroactive effect:

If, taking account of the circumstances of the case, the public interest in safeguarding the principle of legality overrides the interest of the beneficiaries in maintaining a situation which they took to be settled, which the legal decision has had prejudicial effects on the beneficiaries' competitors:

Or if the illegal decision was adopted on the basis of false or incomplete information provided by the beneficiaries.

An appraisal of the respective importance of the interests in question and, consequently, a decision whether or not to withdraw the illegal decision with retroactive effect devolve in the first instance on the author of that decision.

In Joined Cases 42 and 49/59

SOCIÉTÉ NOUVELLE DES USINES DE PONTLIEUE—ACIÉRIES DU TEMPLE (SNUPAT), a limited liability company having its registered office at Billancourt (Seine), represented by its Administrative Director in office, Eugène de Sèze, assisted by Jean de Richemont, Advocate at the Cour d'Appel, Paris, with an address for service in Luxembourg at the Chambers of Georges Margue, 6 rue Alphonse-Munchen,

applicant,

v

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

defendant,

supported by

(1) KONINKLIJKE NEDERLANDSCHE HOOGOVENS EN STAALFABRIEKEN NV, a limited liability company having its registered office at Velsen (Netherlands), reepresented by its Director, Professor J. F. ten Doesschate, assisted by Christiaan Pieter Kalff, Advocate at the Gerechtshof and at the Arrondissementsrechtbank, Amsterdam, and Josse Mertens de Wilmars, Advocate of the Antwerp Bar, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 27 avenue Guillaume,

(2) BREDA SIDERURGICA SpA, a limited liability company having its registered office in Milan, represented by its Authorized Administrative Director in office, Guido Rebua, assisted by Cesare Grassetti, Advocate at the Italian Corte di Cassazione and at the Corte d'Appello, Milan, Professor of the Law Faculty of the University of Milan, with an address for service in Luxembourg at the office of Guido Rietti, 15 boulevard Roosevelt,

interveners,

Application

for the annulment of the letter from the Market Division of the High Authority of 7 August 1959, by which that Division refused to agree to the principle of damages in favour of the applicant claimed on the ground of the alleged wrongful act or omission committed by the High Authority in granting 'derogations' to certain undertakings in connexion with the equalization of scrap (Case 42/59);

against the implied decision of rejection alleged to result from the silence of the High Authority concerning the requests made by the applicant for the withdrawal of all 'derogations' granted or tolerated by the High Authority in respect of the equalization of scrap, for the fixing of a new rate of levy and for the communication of the latter to the applicant with all the information enabling the latter to undertake a normal check on the calculation of those levies (Case 49/59).

THE COURT

composed of : A. M. Donner, President, Ch. L. Hammes and N. Catalano, Presidents of Chambers, O. Riese (Rapporteur), L. Delvaux, J. Rueff and R. Rossi, Judges,

Advocate-General: M. Lagrange
Registrar: H. J. Eversen, Assistant Registrar

gives the following

JUDGMENT

Issues of fact and of law

I – Facts

The facts may be summarized as follows:

1. By successive decisions, the High Authority established equalization machinery for imported ferrous scrap, requiring contributions to be paid by ECSC iron and steel undertakings on the basis of their consumption of 'bought scrap', the 'own arisings' of those undertakings not being liable. The applicant undertaking, which is closely linked to the Régie Nationale des Usines Renault, especially by connexions of a financial and economic nature, considered that the scrap which was delivered to it by the latter should be assimilated to own arisings and, consequently, exempt from equalization. It adduced this argument without success before the High Authority; the Court, by the judgment which it gave in Joined Cases 32 and 33/58 (Rec. 1958-1959, P. 275) confirmed the opinion of the High Authority that ferrous scrap known as group scrap must be regarded as bought scrap.

2. Meanwhile the boards of the Office Commun des Consommateurs de Ferrailles (Joint Bureau of Ferrous Scrap Consumers—hereinafter referred to as the 'OCCF') and of the Caisse de Péréquation des Ferrailles Importées (the Imported Ferrous Scrap Equalization Fund—hereinafter referred to as the 'CPFI') had decided to regard ferrous scrap delivered to the interveners by certain other undertakings with which they were locally integrated as own resources. Those decisions were taken on 6 July and 14 September 1956 as regards Breda, and on 13 and 14 December 1956 as regards Hoogovens; however, the representative of the High Authority at the OCCF expressed reservations on this matter.

By letter of 18 December 1957, addressed to the OCCF and published in the Journal Officiel of 1 February 1958, the High Authority withdrew those reservations 'because of the exceptional nature of the circumstances in question'. By letter of 17 April 1958, addressed to the OCCF and published in the Journal Officiel of 17 April 1958, addressed to the OCCF and published in the Journal Officiel of 13 May 1958, it set out the reasons for the grant of the exemptions in question, that is to say the fact that the interveners, with certain of their ferrous scrap suppliers, at Sesto San Giovanni, Milan and IJmuiden, form 'a single industrial unit'; it added that any other undertaking placed in a similar situation of 'local integration' could also claim the benefit of the exemption.

3. The applicant, which was accountable, according to the CPFI, for a sum of $228 430·75 by way of equalization charges, considered that the basis on which that amount had been calculated was irregular. In fact, that amount would have been smaller if the exemptions had not been granted to the interveners; according to the applicant, those exemptions were illegal because they were censured by implication by the judgment in Joined Cases 32 and 33/58. Consequently, again according to the applicant, the High Authority was bound to revoke those exemptions, which it was moreover enabled to do by its Decision No 13/58 of 24 July 1958, which made provision for the revocation, where appropriate, of any decision of the OCCF or of the CPFI. Consequently, by letters of 29 and 30 July 1959, the applicant asked the High Authority:

(a) To revoke, with retroactive effect, all express or implied decisions of 'derogation' in favour of other undertakings;
(b) To fix the new rate of levy having regard to the revocation of those decisions and 'to the modification of the basis of calculation of the levy as the result of the judgment of the Court' and

to communicate this rate to the applicant;

(c) To agree in principle to the payment of damages to the applicant because of the 'discriminatory measures' taken by the departments of the High Authority which amounted, according to the applicant, to a wrongful act or omission; the applicant suggested that these damages should be fixed 'provisionally at *one franc,* the final amount ... to be fixed by means of an expert's report'.

4. By letter of 7 August 1959, the Director of the Market Division of the High Authority stated in reply to those letters:

(a) That the exact scope of the judgments in question, as well as their repercussions on the equalization contributions 'will be considered by the departments of the High Authority', which would take 'the necessary decisions' on the basis of the information requested from the applicant on 6 August 1959 as well as from a number of other undertakings;

(b) That the 'Market Division ... sees no basis' for the claim for damages for a wrongful act or omission.

The application against an *ultra vires* measure' entered in the Court Register on 7 September 1959 (Case 42/59) is directed against that rejection of the claim for compensation.

Further, the applicant disputes by an application for failure to act, of 28 October 1959, entered in the Court Register on 31 October 1959 (Case 49/59), the implied decision of rejection which it considers to result from the silence of more than months maintained by the defendant concerning the claims of the applicant expressed in letters of 29 and 30 July 1959 and mentioned above at point 3 (a) and (b).

II — Conclusions of the parties

1. *Case 42/59, the main proceedings*

The *applicant* in its application claims that the Court should:

'Annul as being vitiated by illegality, with all legal consequences, the individual decision of 7 August 1959 of the High Authority rejecting the applicant's claim for damages, following express or implied decisions derograting from the equalization levy, based on an extension of the concept of ferrous scrap from own resources;

Take formal note that the applicant reserves the right to bring before the Court a fresh application for damages against the High Authority for a wrongful act or omission, in compensation for the damage suffered by it as a result of the abovementioned derogations;

Order the costs of the proceedings to be paid by the High Authority.'

In its reply the applicant submits that the Court should:

'Take formal note that the applicant leaves to the Court's discretion the merits of the submissions relied upon by the High Authority and especially on the point whether the letter of 7 August 1959 constitutes an individual decision;

In the case of an affirmative finding, accede to the submissions contained in the application;

Take formal note that the applicant reaffirms that it reserves the right to make an application under the Court's unlimited jurisdiction for damages against the High Authority for a wrongful act or omission, in compensation for the damage suffered by it as a result of the abovementioned derogations;

Take formal note that it intends to request the joinder of this new application with that at present before the Court, entered in the Register under No 42/59;

Order the High Authority to pay the costs.'

The defendant in its statement of defence contends that the Court should:

'Reject the application of SNUPAT as inadmissible or alternatively unfounded, and order the applicant to pay the costs of the case.'

In its rejoinder it adheres to those conclusions.

2. *Case 49/59, the main proceedings*

The *applicant* claims that the Court should:

'Annul as being vitiated by infringement of

the Treaty and misuse of powers, with all legal consequences, the implied decision of the High Authority rejecting the applicant's request not only to revoke with retroactive effect to the date on which they were agreed the implied or express decisions granting derogations which it may have taken or in which it may have acquiesced in favour of other undertakings or even which it tolerated, but also, in view, on the one hand, of the revocation of those decisions and, on the other hand, of the modification of the levy as the result of the judgment of the Court, to fix the new rate of levy and to communicate the latter to the applicant, together with all information enabling it to make its normal check on the calculation of that levy;

Order the costs to be borne by the High Authority.'

The *defendant* contends that the Court should:

'(a) Dismiss as inadmissible the application for failure to act in so far as it asks for the annulment of the refusal to fix the new rates of contribution and to communicate to SNUPAT all information enabling it to make a normal check on that amount;

(b) Also, dismiss as unfounded the application for failure to act submitted by SNUPAT,

with all legal consequences, especially as concerns the rules of costs'.

