JUDGMENT OF THE COURT
5 DECEMBER 1963[1]

Société Anonyme Usines Émile Henricot, Société Anonyme Métallurgique d'Espérance-Longdoz and Compagnie des Forges de Châtillon, Commentry et Neuves-Maisons, Société Anonyme v High Authority of the European Coal and Steel Community[2]

Joined Cases 23, 24 and 52/63

Summary

1. *Measures adopted by institutions of the Community—Decisions of the High Authority—Constituent elements*
   (ECSC Treaty, Article 14)

2. *Costs—No formal application—Consequences*
   (Rules of Procedure, Article 69 (2))

1. (a) A measure which satisfies the fundamental conditions underlying the concept of a decision within the meaning of the Treaty retains the character of a decision even though it fails to comply with some inessential requirement of form laid down by the High Authority for the identification of its decisions.
   (b) The decision must appear as a measure adopted by the High Authority, acting as a body, intended to produce legal effects, constituting the culmination of procedure within the High Authority, whereby the latter gives its final ruling in a form which enables the measure in question to be identified as a decision.
   Any measure, therefore, which, in particular, does not appear to have been debated and adopted by the High Authority and which is not authenticated by the signature of one of its members, cannot be regarded as a decision.
2. In the absence of any formal application for the unsuccessful party to be ordered to pay the costs, the latter cannot be made to pay the costs incurred by the successful party.

In Joined Cases

23/63

SOCIÉTÉ ANONYME USINES ÉMILE HENRICOT, Court-Saint-Étienne (Belgium), represented by its Board of Directors, assisted by G. Van Hecke, advocate of the Cour d'Appel, Brussels, and Professor at the University of Louvain, with an address for service in Luxembourg at the chambers of André Elvinger, advocate, 84 Grand' Rue,

1 — Language of the Case: French.
2 — CMLR.

24/63

SOCIÉTÉ ANONYME MÉTALLURGIQUE D'ESPÉRANCE-LONGDOZ, Liège (Belgium), represented by its general manager and its secretary-general, assisted by J. Mertens de Wilmars, advocate at the Antwerp Bar, with an address for service in Luxembourg at the chambers of E. Arendt, advocate, 6 rue Willy-Goergen,

52/63

COMPAGNIE DES FORGES DE CHÂTILLON, COMMENTRY ET NEUVES-MAISONS, SOCIÉTÉ ANONYME, Paris (France), represented by its vice-chairman and general manager, assisted by Jean-Pierre Aron, advocate at the Cour d'Appel of Paris, with an address for service in Luxembourg at the offices of the Chambre Syndicale de la Sidérurgie Française, 49 Boulevard Joseph-II,

applicants,

v

HIGH AUTHORITY OF THE EUROPEAN COAL AND STEEL COMMUNITY, represented by its Legal Advisers, Professor Giulio Pasetti-Bombardella and Doctor Italo Telchini, acting as Agents, with an address for service in Luxembourg at its offices at 2, Place de Metz,

defendant,

In the matter (at the present stage of the proceedings) of the admissibility of the applications made by the above-named companies respectively, as follows:

(a) Application for annulment of the individual decisions addressed to them by the High Authority contained in letters of 5 and 8 April 1963 and relating to the basis of assessment of the applicants' contributions to the equalization scheme for imported ferrous scrap and the fixing of the sums payable in consequence (Cases 23, 24 and 52/63);

(b) Application for annulment 'so far as is necessary' of Decision No 7/63 of the High Authority of 3 April 1963 (Case 23/63);

(c) Subsidiary application for damages based on a wrongful act or omission by the Community (Cases 23, 24 and 52/63);

(d) Further subsidiary application for the appointment of one or more experts to be charged with the task of submitting to the Court a report to determine in particular the damage suffered (Case 24/63);

THE COURT

composed of: A. M. Donner, President, Ch. L. Hammes and A. Trabucchi (Presidents of Chambers), L. Delvaux, R. Rossi, R. Lecourt (Rapporteur), and W. Strauß, Judges,

Advocate-General: K. Roemer
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts

On the basis of certain facts in the disputes, differing from case to case, and after various dealings with the relevant departments of the High Authority, letters were sent to the applicant undertakings by the High Authority (dated 5 and 8 April in Case 23/63 and 8 April in Cases 24 and 52/63) fixing at a certain tonnage the basis of their assessments to contributions to the equalization scheme for imported ferrous scrap and indicating by reference to revised rates of contribution fixed by Decision No. 7/63, the payments required to be made to the High Authority 'by 31 May at the latest'.