3. *Cases 42 and 49/59, intervention proceedings*

The *intervener Hoogovens* submits that the Court should:

'1. Dismiss the two applications by the applicant in Joined Cases 42/59 and 49/59 as inadmissible;

2. Alternatively dismiss as unfounded the two applications mentioned;

with all legal consequences, especially as concerns the rules on costs.'

The *intervener Breda Siderurgica* makes similar submissions.

The applicant claims that the submissions made by way of intervention should be dismissed as unfounded and that the interveners should be ordered to pay all the costs.

The *defendant* adheres to the conclusions which it put forward in respect of the main application.

III — Submissions and arguments of the parties

The submissions and arguments of the parties may be summarised as follows:

1. *Application 42/59*

Admissibility

The *defendant* contends that the application is inadmissible for two reasons:

(a) The contested letter does not constitute a decision of the High Authority: it is signed by the Director of the Market Division acting in his own name and not in the name and on behalf of the High Authority; further, its contents do not satisfy the conditions which must be fulfilled in order that a measure may have the nature of a decision, as laid down by the case-law of the Court.

(b) It appears from the applicant's letter of 29 July 1959 and from the reply of the Market Division of 7 August 1959 that the only matter in dispute is the existence of a wrongful act or omission. An application for monetary compensation for a wrongful act or omission can be based only on Article 40 of the Treaty and not on Article 33 which deals with the annulment of decisions of the High Authority.

The *interveners* put forward substantially the same arguments.

The *applicant* in its reply relies on the discretion of the Court as regards the merits of these submissions and especially as to whether the letter of 7 August 1959 constitutes an individual decision. It states that it reserves the right very shortly to commence an action in which the Court has unlimited jurisdiction for damages against the High Authority for a wrongful act or omission and indicates at the present time its intention of asking the Court to join that action to case 42/59.

The *defendant,* in its rejoinder and in its observations on the supplementary pleadings of the interveners, states that the applicant has admitted by implication that the submissions of inadmissibility put forward are well founded, as is also mentioned by the *intervener Breda Siderurgica.*

The defendant, whilst relying upon the discretion of the Court in this respect, considers the applicant's request 'that the Court should take formal note that it reserves to itself the right very shortly to lodge a third action before the Court' to be devoid of interest and consequently inadmissible.

The defendant also opposes the joinder to the present action of the action yet to be commenced.

Substance

(a) The *applicant* considers that the disputed 'decision' is irregular, since it does not contain a statement of reasons. In fact, it merely indicates that the High Authority 'sees no basis for your claim for compensation for a wrongful act or omission'; that is hardly a sufficient enumeration of the essential findings of fact on which the legal justification for the measure depends.

The *defendant* recalls that a letter from an official who is not acting pursuant to a power delegated by the High Authority need not be reasoned, since such a letter does not constitute a decision (see above on admissibility).

(b) According to the *applicant* it follows from the judgment of the Court in Joined Cases 32 and 33/58 that the exemption of 'group ferrous scrap' is contrary to the Treaty and that exemption based on the essentially fortuituous geographical link of 'local integration' must also be prohibited. Thus action of the High Authority in granting or tolerating derogations from the requirement to pay the equalization contribution is contrary to the Treaty and has a discriminatory effect prohibited by the latter. This attitude of the High Authority, which is the consequence of an error of law in its administration, constitutes malfeasance and displays a misuse of powers. That wrongful act or omission has caused damage to the applicant by substantially widening the differences in the costs of production.

The *defendant* first of all claims that, even if in the present case an illegality has been committed, which has not been established, that illegality cannot be regarded as amounting to a wrongful act or omission, because if there had been an error of interpretation of the concept of own resources, it is at least excusable because of the intricate nature of the question. As to the misuse of powers, no proof of it has been adduced.

As regards the damage claimed, neither its existence nor its amount has been established; the absence of any proof of real damage can lead only to the dismissal of the application as soon as its substance is examined.

The *intervener Hoogovens* claims that there was no wrongful act or omission since the refusal of the High Authority to withdraw the exemptions is not vitiated by illegality or by misuse of powers.

The *intervener Breda Siderurgica* does not adopt a position on the substance of Application 42/59.

2. *Application 49/59*

Admissibility

A — *Submissions put forward by the defendant*

The *defendant* puts forward the following arguments:

(a) As to the question whether the High Authority failed to act on the applicant's preliminary request to withdraw the exemptions, the defendant relies on the discretion of the Court. It admits that, according to the case-law of the Court, a letter stating that a question is being studied does not interrupt the period laid down in Article 35 of the ECSC Treaty.

(b) As to the applicant's preliminary request to fix the new rate of contribution and to provide the applicant with all information enabling it to make a normal check in this respect, a separate procedure was commenced immediately the judgment of the

Court in Cases 32 and 33/58 was given, in order to apply the principles of that judgment and to adopt the new rate consequent upon it. There is therefore no failure to act. Furthermore, there can be no question of finding a failure to act since the departments of the High Authority are entitled to a reasonable time in order to finish this work, which will be possible only when they have obtained all the necessary information. At the appropriate time the High Authority will adopt a reasoned decision, but it refuses to submit to the supervision of an undertaking. That part of the application is therefore inadmissible.

The *applicant* replies as follows:

On point (a): In its judgment in Case 42/58 *(SAFE v High Authority)* the Court accepted that an application for failure to act is admissible on condition that no express decision has been adopted within the period laid down, whether or not the High Authority has replied to the claimant 'that the question is under consideration'.

On point (b): The request for modification of the rate of levy is the normal consequence of the application for withdrawal of the exemptions and is an integral part of it. As soon as there was an implied rejection of the first request there was also a rejection of the second and in order to avoid being out of time the applicant had to institute proceedings within the period laid down in the third paragraph of Article 35. Lastly the judgment in Case 9/56 *(Meroni* v *High Authority)* reminded the High Authority that Articles 5 and 47 of the Treaty require it to make public the reasons for its actions and to publish such data as could be useful to those concerned. The applicant asks only for the application of these principles; there can therefore be no question of 'supervision'.

The *defendant* replies in its rejoinder that the said passages of the *Meroni* judgment have nothing to do 'with the applicant's claim to be entitled to supervise in advance the work of the departments of the High Authority in so far as such action has not yet been put into effect by a decision in respect of the applicant as to the amount of equalization contribution which is claimed from it'.

B—*Submissions put forward by the interveners*

The *intervener Hoogovens* repeats certain of the submissions of inadmissibility raised by the defendant, but it adds to them the following submissions and arguments:

1. *Preliminary considerations*

Hoogovens states that what is at issue is not a matter of 'derogations' from the basic decisions, but of the interpretation and application of Decision No 2/57 on the question of what should be understood by 'own resources' and 'bought scrap'.

The *defendant* agrees with that argument. It is true that the High Authority itself previously used the expression 'derogation', when it was in reality a question of an exemption. Since there was no derogation, the action for failure to act, as presented, does not lie.

The *applicant* replies that the High Authority certainly used the term 'derogations' in its letters of 18 December 1957 and 17 April 1958.

2. *Submissions based on the argument that the contested decision is a general decision*

As a main argument, *Hoogovens* maintains that the contested decision is general, since:

By asking the High Authority to 'revoke, with retroactive effect, all . . . decisions of derogation, etc.', the applicant requested a decision which would have been general not only in relation to the wording of the said request but also in respect of its object and effect because without mentioning an addressee 'it was to lay down a measure applicable for the past and for the future to all persons finding themselves in the circumstances specified for its application' (see the judgment in Joined Cases 36 to 38, 40 and 41/58, *SIMET and Others v High Authority*);

The applicant's request that the rate of contribution be modified is closely linked

to the request mentioned above; furthermore, such a modification would clearly amount to a general decision of a legislative character.

In the light of these remarks, Hoogovens puts forward three submissions of inadmissibility:

(a) The contested decision is purely confirmatory;
(b) The applicant puts forward no submission of misuse of powers, which is the only submission which may be made in an application by an undertaking against a general decision;
(c) A misuse of powers is legally impossible in the present case.

On point (a): The contested decision merely confirms the point of view already adopted previously by the High Authority in its letters of 18 December 1957 and 17 April 1958. Either the applicant could have brought an action for annulment against the confirmed decision and did not do so within the limitation period, and therefore, since the period within which an action for annulment must be brought cannot be suspended indefinitely, it can no longer ask for the annulment of the confirmatory measure; or the applicant was not in a position to dispute the exemption decisions, and therefore any application against the refusal to withdraw those decisions is *a priori* inadmissible.

On point (b): Although it may perhaps be accepted that the applicant has alleged a misuse of powers as regards the granting of exemptions, it has not shown any reason of such a character as to establish a misuse of powers vitiating the refusal to withdraw them; that is precisely what it should have done since, even supposing that the exemptions are vitiated by misuse of powers, it does not necessarily follow that the same is true of the refusal to withdraw them.

On point (c): (α) If the application is based on the first paragraph of Article 35, the applicant should have established that the High Authority was required to withdraw the exemptions, which it has not even offered to prove; such an obligation cannot be found in the judgment of the Court in Joined Cases 32 and 33/58, nor does it follow from Article 34 of the Treaty, since that judgment was not a judgment of annulment. Furthermore, even if such a duty on the High Authority were proved, the application is none the less inadmissible. In fact the applicant can rely only on the submission of misuse of powers, and in the absence of any discretionary power, misuse of powers is inconceivable.

(β) If the application is based on the second paragraph of Article 35, it is equally inadmissible, since the High Authority is not empowered to order the withdrawal requested; in fact if, according to its interpretation of the basic decisions, the exemptions were justified, it had no power to withdraw them except by resorting to the procedure laid down by Article 53 (b), that is to say by seeking the unanimous assent of the Council of Ministers.

The *intervener Breda Siderurgica* also puts forward the submissions set out above under points (a) and (c) and it adduces similar arguments. It adds to point (a) that the exemptions did not amount to decisions, but were merely applications of the basic decisions; consequently the implied refusal to withdraw them cannot be classed as a decision either, for 'where there is no decision which may tacitly be confirmed, there cannot be a confirmatory decision'.

The *applicant* denies the general nature of the decision sought. The withdrawal of the exemptions would have the effect of reducing the amount of the contribution due from the applicant and therefore concerns it personally; further, in its letter of 29 July, it asked that the new rate of levy should be notified to it, which necessitated an individual decision. Consequently the implied decision of refusal has, in part at least, the nature of an individual decision. More particularly, the applicant puts forward the following:

On point (a): The contested decision goes beyond the scope of a purely confirmatory decision, because two new factors intervened following the grant of the exemp-

tions, that is to say, on the one hand, Decision No 13/58 of the High Authority of 24 July 1958 (JO of 30. 7.1958) permitting the High Authority, following the *Meroni* judgment (Case 9/56), to review the decisions taken by the CPFI and the OCCE and, on the other hand, the judgment of the Court in Joined Cases 32 and 33/58, specifying what must be understood by 'own resources'. The submission based on the expiry of the limitation period cannot therefore be accepted. Further, by its letters of 18 December 1957 and 17 April 1958, the High Authority interpreted Decision No 2/57, as it admits itself; the refusal to modify that interpretation amounts to an implied decision.

On point (b): From the moment the application was lodged, the complaint of misuse of powers has been relied on and sufficiently reasoned.

On point (c): The duty to withdraw the exemptions follows from the judgment in Cases 32 and 33/58. As the result of that judgment, the High Authority was required immediately to take retroactive measures. Consequently, an application based on the first paragraph of Article 35 is admissible. The existence of misuse of powers is by no means excluded in case of limited jurisdiction, since limited jurisdiction has to do with the 'object' and the misuse with the 'purpose' of the decision.
Moreover, the application may also be based on the second paragraph of Article 35; the High Authority had the right, under its Decision No 13/58, to revoke, where appropriate, any proceedings of the Imported Ferrous Scrap Equalization Fund and of the Joint Bureau of Ferrous Scrap Consumers and to take such measures as that revocation might require. Further, it had only to resort to the procedure of Article 53 (b) and to try to obtain the prior unanimous assent of the Council which it did not do.
The *intervener Hoogovens* denies that the judgment of the Court and Decision No 13/58 constitute new facts capable of altering the legal basis of the original exemption decisions.

3. *Submissions based on the argument that the contested decision is an individual decision*

As a subsidiary matter, the *intervener Hoogovens* maintains that the application would also be inadmissible if the contested decision were individual. Even in this case it would be purely confirmatory and to avoid being out of time the applicant should have disputed the decisions confirmed within the period of one month from the publication in the Journal Officiel on 1 February and 13 May 1958 of the letters of 18 December 1957 and 17 April 1958.
To the extent to which the applicant bases its application on the second paragraph of Article 35 it cannot rely on misuse of powers, even if the contested decision is individual; the application does not satisfy this requirement (see above, 2 (b)).
The *applicant* replies to these arguments with those already reproduced above (2 (a) and (b)).

4. *Submission based on the retroactive nature of the decision sought*

The *intervener Hoogovens* states that as early as 1956 the Brussels organizations accepted that ferrous scrap from Breedband was Hoogovens' own arisings; the High Authority accepted that interpretation, which applies equally to the past, that is to say the situation created since 1 April 1954.
According to the case-law of the Court an administrative measure conferring individual rights can be revoked only within a reasonable period of time, and it certainly cannot be revoked after several years of application. Since 1954, Hoogovens, in the management of its business, has taken account in perfectly good faith of the fact that it did not have to pay contributions on its ferrous scrap.
The retroactive withdrawal of the exemption would require Hoogovens to pay more than Fl. 4.5 million. Such a withdrawal would be contrary to the fundamental principles of good administration and legal certainty.
Further, the damage suffered by Hoogovens

would be, proportionally, infinitely greater than the benefit which would accrue to the other undertakings; as regards especially the applicant, it would be a matter of saving Fl. 10 000 at the most. The individual interest of Hoogovens would therefore be damaged to an infintely greater proportion by the retroactive withdrawal than would be the common interest by the maintenance of the exemption.

For all these reasons, the High Authority has no power to undertake the retroactive withdrawal sought. The application for failure to act is therefore inadmissible.

The *intervener Breda Siderurgica* makes the same submission.

The *defendant* agrees with these arguments and leaves to the discretion of the Court the question whether what is at issue is an objection of inadmissibility or a substantive submission. It adds that the applicant, in its previous application (32/58), far from criticizing the 'Hoogovens solution', demanded that it should be extended. That circumstance alone suffices to deny the applicant the right to ask for its abolition now.

The *applicant* recalls that Decision No 13/58 allowed the High Authority to revoke exemptions even with retroactive effect and that the judgment of the Court required it to do so. Hoogovens is free to make an application against the High Authority for compensation for a wrongful act or omission. However, by relying on the irrevocability of the measures in question, the defendant has by implication accepted their illegality. The criterion of the reasonable period of time cannot apply if third parties are affected.

Furthermore, such a period did not begin to run until the date of the Court's judgment (17 July 1959), since it was only on that date that the illegality of the exemptions became apparent. The request of 29 July 1959 was therefore lodged within a reasonable period.

The *defendant* contests these conclusions and energetically denies having admitted the illegality of the exemptions. It adds that the rights of the applicant are in no way compromised since 'it can always dispute the amount of its contribution to the equalization levy before the Court when that amount is officially claimed from it and for any reasons which it may regard as appropriate'.

The *intervener Hoogovens* considers that what matters is not whether the applicant required the withdrawal of the exemptions in good time, but whether at that time the period during which the High Authority could reasonably revoke the exemption had expired. Lastly, Hoogovens disputes the applicant's argument as to the inapplicability of the principle prohibiting the withdrawal of individual rights on the basis that an administrative act has repercussions on the situation of third parties. Moreover, even when the interests of third parties are at issue, the theory of the confrontation of interests prevents a withdrawal and above all a retroactive withdrawal.

Substance

The application puts forward submissions based on infringement of essential procedural requirements and lack of jurisdiction, and on infringement of the Treaty and misuse of powers.

1. First submission: *Lack of jurisdiction and infringement of essential procedural requirements*

The applicant considers that the High Authority, by granting the disputed exemptions, has altered the provisions establishing the equalization machinery and especially Article 5 (2) [sic] of Decision No 2/57 which defines the concept of 'own resources' in accordance with the 'semantic value of the expression', as the letter of 18 December 1957 confirms. The decision confirming this modification was not taken in accordance with the correct procedure, that is to say, with the unanimous assent of the Council of Ministers (Article 53 (b) of the Treaty).

The *defendant* replies that it is not at all a matter of a modification of Decision No 2/57, but simply of an interpretation of the concepts of 'bought scrap' and of 'own resources', contained in that decision.

Moreover, according to the judgment of the Court the letters of 18 December 1957 and 17 April 1958 which settled that interpretation constitute 'directives of an internal character' and not decisions.

The *applicant* replies that an interpretation which adds something to a provision or reduces the scope of it gives it an effect which was not desired by its authors.

The *intervener Hoogovens* replies first of all that the applicant can put forward only the submission of misuse of powers.

Nevertheless, Hoogovens repeats the arguments of the defendant adding that the latter would have acted outside the limits of its powers if it had acceded to the request of the applicant and so altered 'the legal situation created by a uniform interpretation and application of the basic decisions'.

The intervener *Breda Siderurgica* repeats the argument put forward by the defendant and by Hoogovens; it stresses the fact that it never requested a 'derogation' from Decision No 2/57, but only a perfectly justified exemption since the scrap recovered within the factories at Sesto San Giovanni are clearly own resources (on this subject the intervener refers to its letter of 15 June 1956, addressed to the OCCF).

The *applicant* replies that if the exemptions are illegal, as it maintains, the fact of having accepted the principle that all undertakings placed in a situation similar to that of Hoogovens and Breda would be exempt constitutes a modification of the basic principles so that the prior assent of the Council of Ministers should have been sought.

In its rejoinder the *defendant* emphasizes that by providing that all undertakings placed in a situation similar to that of Hoogovens and Breda would be exempt it simply intended to confirm adherence to the rule of non-discrimination; that simple reference, which perhaps was legally superfluous, does not at all amount to a 'provision of a general nature having legislative character but individual effect' as the applicant claims.

The *intervener Hoogovens* states that, when the basic Decision No 2/57 was discussed (26 January 1957), the exemption granted to Hoogovens by the Brussels organizations in December 1956 was perfectly well known. If the 'legislature' of the Community (Council of Ministers and High Authority), in order to maintain that exemption, considered the wording of Decision No 2/57 sufficient, it therefore considered that the exemptions were in conformity with the principles laid down by the basic decisions.

2. Second submission: *Infringement of the Treaty*

The *applicant* considers that the contested decision infringes Articles 4 and 67 of the Treaty and the provisions establishing the equalization machinery. Further, it is in contradiction with the abovementioned judgment in Joined Cases 32 and 33/58. It is true that that judgment did not give a formal ruling as to the validity of the exemptions in question, since their annulment was not requested. But it is none the less true that that judgment censured any exemptions of 'group scrap'; the disputed ferrous scrap is precisely 'group scrap' (for details see below, 4). The Court also gave judgment against any exemption based on the essentially fortuitous geographical link of 'local integration'. The applicant quotes from the following passage of the same judgment:

> 'The fact that the High Authority or its departments may have given in certain cases *too wide* an interpretation of the concept of "own arisings" cannot justify the grant of an exemption from the levy in other more or less comparable cases, since such grant is contrary to the very principles of the equalization system'.