The letter sent on 5 April 1963 to S.A. Usines Émile Henricot (Case 23/63) reads as follows:

'A statement of account reflecting your present position with regard to the schemes referred to in the margin will be sent to you shortly. We should like to make the following observations on the matter.

In preparing this statement we took as the basis the tonnages of bought scrap as notified by you to us in your letter of 31 January 1963.

In accordance with the decisions of the High Authority, we then made proportionate calculations for exempting that portion of the bought scrap which corresponded to the amount of crude steel production intended for moulding. The same procedure has been applied without discrimination to producers within the Community of liquid steel castings in the form of both mouldings and ingots.

Taking into account this exemption, the basis of your assessment to contributions is . . .

The statement, divided into accounting periods, appears in the schedule hereto.

However, the above-mentioned basis of the assessment remains provisional pending the results of a survey of your affairs commissioned from the Société Anonyme Fiduciaire Suisse of Basel.'

The letters sent on 8 April 1963 are identical, save for the paragraph containing the statement of account. They read as follows:

'Decision No 7/63 of the High Authority, published in the *Official Journal of the European Communities* of 6 April 1963, fixes the revised contribution rates for the equalization of imported ferrous scrap and scrap treated as such on the basis of Decisions Nos 22/54, 14/55,

26/55, 3/56, 2/57 and 16/58 for the period April 1954 to March 1959 inclusive.

In accordance with this Decision and subject to the reservations set out therein, a complete statement of account taking into consideration all the debits and credits, inclusive of principal and interest, of your undertaking has been compiled and is enclosed herewith. The statement is in two parts. The first complies with Decisions Nos 22/54, 14/55, 26/55, 3/56 and 2/57 (administration of the Imported Ferrous Scrap Equalization Fund—referred to for the sake of brevity by the initials of the French title, that is to say, C.P.F.I.) while the second is based on Decision No 16/58 (administration of the Luxembourg fund). An explanatory note is attached.

The purpose of the statement is to adjust the state of your account as closely as possible to the final position. Subsequent amendments may nevertheless be made once certain outstanding difficulties have been settled.

On the basis of this statement, drawn up as at 31 May 1963, the account for your undertaking is made up as follows: . . . In accordance with the terms of Article 6 of Decision No 7/63, you are requested to pay the sum of . . . to the account of the High Authority at one of the banks listed in the above Article by 31 May 1963 at the latest.'

These letters, sent by registered post with form of acknowledgement of receipt, were accompanied by an explanatory note and bore a reference 'to be quoted when making payment'.

Application for annulment of the letters, together with subsidiary conclusions, were lodged by the applicant undertakings.

On 20 June 1963 the High Authority raised a preliminary objection of inadmissibility to the application for annulment and the subsidiary applications under Article 91 of the Rules of Procedure.

II—Conclusions of the parties as to the admissibility of the applications

In Case 23 and 24/63, the *High Authority* contends, in accordance with Article 91 of the Rules of Procedure, that the Court should declare, without going into the substance of these cases, that the applications for annulment made by the applicant companies on 8 and 20 May 1963 are inadmissible and should therefore declare inadmissible the applications for damages made by the same companies in that they are dependent upon or subordinate to the primary applications, and in any event on the ground of the lack of any legal interest at the present time.

In Case 52/63 the High Authority contends that the Court should declare the requests made in the application of 10 May 1963 inadmissible 'so far as both the principal and the subsidiary conclusions are concerned.'