The *defendant* states that the judgment in question did not pronounce upon the legality of the exemptions in question. Although the Court recognized the legality of the exemption of own resources of ferrous scrap and censured any exemption of group scrap, the distinction between these two categories in practice must still be applied. As regards the Breda and Hoogovens undertakings the defendant considered that there

was reason to treat scrap which they received from certain undertakings with which they were locally integrated in the same way as ferrous scrap recovered by an undertaking in the factories bearing its name. The passage quoted by the applicant is written in the subjunctive and is conditional in meaning; the Court has therefore censured nothing and approved nothing.

The *interveners* share this point of view.

The *applicant* replies to this latter argument that although the Court expresses itself in the subjunctive its meaning is not conditional; 'it asserts that an interpretation which is "too wide" (and the adverb "too" clearly indicates the error committed by the High Authority) cannot in any way justify other exemptions since that grant is contrary to the very principles of the system and of the Treaty'.

The *intervener Hoogovens,* after recalling once more that the applicant can put forward only the submission of misuse of powers, considers that the applicant, by deducing from the illegality of the exemptions the illegality of the refusal to abrogate them, has raised a type of objection of illegality which cannot be admitted, since none of the conditions which allow the objection of illegality to be raised are present.

The *applicant* repeats that it regards the contested decision as an individual decision. Nevertheless, even if it were general, the applicant would be entitled to show that it is illegal as being in violation of the Treaty, in order better to demonstrate the illegality of the purpose in view, that is to say, a misuse of powers as regards the applicant.

3. Third submission: *Misuse of powers*

The *applicant* recalls that according to the wording of the judgment in Joined Cases 32 and 33/58 'Any action having the objective or the effect of artificially distorting ... competition must be regarded as discriminatory and incompatible with the Treaty'. The applicant deduces from this passage as well as from other expressions employed in the same judgment, that any exemption constitutes discrimination and therefore also a misuse of powers in respect of the applicant since it favours in a systematic manner certain undertakings to the detriment of the applicant and because the reasons for such exemptions are contrary to the purpose of the Treaty. In the present case it is not disputed that the reason for the grant of the exemption was local integration, a geographical criterion condemned by the judgment in Joined Cases 32 and 33/58.

The misuse of powers appears equally from the fact that the exemptions were granted with full knowledge of the discriminatory financial repercussions which they entailed for the undertakings subject to the equalization charge. The contested decision which refused to revoke the exemptions is also vitiated by this defect.

Lastly, the applicant complains of the imprecision of the defendant's decisions.

The *defendant* disputes the existence of discrimination, since the ferrous scrap used by Hoogovens and Breda was not regarded as group scrap, but declared to be assimilable to own arisings, the exemption of which has been accepted by the Court as being legal. Furthermore, by its letters of 18 December 1957 and 17 April 1958, the High Authority declared that such an exemption would be granted to undertakings which could prove the same conditions: there was therefore no discrimination. Moreover, the complaint put forward by the applicant does not amount to a misuse of powers but to an infringement of the Treaty.

The *applicant* replies that the whole problem is whether this assimilation to own arisings is legal; it appears from the judgment of the Court that such is not the case. Moreover, under Article 47 of the Treaty, the High Authority, as the *Meroni* judgment (Case 9/56) recalled, should have made public the reasons for its action and in particular should have specified those which caused it to treat the ferrous scrap in question in the same way as own arisings.

As to the complaint of misuse of powers, the *defendant* emphasizes that the exemptions were granted not to favour a given undertaking, but because the High Authority con-

sidered that own resources were involved. 'Local integration' is both an objective and a technical criterion; it is not based on a fortuitous link.

The defendant disputes the alleged imprecision of its decisions and states that it cannot in any event authorize an annulment of the exemptions criticized.

In its reply the *applicant* adheres to its previous position and adds that the High Authority chose the criterion of local integration in order to facilitate supervision by its departments, as it admitted in its statement of defence in Case 32/58; that is however formally disputed by the *defendant,* which complains that the applicant has confused cause and effect.

The *intervener Hoogovens* repeats and expands the arguments of the defendant. The complaint of discrimination fails because, in the absence of local integration with the Régie Renault, the applicant is in a situation which is entirely different from that occupied by the Hoogovens company. The High Authority had to take account of the special aspects of local integration and the relationship existing between Hoogovens and Breedband, in so far as in doing so it did not adversely affect the working of the equalization system and did not create conditions interfering with normal competition. Such is not the case in the present instance, since the exemptions represent only a very small amount in relation to the total amount of equalization and since their effect on the price of steel does not even amount to 1%.

The *intervener Breda Siderurgica* repeats these arguments in part.

The *intervener Hoogovens* recalls that the applicant must prove the misuse of powers allegedly vitiating the decision of refusal which it disputes, and not the misuse of powers allegedly vitiating the grant of the disputed exemptions. Further, the effect of an exemption on the situation of other undertakings in the Community cannot be taken into account to show a misuse of powers.

The *applicant* recalls that the Court has clearly stated that the assimilation of group scrap to own arisings constitutes a discriminatory advantage in relation to other undertakings. Hoogovens forms a group with Breedband.

4. *As regards more particularly the situation of Hoogovens and of Breda Siderurgica*

A—*Hoogovens*

The *intervener Hoogovens* emphasizes, first, that it does not bear the burden of proof of the legality of the exemptions. Next, it states that the relationship which exists between Breedband and itself is consequent upon a contract concluded in 1950 and added to on various occasions since. That contract contains a series of 'highly confidential' clauses. The intervener states that it would agree to any measures of inquiry which the Court considered necessary if it took account of the necessity for Hoogovens to maintain secrecy regarding information which must not be divulged to its competitors. It states that it is ready to produce the contract to any person bound by professional secrecy in the presence, if necessary, of the Judge-Rapporteur for the purpose of any investigation which the Court may consider necessary or even to submit it, for the same purpose of investigation, to the High Authority. On this point the *applicant* emphasizes that 'professional secrecy must not obstruct the rights of the defence and the need for any inquiry to be conducted in the presence of the parties'.

The *intervener Hoogovens* maintains and expands above all the following two arguments:

(a) The own arisings in question are its property. There has therefore been neither purchase nor transfer of ownership.

(b) In any case, these own arisings must be treated as Hoogovens' own resources because, taking account of the relationship which exists between Hoogovens and Breedband, those two companies form in fact a single undertaking.

On point (a): According to the intervener, the relationship between Breedband and

itself has all the characteristics of a company ('maatschap') within the meaning of Article 1655 *et seq.* of the Netherlands Civil Code and Article 1832 *et seq.* of the French and Belgian Civil Codes. Consequently, products manufactured in common by Hoogovens and Breedband are in their undivided co-ownership.

Hoogovens and Breedband produce iron and steel products together. Hoogovens undertakes the first phase of manufacture of those products and Breedband the second, each of the undertakings contributing a part (Hoogovens) or the whole (Breedband) of its productive capacity. Consequently, both of them have the exclusive right to enjoy and use that capacity, and during manufacture they have undivided power as to the control and right of disposal of the things produced jointly. In accordance with this company structure the sale of products is entrusted to a common sales organization, of which the two members are shareholders. The production of the two companies is carried on on their common account and at joint risk, all losses, whether they occur in the Hoogovens factories or in those of Breedband, being borne by the two members in accordance with the rules governing the division of the joint annual result. According to the same rules all profits are entered by the two members in common and then divided between them. Before dividing the profits each of the members makes provision for its production costs.

According to Netherlands civil law, the members of such a company are joint owners of the goods produced in common. When Breedband makes scrap available to Hoogovens there is a 'transfer from one joint owner to the other of part of what was in undivided joint ownership which may now be divided'. It is a matter of the termination of undivided ownership and not of a purchase and sale. Since the division between joint owners is purely declaratory in character, in accordance with Articles 1129 and 1689 of the Netherlands Civil Code, Hoogovens is deemed always to have been the owner of the ferrous scrap which is put at its disposal by Breedband.

The fact that the market price of that scrap appears in Hoogovens' accounts does not affect this conclusion at all; that is done only to allow the resale price of goods manufactured in common to be established.

Even if there were no company (or association) as between Hoogovens and Breedband there could not have been a purchase of own arisings from Breedband by Hoogovens because no price was paid. 'The so-called price with which Hoogovens is debited and Breedband is credited must be entered by the latter in the annual accounts under the form of a decrease in the costs of production'. A purchase and sale transaction is inconceivable without the existence of a price.

The *applicant* replies to these arguments that:

1. If two companies form a third company between them the products manufactured are the property of that third company and are not subject to the undivided joint ownership of the members. Otherwise, it would have been easy for the Régie Renault and the applicant to draw up such a contract, and the own arisings of the Régie Renault would then have been the undivided property of the two companies.
2. If such a company exists as between Hoogovens and Breedband, it is concealed and it therefore does not come within the jurisdiction of the High Authority, which granted the exemption only to the two undertakings Hoogovens and Breedband. The acceptance of such concealed companies would render impossible the supervision which the High Authority must exercise under Article 65 *et seq.* of the Treaty. It is also contrary to the case-law of the Court on the concept of 'output'.
3. The intervener is wrong in claiming that the price which is charged to its account is paid into joint ownership. As soon as a company comes into existence, monies which it receives in exchange for goods do not fall into joint ownership but become the property of that company.

The financial and administrative links which unite the intervener to Breedband are absolutely identical to those which exist

between the applicant and the Régie Renault. When the latter claimed that the market price entered on the accounts was merely a fictitious price, the High Authority replied that it was nevertheless a purchase and therefore subject to equalization, and the Court confirmed that argument in its judgment.

Breedband and Hoogovens are two different undertakings and have distinct company names. In accordance with the principles laid down by the High Authority and accepted as valid by the Court, own arisings which the Breedband company transfers to the intervener cannot therefore be regarded as the latter's own resources.

The *intervener Hoogovens* replies that the legal links existing between Breedband and itself did not give rise to a third distinct legal entity, but to a form of association provided for by Netherlands civil law which creates between contracting parties a relationship of joint ownership. The applicant wrongly relies on the concealed nature of this company because, according to Netherlands law, undivided co-ownership of things produced in common may be relied upon against third parties and that possibility is not subject to special measures concerning publication. In that respect, the intervener refers to the preamble to the Netherlands draft law which was the basis of the law of 8 May 1952, allowing the formation of the Hoogovens-Breedband group; that document has been placed on the file.

On point (b): According to the intervener, the arguments which the Court accepted in its judgment in Joined Cases 32 and 33/58 are not applicable to the Hoogovens-Breedband group because:

1. Those two undertakings do not constitute a group capable of affecting normal competition artificially;
2. 'The interpenetration of factories within a single complex has the effect of improving output, which is not the consequence of *fortuitous* links which are the basis of the group concept, but which must be regarded as variations in output achieved within an undertaking'.

On point 1: The creation of the Breedband factories during the years 1950 to 1953 took place exclusively with a view to the expansion of Hoogovens.

That expansion required nearly Fl. 200 million, a sum which it was impossible to find immediately after the war on the Netherlands market. With the help of the Government of the Netherlands and with funds from the Marshall Plan, it was possible to gather the necessary means; these were partly devoted to the extension of Hoogovens, and the balance of Fl. 135 million was put into the construction of the Breedband rolling mills, it being understood that this was a matter of 'the extension ... of the iron and steel industry of the Netherlands at IJmuiden'. In order to safeguard the interests of the Government and, on the other hand, to prevent the State from becoming a majority shareholder in Hoogovens (which would have deprived it of its former nature as a private company), a separate company was created, the NV Breedband, to which the State subscribed 97% and Hoogovens 3% of the capital. The establishment of that distinct company was therefore imposed by circumstances; it does not in the least distort normal conditions of competition; lastly, 'the creation of the Breedband company and its relationship with Hoogovens are of a quite different order [from the] relationships which prevail in the formation of industrial or financial groups'.

The *applicant* replies that it was an equally fortuitous reason, of a fiscal nature, which caused the separation between SNUPAT and the Régie Renault. All the arguments that Hoogovens puts forward apply also to those two undertakings, and they are those which the applicant adduced without success in its previous applications.

On point 2: The *intervener Hoogovens* claims that its factories and those of Breedband, combined in such a unified whole that they achieve the highest possible degree of local integration, form a single undertaking. The workshops are on a single site and there is no external sign to separate them; the slabbing mill which produces slabs is in the same building as Breedband's rolling mill;

technical and commercial management is in common, as are the research departments, and large administrative and clerical departments work for the two companies as a whole.

The improvements in output which result from this are not a consequence of the fortuitous links which are ordinarily characteristic of groups, but result from the fact that Hoogovens and Breedband form a single undertaking.

That integration leads to an improvement in output such as does not exist within groups of undertakings; it eliminates all transport costs and allows immediate delivery or provision by Hoogovens to Breedband of a whole series of raw materials (such as gas, water, steam, oxygen) and of services; one of these improvements in output follows from the transfer of arisings from Breedband to Hoogovens. Thus the re-utilization of Breedband's arisings 'returns to the common production cycle a by-product of that same common production'. It constitutes 'an improvement in productivity within the meaning of Article 67 of the Treaty which, in the words of the judgment in Joined Cases 32 and 33/58, justifies the creation of differences in production costs'. The intervener interprets that judgment as meaning that a single site is a prerequisite for regarding the use of arisings as an improvement in productivity.

The equalization contribution paid by the intervener on the bought ferrous scrap which it acquires in order to produce the steel ultimately to be rolled by Breedband is debited to the common annual accounts, so that that contribution is borne equally by Breedband. If Breedband's own arisings were again subject to payment, that new contribution would in its turn be borne by the two companies, which would have the result of causing the same undertakings to contribute twice over for the same quantity of ferrous scrap. The Court has accepted that such a result would clearly be unjust; furthermore, such a double charge would constitute a discrimination prohibited by the Treaty.

The *applicant* replies that the only difference between the Hoogovens-Breedband group and the Régie Renault-SNUPAT group, both of which are artificially split, is that the first group has no transport costs to bear, whilst the second has large transport costs. That is no reason to exempt the first and tax the second.

The Court has used the name by which the undertaking is distinguished as the sole criterion for the concept of own resources, and it is only within an undertaking thus defined that there is reason to take account of improvement in productivity. By refusing to accept exemptions in case of fortuitous links, including geographical links, the Court has excluded the possibility of taking account of the use of a single site. Hoogovens and Breedband are two different undertakings. According to the argument of the intervener, it would be sufficient that the Régie Renault and SNUPAT, which are as closely integrated with one another as Breedband and Hoogovens from the administrative, commercial and financial points of view, as well as from the industrial point of view, had their workshops situated on a single site for their arisings to be exempt from the equalization contribution; and it is sufficient that their workshops are some hundreds of kilometres apart for their ferrous scrap to be taxed.

The *intervener Hoogovens* replies that the criterion of the company name is not to be found in the basic decisions, nor has it been adopted by the Court. It endeavours to show in detail the differences which exist between SNUPAT and Hoogovens in respect of their legal structures and their factual situations, stating in particular:

That the legal relationship derived from the 'maatschap' existing between Breedband and itself have the consequence that the arisings which are produced at Breedband are Hoogovens' own resources 'in accordance with the semantic value of the expression', and

'That complete local integration between its plant and that of Breedband has the consequence that its use of arisings from Breedband's workshops constitutes an improvement in productivity within a

single undertaking and that this ferrous scrap has therefore properly been assimilated to own resources.'

The *defendant* agrees entirely with the arguments of the intervener. It adds that rather than confine the matter to the criterion of the identity of the company name alone, it was necessary 'to give precedence to reality over the simplicity of formal legal criteria in order to adhere not only to the letter of legislative decisions but also to their spirit'.

B — *Breda Siderurgica*

The *intervener Breda Siderurgica* states that the ferrous scrap which it uses comes from other factories in the same industrial group established within the same precinct at Sesto San Giovanni, Milan, this last being a single establishment surrounded by a wall, served by a main entrance and two side entrances common to all departments and by a single railway link.

In this industrial complex all the general departments are common:

purchase, transformation and distribution of electric energy;

purchase and distribution of raw materials by pipelene ;.

distribution network of industrial and drinking water;

drainage network;

internal and external security;

medical and infirmary services;

central telephone switchboard and extensions;

social services, mutual insurance, staff housing service, recreational groups, trade schools;

central research and development laboratory.

There can therefore be no doubt that the ferrous scrap recovered within the factories at Sesto San Giovanni must be regarded as the 'own resources' of the intervening company.

The *applicant* replies that the facts mentioned by the intervener are 'completely fortuitous and empirical. Breda's attempt at self-justification shows clearly that in granting it an exemption the High Authority has not conformed to the principles accepted by the Court'.

The *defendant* considers that the facts mentioned by the intervener 'constitute further arguments showing the correctness of the High Authority's interpretation'. Like the intervener, it is of the opinion that the latter's situation is technically very different from that of the applicant.

5. *As regards more especially the retroactive effect of the withdrawal sought*

The *intervener Hoogovens* submits that the Court should rule 'that the High Authority would have infringed fundamental rules of law by retroactively withdrawing the exemptions granted'. It refers on this point to the submissions which it made against the admissibility of the application.

The *intervener Breda Siderurgica,* putting forward the same arguments as Hoogovens, asks the Court 'to rule that the High Authority would have infringed fundamental principles of law if it had retroactively revoked the exemptions granted to certain undertakings, among them Breda Siderurgica'.

The *applicant* replies that without retroactive effect the decisions of the Court would have no effect, since the equalization scheme has been abolished.

IV — Procedure

The procedure followed the normal course.

The following were permitted to intervene in favour of the defendant:

(a) Koninklijke Nederlandsche Hoogovens-en Staalfabrieken NV, having its registered office at Velsen (Netherlands), by two orders of the Court of 20 January 1960;

(b) Breda Siderurgica, SpA, having its registered office at Milan (Italy), by order of the Court of 6 May 1960.

By an order of 29 January 1960, the Court ordered the joinder of Cases 42 and 49/59 for the purposes of the written procedure and the oral procedure.

Following the termination of the written procedure and on hearing the views of the Advocate-General the Court decided to inspect the factories of the intervener Breda Siderurgica at Sesto San Giovanni, Milan, and those of the intervener Hoogovens, at IJmuiden; these inspections took place respectively on 23 September and 7 October 1960.

Grounds of judgment

Case 42/59

I – The admissibility of the applicant's main conclusions

The defendant submits that the application is inadmissible on the ground that the letter of 7 August 1959 from the Market Division does not constitute a decision of the High Authority and, alternatively, that there cannot be an application in respect of an *ultra vires* measure in this connexion.

These two objections of inadmissibility are well founded.

(a) In fact the letter in question does not constitute a decision of the High Authority either in its form or in its content.

As regards its form, this letter was signed solely by the Director of the Market Division, acting in his own name and not in the name and on behalf of the High Authority; it cannot therefore be regarded as a decision of the High Authority.