The applicant in Case 23/63, replying to the objection, contends, whilst reserving its position, that the Court should:

'1. Place on record the fact that the applicant leaves it to the Court to decide whether the letter of 5 April 1963 is a decision within the meaning of Article 33 of the Treaty;

2. Order the defendant to pay the costs.'

The applicant in Case 24/63 contends that the Court should:

'Place on record the fact that the applicant leaves it to the Court to decide:

1. Whether the objection of inadmissibility should be decided separately or together with the substance of the application;

2. On the merits of the objection;
Place on record the High Authority's statement that it will take no enforceable decision until it has examined the applicant's observations and that it will give reasons for its decision on this point;
In any event, order the High Authority to pay the costs.'

The applicant in Case 52/63 contends that the Court should:

'Dismiss the argument of inadmissibility founded on the fact that the application comprises two claims which differ as to cause and subject matter;
Place on record the High Authority's assurance that it will re-examine the dispute in the light of the applicant's observations;
Place on record the applicant's willingness under the above conditions to leave it to the Court to decide whether the document in dispute constitutes a decision or not;
If the Court rules that it does not, and accordingly that the application as a whole is inadmissible, order the High Authority to pay the costs in accordance with the provisions of the second subparagraph of Article 69 (3) of the Rules of Procedure.'

III — Arguments of the parties

On the application for annulment

1. The letters in dispute

The *High Authority* states that the contested letters do not constitute a decision on the ground that they do not comply with the formal requirements of Decision No 22/60 of 7 September 1960. They were not notified to the applicants in accordance with the procedure set out in that Decision, contained no more than a simple statement of account formally made subject to the checks to be carried out, and were merely a 'request' to pay and not an order comprising an obligation with the implied possibility of sanctions. They were not capable of being made by the national authorities the subject of an order for enforcement specified in Article 92 of the Treaty.
The explanatory note accompanying them is evidence that the request for payment is only provisional, and contains a request for comments. Accordingly they do not constitute the 'final word' of the administration after all recourse under the internal procedure has been exhausted. The majority of undertakings did not regard them as decisions.

The applicants reply that they have taken note of the statements made by the High Authority and leave it for the Court to decide whether the contested measure constitutes a decision or not.
They draw attention, however, to the factors which in their opinion could cause the disputed letters to be regarded as decisions, in particular the peremptory nature of the letters, the specifying of a definite date for payment and the substantive content of the explanatory note. In support of their argument they cite the judgment of the Court in Case 14/59.

2. Decision No 7/63

The *High Authority* stresses that the application made in Case 23/63 for the annulment 'so far as is necessary' of Decision No 7/63 constitutes an objection of illegality couched in such vague terms that it fails to comply with the requirements of Article 38 (1) of the Rules of Procedure and should therefore be declared inadmissible. The objection of illegality should share the same fate as the main application for annulment.
The second paragraph of Article 33 of the Treaty requires an applicant in proceedings against a general decision to allege a misuse of powers affecting him, which has not been done in this instance.

On the subsidiary applications for damages and for the appointment of experts

In Cases 23 and 24/63 the *High Authority* alleges that at the present stage in the proceedings the subsidiary applications ought to meet the same fate as the main application in accordance with the maxim that an ancillary claim is dependant upon the principal claim.
Since the preliminary objection of inadmissibility made against the main application prevents any discussion of the substance of the case, the possibility of discussing whether the subsidiary application is well founded or not is excluded, and deprives of any real substance the legal interest, which the applicant claims would be harmed if the contested measures are lawful.
On the other hand, in Case 52/63 the High Authority alleges that in national legal systems, the submission in a single action of two claims in which the 'petitum' and the 'causa petendi' are different, and even contradictory, would make the entire action or at the very least the subsidiary claim, inadmissible.
The applicant in Case 24/63 admits that the application for annulment and the application for damages are interdependent.
The applicant in Case 52/63 replies that the defendant's arguments are expressly contradicted by the case-law of the Court (Judgment in Fives Lille Cail, Rec. 1961, p. 590).

Costs

It should be emphasized that the three applicants have requested that the second subparagraph of Article 69 (3) be applied, and that the High Authority be ordered to pay the costs.
The High Authority asks that this request be dismissed.