As regards its content, it merely states that the judgments of the Court of Justice of 17 July 1959 will be considered by the departments of the High Authority which will take the necessary decisions, and that the Market Division sees no basis for the claim for compensation for a wrongful act or omission.

Such a statement does not establish any general rule and does not conclusively affect any individual interest.

(b) The present application is really directed towards having the High Authority held liable for a wrongful act or omission.

Such a ruling may not be obtained by means of an action for annulment under Article 33 of the ECSC Treaty, which concerns the annulment of decisions of the High Authority and on which the application is based, but can be founded only upon Article 40 or possibly upon Article 34.

It is not possible to base a contrary argument on the third sentence of Article 40 of the Statute of the Court of Justice of the ECSC; in fact, although that provision

refers to cases in which a person who considers that he has suffered damage owing to a wrongful act or omission of the Community has made a prior request to the relevant institution of the Community, it is nevertheless intended only to fix a limitation period, without altering the character of the application provided for in the matter.

For these two reasons the application is inadmissible.

II — The admissibility of the applicant's supplementary conclusions

The applicant further asks the Court to 'take formal note that [it] reserves the right to bring before the Court a fresh application for damages against the High Authority for a wrongful act or omission, in compensation for the damage suffered by it as a result of the abovementioned derogations' and 'also to take formal note that it intends to request the joinder of this new application' with the present proceedings.

The applicant has not established that it has a legitimate interest in submitting such conclusions, nor does the Court accept the existence of such an interest.

In fact the applicant's right to take action cannot in any case depend on the fact that the Court has previously taken formal note of its intention to avail itself of such a right.

The joinder of future proceedings with the present proceedings which are the subject of the present judgment, is inconceivable.

Consequently, failing any interest, these two heads of the present application are inadmissible.

Case 49/59

Admissibility

I — *Submissions put forward by the defendant*

1. As regards the request to revoke the exemptions the defendant relies on the discretion of the Court on the question whether the High Authority has failed to act, despite the fact that within the period of two months laid down in the third paragraph of Article 35 the Market Division replied to the applicant that the questions raised were being studied.

Nevertheless, such a reply does not exclude the admissibility of an application for failure to act, since it does not amount to a decision within the meaning of the Treaty.

Despite that letter there is an implied decision of refusal, in accordance with Article 35 of the ECSC Treaty, so that from this point of view the application for failure to act is admissible.

2. As regards the application to have a new rate of contribution fixed and to have it communicated to the applicant with all the information enabling the latter to exercise a normal check on the establishment of that rate, the defendant alleges that there was no failure to act and no possibility of such a failure.

In order to show that there was no failure to act, the defendant submits that a full procedure was commenced as soon as the judgment in Joined Cases 32 and 33/58 was pronounced, in order to draw the inferences from that judgment and to fix the new rate of contribution.

These observations are irrelevant.

In fact the failure to act referred to by Article 35 of the Treaty is distinguished by the absence of an express decision; the preliminary work undertaken in preparation for such a decision cannot be assimilated to the decision itself.

In order to show that there was no possibility of a failure to act the defendant alleges that the High Authority's departments had to have a sufficient period of time to fix the new rate of contribution following the judgment in Joined Cases 32 and 33/58.

According to the defendant, the High Authority cannot be 'forced, within a certain period and at the request of an undertaking, to modify' the rules in question.

The reasoning confuses the admissibility of the application with its validity.

According to the third paragraph of Article 35 of the ECSC Treaty proceedings may be instituted for failure to act if at the end of two months the High Authority has not taken any decision.

It follows from the foregoing that the objections of inadmissibility raised by the defendant must be rejected.

I I — *Submissions put forward by the interveners*

The interveners raise objections of inadmissibility which were not put forward by the defendant.

The interveners' right to do so cannot be disputed in the present case, since these objections or arguments seek the rejection of the applicant's conclusions.

1. The interveners raise an objection of inadmissibility based on the fact that the implied decision of refusal, to the extent to which it relates to the revocation of the exemptions, has only confirmatory force and that consequently the applicant is not entitled to seek its annulment, since the period granted by the Treaty for instituting proceedings against previous identical decisions has expired.

The intervener Breda Siderurgica adds that the exemptions do not amount to a decision because in granting them the High Authority simply applied its basic Decisions Nos 22/54, 14/55 and 2/57; neither, therefore, can the refusal to revoke those exemptions be a decision within the meaning of the Treaty because, 'where there is no decision which may tacitly be confirmed, there cannot be a confirmatory decision'.

Furthermore, the defendant, in its observations concerning the supplementary statement from the intervener Breda Siderurgica, claims that the contested measure amounts to a mere interpretation of previous rules and adds that an interpretation, 'although it undeniably constitutes the adoption of an attitude, is nevertheless not a "decision" and cannot be the subject either of a direct action for annulment or of proceedings for failure to act'.

The Court cannot accept these arguments.

The arguments put forward by the intervener Breda Siderurgica and the supplementary arguments of the defendant ignore the fact that the application of the general Decision No 2/57 to a concrete case constitutes a decision, whatever the legal status which should be attributed to the letter of 18 December 1957.

Thus the withdrawal by the High Authority of the reservations previously formulated by its representative concerning the disputed exemptions had the force of a decision; the exemptions granted to the interveners therefore constitute decisions.

As regards the argument that the refusal to revoke the exemptions granted to Breda and Hoogovens is a purely confirmatory measure, it is true that a measure which merely confirms a previous measure cannot afford those concerned the opportunity of reopening the question of the legality of the measure which is confirmed.

However, that general rule does not apply if there is a new fact of such a character as to alter the essential circumstances and conditions which governed the adoption of the first measure.

By commencing an action based on Article 35 of the Treaty the applicant asked the High Authority to implement the Court's judgment in Joined Cases 32 and 33/58, maintaining that, considered in the light of the grounds of that judgment, the exemptions granted to undertakings in a situation of local integration were no longer justified and must be withdrawn.

Nevertheless, the question whether the judgment mentioned is such as to invalidate the implied refusal at issue must be examined in relation to the substance of the case; in these circumstances the argument based on the alleged confirmatory nature of the contested decision cannot be accepted as an objection of inadmissibility.

It follows from the foregoing that the objections of inadmissibility put forward must be rejected.

2. The intervener Hoogovens relies on an objection of inadmissibility based on the fact that the applicant did not put forward the submission of misuse of powers.

That allegation is in fact incorrect, since in its application the applicant relied on the submission of misuse of powers and set out in a cogent manner the facts from which, in its opinion, the misuse of powers arises.

Consequently that objection must be rejected, irrespective of the question whether the admissibility of the application depends on the fact that a misuse of powers was relied upon.

3. The interveners raise two further objections of inadmissibility.

They claim, first, that the decision at issue is general and therefore can be disputed only by a submission of misuse of powers, whilst a misuse of powers is legally impossible in the present instance since the High Authority did not act under a discretionary power.

They further maintain that even if the decision were individual the applicant could rely only on misuse of powers to the extent to which the application is based on the second paragraph of Article 35.

(a) The nature of the contested decision must be assessed in the light of the wording of the prior request addressed by the applicant to the High Authority.

By that request, the applicant sought in particular the adoption of a series of individual decisions to withdraw exemptions.

In the opinion of the Court that was certainly the essential element of the request, since at the time when it was formulated no case similar to that of the two interveners had come to light, so that it referred in substance to the withdrawal of the exemptions granted to Hoogovens and Breda Siderurgica.

Thus the refusal to accede to the applicant's request has the nature of an individual decision.

Similar considerations apply to the other parts of the requested decisions, that is to say the fixing of the new rate of equalization and its communication to the applicant.

In fact it appears from the context and the circumstances that the applicant, although perhaps using inappropriate expressions, in essence wanted the charge to which it would become liable to be fixed in relation to the withdrawal of the abovementioned exemptions and to be communicated to it.

Consequently on this point also the contested decision appears to have an individual nature.

The individual decision concerns the applicant since the effect of these exemptions is to increase the contribution payable by the applicant and this fact certainly influences the competitive situation existing between the applicant and the interveners.

(b) Since the contested decision is individual, the applicant is in principle entitled to put forward all the submissions provided for in the first paragraph of Article 33 of the Treaty, and not only misuse of powers.

There is, consequently, no need to decide the problem whether a misuse of powers is conceivable in the case of limited jurisdiction.

It should however be considered whether, as the intervener Hoogovens maintains, that rule is inapplicable in the present case since an application for failure to act based on the second paragraph of Article 35, according to the very wording of that provision, can only be an application concerning misuse of powers.

That objection disregards the fact that the application is in effect based on the first paragraph of the said article.

In fact the applicant has clearly expressed the opinion that the High Authority is *required* to make a finding acquiescing in the prior request which the applicant addressed to it.

It follows from the preceding considerations that the objections of inadmissibility which have been raised are unfounded.

4. Finally, the defendant and the interveners raise an objection of inadmissibility based on the fact that the retroactive withdrawal sought exceeds the powers of the High Authority, since an administrative act conferring subjective rights can be revoked only within a reasonable period of time, and such period has been greatly exceeded in the present case. The principle of the balance of the interests in question is also said to stand in the way of the withdrawal sought.

As has been said above, the question whether the High Authority had the right to take the decision sought must be examined in relation to the substance of the case, and must therefore be deferred until the discussion of the substance.

For these reasons the application is admissible.

The substance

I—*The application for failure to act directed against the implied refusal to withdraw the disputed exemptions*

The legality of the refusal to withdraw the disputed exemptions with retroactive effect depends in the first place on the legality of the exemptions themselves.

In fact, if these are legal, it follows that the High Authority was justified in refusing to withdraw them, since the retroactive withdrawal of a legal measure which has conferred individual rights or similar benefits is contrary to the general principles of law.

It is appropriate therefore to consider first whether the disputed exemptions are illegal.

A—*Are the disputed exemptions illegal?*

1. The ferrous scrap in question, used by Hoogovens and Breda Siderurgica and coming from their sister undertakings, was exempted from equalization in 1956 and 1957 because of the local integration of the workshops in question, although it might possibly fall within the concept of group scrap.

In its judgment given on 17 July 1959 in Joined Cases 32 and 33/58 *(SNUPAT v High Authority)* the Court decided that an exemption in respect of group scrap was unjustified.

In these circumstances the abovementioned judgment showed the exemptions in a new light; this should have led, after a fresh examination of their legal basis, to a decision concerning their legality.

The said judgment must therefore have led the High Authority to re-examine its previous position and to consider whether the disputed exemptions could be retained in view of the principles established by the abovementioned judgment, since it was required from that time to conform to those principles at the risk of tolerating discrimination interfering with normal competition as provided for by the fundamental rules of the Treaty.

In fact, at the time when the letters of 18 December 1957 and 17 April 1958 were written and published in the Journal Officiel, the High Authority had still to resolve completely the problem of extracting the principles contained in basic Decision No 2/57, which does not define the meaning of the terms 'own resources' and 'bought scrap'.

This was no longer the case when the applicant, after the aforementioned judgment had been given by the Court, brought the matter before the High Authority.

At that time in fact the delicate problem of the interpretation of Decision No 2/57 had been undertaken and on several points resolved by the Court of Justice.

In particular, the said judgment set out the reasons for which the exemption of own resources must be regarded as legal whilst that of ferrous scrap described as 'group scrap' is not.

The High Authority's refusal to withdraw the exemptions, far from simply confirming its previous point of view, therefore contains the implied decision that the judgment of the Court does not require a different attitude and that the considerations which, in the Court's opinion, prevent the exemption of group scrap do not cover the case of local integration.

In these circumstances, the silence of the High Authority on the request that the disputed exemptions be withdrawn, far from amounting to a mere confirmation of its previous attitude, implies a new decision, to the effect that the principles laid down by the judgment of the Court in Joined Cases 32 and 33/58 did not require the High Authority to alter its position.

The refusal to revoke the disputed exemptions thus constitutes a new decision of the High Authority, a decision which the applicant was able to dispute and which it disputed within the prescribed period by the present application.

2. It is appropriate to pass next to a consideration of the problem of the legality of the disputed exemptions on the basis of the principles laid down by the Court in its previous judgment (Joined Cases 32 and 33/58).

In granting the exemptions on the ground of the local integration of the workshops, the High Authority justified its decision on the basis of a link which was essentially geographical, and therefore fortuitous, which the Court held to be unacceptable in its previous judgment.

Further, in the aforementioned judgment, the Court laid down the principle that the exemption of group scrap, since it causes discrimination prohibited by Article 4 of the Treaty, is contrary to the Treaty.

The ferrous scrap from Breedband's workshops which is used by Hoogovens constitutes group scrap, as does the ferrous scrap used by Breda Siderurgica which comes from its sister undertakings.

In fact neither Hoogovens nor Breda forms a single undertaking with the companies from which the ferrous scrap in question comes.

The concept of an undertaking for the purpose of the Treaty may be identified with that of a natural or legal person, since the Treaty uses this concept primarily to define persons with rights and obligations arising under Community law.

It could be accepted that several distinct companies may constitute a single undertaking within the meaning of Article 80 of the Treaty only if the Treaty contained an express provision to that effect.

In the absence of such a provision it cannot be presumed that two separate and distinct companies can constitute a single undertaking for the purposes of the Treaty, more particularly when they each have distinct legal personality in the eyes of their national law; on the other hand, if the contrary argument were accepted, the identification of the undertakings referred to in Article 80 would frequently be impossible.

Furthermore, as regards the Breda industrial complex, only the Breda Siderurgica company produces steel whilst the other companies only process the steel.

In these circumstances the Breda Siderurgica company and the other companies in the same group cannot constitute a single undertaking within the meaning of Article 80 of the Treaty, which refers solely to undertakings 'engaged in production in the coal or the steel industry'.

Local integration, even of a very high order, and the economic interdependence of the production of each of the undertakings forming the group cannot obscure the fact that the workshops where the ferrous scrap is recovered belong to legal persons distinct from the interveners.

If the interested parties choose expressly to group themselves together according to a given legal form in anticipation of certain advantages, they have no grounds for demanding that this legal form should not be taken into account whenever its application is capable of operating to their disadvantage.

It would further be unjust to apply to ferrous scrap moving between two distinct companies rules differing according to whether those companies occupy neighbouring or more or less widely separated premises.

Such a system would result in increasing the extra burden consequent upon the necessity of paying for transport charges and therefore might artificially increase the differences in costs of production, which would run counter to the Treaty as well as to the basic principles of the equalization scheme.

Lastly, Hoogovens' argument that the use by it of arisings from Breedband's workshops constitutes an improvement in productivity within one and the same undertaking, and that the two undertakings do not constitute a group likely to affect competition artificially, is negated by the fact that actually this is not a case of a single undertaking, but of two companies distinct in law, each having legal personality.

The pooling of the gains and losses resulting from the contract governing the relationship between Hoogovens and Breedband expresses only the cooperation existing between those two undertakings.

By virtue of that cooperation, whether or not it amounts to a cartel or a combine, the two undertakings form a group.

Consequently the exemption granted to Hoogovens because of the existence of the Hoogovens-Breedband group is capable of distorting competition, that is to say, in

the present case, the competitive relationship existing between Hoogovens and other undertakings which are not grouped with ferrous-scrap producers.

For these reasons the rules laid down in the judgment in Joined Cases 32 and 33/58, according to which so-called group scrap must be assessed for equalization, apply equally to the interveners.

3. Hoogovens claims that the disputed exemptions must be maintained to avoid a double charge on the same undertakings for the same quantity of ferrous scrap, of which the Court disapproved in its previous judgment.

The Court does not accept that reasoning.

In its judgment in Joined Cases 32 and 33/58, the Court ruled against double imposition of the levy only in so far as this would affect one and the same undertaking and not in a case in which the levy would be apportioned between several separate undertakings.

Consequently the decisive test is not whether the material is technically identical, but whether the purchaser and the undertaking in which the material is recovered are the same.

In fact, in very numerous cases there is a technical relationship between ferrous scrap recovered during the manufacture of finished products, on the one hand, and ferrous scrap used in the production of steel intended for such manufacture, on the other.

At the risk of rendering the financial arrangements for equalization inoperative and in view of the endless cycle of crude or processed scrap through the different stages of production, it is unavoidable that 'the same quantity of ferrous scrap' should be subject twice and even more to the charge.

It is therefore established that the decisions by which exemptions were granted to Hoogovens and Breda Siderurgica are illegal, since exemption based on the criterion of local integration is in contradiction with the interpretation of the Treaty given by the Court in its judgment in Joined Cases 32 and 33/58.

4. It is necessary to consider further whether the finding of the illegality of the disputed exemptions is in contradiction with basic Decision No 2/57.

The Court considers that such is not the case.

(a) It appears from Article 2 of Decision No 2/57 that the expression '*own* resources' used in Article 4 of the decision relates to the 'undertakings referred to in Article 80 of the Treaty', it being understood that the undertaking using the ferrous scrap is referred to, that is, in the present case, Hoogovens and Breda Siderurgica.

There is reason to note first of all that by the expression 'own resources' Decision No 2/57 refers to ferrous scrap which has from the beginning been the property of an undertaking within the meaning of the Treaty.

That interpretation, far from contradicting the intention of the author of the decision, was adopted by the latter in its letter of 18 December 1957 (JO of 1, 2. 1958, p. 45/58), since there it is specified that the concept of 'own resources' must be interpreted 'in accordance with the semantic value of the expression'.

The concept of 'undertaking' as conceived by Article 80 of the Treaty corresponds to the concept of a natural or legal person, as is set out above under A 2.

Consequently, when a decision of the High Authority simply refers to the 'undertakings referred to in Article 80 of the Treaty' there is reason to assume that it means by this the natural or legal persons in whose name the activities referred to in that article are carried on.

In the present case it is furthermore established that such an interpretation corresponds to the intention of the author of Decision No 2/57 since, in its letter of 18 December 1957, the High Authority specified 'that an undertaking . . . is defined in all circumstances by its name'.

In addition, the reference to an undertaking's 'own' ferrous scrap implies the concept of 'owner', which has a strictly legal nature.

It follows from the preceding considerations that, according to the wording of decision No 2/57, only ferrous scrap which between the time of its 'production' and that of its use has not undergone a change of ownership, that expression being taken in its strictly legal sense, can be regarded as own resources and therefore as exempt from equalization.

This cannot be said of the ferrous scrap at issue.

(b) The intervener Hoogovens attempted to show that the ferrous scrap which it receives from Breedband has never ceased to be the property of Hoogovens.

In that respect it alleges in particular that:

Under the contract made between Breedband and itself, the two companies form a 'maatschap' within the meaning of Article 1655 *et seq.* of the Netherlands Civil Code;

According to the civil law of the Netherlands, the members of a 'maatschap' are joint owners of the goods produced in common.

These allegations are based essentially on the contract made between Hoogovens and Breedband, the wording of which the intervener did not see fit to place on the file.

The intervener emphasized the 'extremely confidential' nature of this contract and stated that it had serious doubts about disclosing its contents to the applicant and to the intervener Breda Siderurgica, which are its competitors.

It stated nevertheless that it was willing to make the contract available to any person bound by professional secrecy, in the presence, if need be, of the Judge-Rapporteur, or to the High Authority for the purpose of such investigation as the Court might consider necessary.

It would infringe a basic principle of law to base a judicial decision on facts and documents of which the parties themselves, or one of them, have not been able to take cognizance and in relation to which they have not therefore been able to formulate an opinion.

At the time of the inspection by the Court at IJmuiden, the representative of the intervener, when questioned on the subject, stated that the contract contained no express reference to the system of ownership, but that in the opinion of the intervener the proof of joint ownership emerged from several of its clauses.

The interpretation and evaluation of these clauses are dependent on an examination of the complete contract.

Since the intervener has itself relied upon this contract by way of proof of its allegation that the ferrous scrap from Breedband is equivalent to Hoogovens' own resources, it should have adduced proof of its allegations.

It is not acceptable to rely on the Court to take the initiative in obtaining for itself by measures of inquiry information intended to prove the cogency of the argument relied upon by the intervener, which itself possesses that information.

For these reasons the Court, taking note of the reservations and hesitations of Hoogovens, has not ordered the production of the contract.

In the present case, since the intervener has not adduced proof of its allegations, it is not necessary to give judgment upon the weight of that argument.

Consequently it has not been established that the ferrous scrap which Hoogovens receives from Breedband constitutes 'own resources', in accordance with the semantic value of that expression.

(c) The same finding must be reached on the subject of the intervener Breda Siderurgica, which has not even alleged the absence of a change of ownership of the ferrous scrap in question.

5. Consequently the exemptions granted to the interveners amount to true derogations.

Decision No 2/57 provides neither for general derogations nor for special derogations from the concept of own resources.

Nevertheless, in the context of financial arrangements involving the equalization of charges, the power to grant derogations must not be presumed, especially since any derogation in favour of one contributor necessarily increases the burden on the others.

The disputed derogations were therefore granted as the result of a mistaken interpretation of Decision No 2/57.

6. Nevertheless, it should be examined further whether these considerations are invalidated by the fact that the ferrous scrap in question is not 'bought scrap' either, this expression being taken in the meaning which emerges from a logical interpretation of Decision No 2/57.

(a) The intervener Breda Siderurgica stated, at the time of the visit of inspection, that the deliveries which it receives from its sister companies are made pursuant to the fixing of a price which is often 'the subject of serious discussion'.

Consequently there can be no doubt that those deliveries constitute purchases since there is agreement on a transfer of ownership by means of the payment of a price.

(b) The intervener Hoogovens alleged, at the time of the visit of inspection, that 'in respect of deliveries of ferrous scrap from Breedband, the latter receives a credit note from Hoogovens, drawn up in accordance with the price of ferrous scrap in the internal market'; it added however that 'this price is irrelevant because it is fixed only to enable the cost of production at the different stages of manufacture to be

precisely calculated' and that in any case this 'price' is finally borne by the two companies under an agreement by which they are required to share their profits and losses.

The facts alleged have not been disputed by the applicant.

Nevertheless, in the opinion of the Court, it emerges from the general structure and objectives of Decision No 2/57 that the concept of 'bought scrap' includes the deliveries in question.

As the Court has already found in its judgment in Joined Cases 32 and 33/58, it emerges from the objectives and fundamental principles of the equalization machinery that the exemption of own resources constitutes an exception to the rule that all consumers of ferrous scrap are required in that capacity to pay equalization contributions.

Consequently it is not the concept of 'own resources' but rather that of 'bought scrap' which, in case of doubt, must be interpreted widely.

There is therefore reason for regarding as 'bought ferrous scrap' all scrap in which there has been a transfer of property for an agreed price, whether this transfer is effected under a contract of sale in the real meaning of the term, or by virtue of a comparable contract and whether or not there exists between buyer and seller a sharing of profits and losses.

Such is the case as regards the ferrous scrap in question.

It follows from the considerations set out above that the exemptions granted to the interveners are contrary both to the Treaty and to the provisions of Decision No 2/57.

B — *Are the illegal exemptions in dispute capable of being revoked?*

The interveners have alleged that the refusal to revoke the exemptions is justified by the fact that their possible withdrawal would be pointless.

They claim that the equalization scheme no longer operates and is being wound up, so that the annulment *ex nunc* of the contested decision can have no practical effect, whilst a withdrawal with retroactive effect and an alteration of the amounts which the interveners have paid in the past would run counter to the principle that the withdrawal of acquired rights is unacceptable.

That allegation desregards the fact that the principle of respect for legal certainty, important as it may be, cannot be applied in an absolute manner, but that its application must be combined with that of the principle of legality; the question which of these principles should prevail in each particular case depends upon a comparison of the public interest with the private interests in question, that is to say:

On the one hand, the interest of the beneficiaries and especially the fact that they might assume in good faith that they did not have to pay contributions on the ferrous scrap in question, and might arrange their affairs in reliance on the continuance of this position.

On the other hand, the interest of the Community in ensuring the proper working of the equalization scheme, which depends on the joint liability of all undertakings consuming ferrous scrap; this interest makes it necessary to ensure that other contributors do not permanently suffer the financial consequences of an exemption illegally granted to their competitors.

It should also be noted that the statement of account is still provisional in character and that it is possible to spread the payment of arrears over a period of time.

Furthermore, according to the law of all the Member States, retroactive withdrawal is generally accepted in cases in which the administrative measure in question has been adopted on the basis of false or incomplete information provided by those concerned.

The Court cannot exclude the application of this principle in the present case.

In fact it appears from a statement made by the representative of the intervener Hoogovens at the time of the visit of inspection by the Court at IJmuiden, as well as from the 1959 Annual Report of Breedband NV, that the latter also provided Hoogovens with ferrous scrap arising during the rolling of steel slabs which did not come from Hoogovens.

On the other hand, it appears from the statements made by the representative of Breda Siderurgica at the time of the visit by the Court to Sesto San Giovanni that the sister companies of the intervener Breda Siderurgica are free to choose their suppliers of steel, so that the ferrous scrap which they deliver to the Breda Siderurgica company does not come exclusively from the steel provided by the latter.

The appraisal of this fact and of the respective importance of the interests in question and consequently the decision whether or not to withdraw the irregular exemptions with retroactive effect devolve in the first place on the High Authority.

The Court cannot put itself in the place of the High Authority and must consequently confine itself to referring the matter back to the High Authority so that it may make that appraisal in accordance with Article 34 of the Treaty.

It appears from the considerations set out above that the contested decision is illegal because it is based on the notion, which is incorrect in law, that the disputed exemptions were legal and that the High Authority had no power to withdraw them.

Consequently that decision must be annulled and the matter remitted to the High Authority.

II—*The action for failure to act brought against the implied refusal to fix the new rate of charge and to communicate it to the applicant with all the necessary information*

Any withdrawal of disputed exemptions would involve an obligation on the part of the defendant to fix the new basic rate of equalization, to substitute for the decisions imposing a contribution on the applicant new and properly reasoned decisions based on a correct calculation and to communicate those decisions to the applicant.

However, the departments of the High Authority must have, where necessary, a reasonable period of time in which to carry out these operations, so that it cannot be accepted that the defendant was required to adopt the decisions sought at the latest by the date on which it is considered to have taken the contested implied decision.

Nevertheless, the annulment of the refusal to withdraw the exemptions extends necessarily to the refusal to rectify the contribution.

Consequently, that part of the contested decision must also be annulled.

In these circumstances there is no need to consider whether the contested decision is further vitiated by other defects alleged by the applicant, that is to say misuse of powers, lack of jurisdiction and infringement of essential procedural requirements.

Costs

Under the terms of Article 69 (2) of the Rules of Procedure of the Court of Justice of the European Communities the unsuccessful party shall be ordered to pay the costs.

In the present case the applicant has been unsuccessful in Application 42/59, whilst the defendant and the interveners have been unsuccessful in Application 49/59.

Consequently, as regards Application 42/59, the applicant must bear the costs, including those of the intervention.

As regards Application 49/59, it is appropriate that the defendant and the interveners should bear their own costs, that the defendant should be ordered to bear the costs of the applicant, apart from the costs due to the interventions, and that the interveners should be ordered to bear the costs caused to the applicant by their respective interventions.

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the parties;
Upon hearing the opinion of the Advocate-General;
Having regard to Articles 4, 33, 34, 35, 40, 53 and 80 of the ECSC Treaty;
Having regard to the Protocol on the Statute of the Court of Justice of the ECSC;
Having regard to Decision No 2/57 of the High Authority;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities,

THE COURT

hereby:

In Case 42/59:

1. **Dismisses the application as unfounded;**

2. **Orders the applicant to pay the costs, including those of the intervention;**

In Case 49/59:

1. **Annuls the implied decision of the High Authority refusing to withdraw with retroactive effect the exemptions granted to the interveners and to fix, with respect to the withdrawal, the contribution due from the applicant, as well as to communicate it to the latter with all the information enabling it to make its normal check of the calculation of that contribution;**

2. **Remits the matter to the High Authority;**

3. (a) Orders the defendant and the interveners to bear their own costs;

(b) Orders the defendant to bear the costs of the applicant, apart from the costs caused by the intervention;

(c) Orders the interveners to pay the costs caused to the applicant by their respective interventions.

Donner Hammes Catalano

Riese Delvaux Rueff Rossi

Delivered in open court in Luxembourg on 22 March 1961.

H. J. Eversen
Assistant Registrar
For the Registrar

A. M. Donner
President

OPINION OF MR ADVOCATE-GENERAL LAGRANGE DELIVERED ON 24 NOVEMBER 1960[1]

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1 – Translated from the French.