IV — Procedure

The written procedure relating to the preliminary objection of inadmissibility followed the normal course.
Cases 23, 24 and 52/63 were joined for the purposes of the oral procedure and of the judgment on the objections of inadmissibility.
A question was put by the Court on 30 September 1963 to the High Authority and the latter replied on 10 October.
The oral procedure took place on 10 October 1963.
On 16 October 1963 Mr Advocate-General K. Roemer gave his opinion to the effect that the applications were inadmissible and the High Authority should be ordered to pay the costs.

Grounds of judgment

It is established that on 5 and 8 April 1963 the relevant departments of the High Authority sent registered letters with forms of acknowledgement of receipt to the undertakings S.A. Usines Émile Henricot, S.A. Métallurgique d'Espérance-Longdoz and Compagnie des Forges de Châtillon, Commentry et Neuves-Maisons. The letters stated that the said undertakings were requested to make by 31 May 1963 at the latest, certain payments by way of contribution to the imported ferrous scrap equalization scheme.

Fearing that the content of these letters would be regarded as a decision within the meaning of the ECSC Treaty, the recipient undertakings made an application for annulment of the alleged decision with a subsidiary claim for damages against the High Authority.

S.A. Usines Émile Henricot made a further application for the annulment 'so far as is necessary' of Decision No 7/63 of 3 April 1963 of the High Authority.

As a subsidiary point of minor importance, S.A. Métallurgique d'Espérance-Longdoz requested the Court to appoint one or more experts to report on various questions specified by the company.

The High Authority has submitted that these applications are inadmissible.

On the admissibility of the applications for annulment

In support of these objections on the ground of inadmissibility the High Authority points out that the letters of 5 and 8 April 1963 do not constitute a decision and cannot therefore be made the subject of an application. The applicant undertakings have left this matter to the discretion of the Court.

It is appropriate to inquire whether the letters constitute a decision within the meaning of Article 14 of the Treaty. According to the provisions of this Article, the High Authority 'shall . . . take' decisions which 'shall be binding in their entirety'.

The High Authority in its Decision No 22/60 has considered it necessary to establish 'as a matter of obligation' the form of these decisions and has laid down the conditions with which it undertakes to make such measures comply.

In a subsequent 'communication' (*Official Journal of the European Communities*, pp. 1250/60), the High Authority has prescribed that if these formalities are not carried out, then the parties concerned may 'infer that the measures in question do not entail any legal obligations'.

Although it is desirable to ensure observance of the requirements prescribed in the appropriate manner by the High Authority, which enable governments, institutions and undertakings to identify decisions from their actual form, it does not follow that a measure should not be considered a decision, merely because it fails to comply with some inessential requirement of form if the fundamental conditions underlying the concept of a decision within the meaning of the Treaty are otherwise satisfied.

According to Article 14, decisions shall be taken by the High Authority, that is to say by its members sitting as a body. As such decisions are 'binding in their entirety' however, they must show that they are intended to have legal effects upon those to whom they are addressed.

It follows from the natural meaning of the word that a decision marks the culmination of procedure within the High Authority, and is thus the definitive expression of its intentions.

Finally, it is necessary for the legal protection of all those affected that they should be able to identify by its very form a decision which involves such serious legal consequences, in particular a compulsory time-limit for exercising the right of instituting proceedings against it. In particular, for a measure to amount to a decision, those to whom it is addressed must be enabled to recognize clearly that they are dealing with such a measure.

It follows therefore from all these considerations that a decision must appear as a measure taken by the High Authority, acting as a body, intended to produce legal effects and constituting the culmination of procedure within the High Authority, whereby the High Authority gives its final ruling in a form from which its nature can be identified.

Any measure, therefore, which, in particular, does not appear to have been debated and adopted by the High Authority and authenticated by the signature of one of its members, cannot be regarded as a decision.

In the present case, in spite of the apparently peremptory nature of the letters in dispute, they cannot be considered as decisions within the meaning of the Treaty. In fact, there is nothing to indicate that the High Authority, sitting as a body, had discussed and resolved upon them. The applicants were merely 'requested' to make payment, and, according to the 'explanatory notes' enclosed with the contested letters, to submit any observations they might have. Consequently the applications are inadmissible.

The application made by S.A. Usines Émile Henricot for the annulment 'so far as is necessary' of Decision No 7/63 of 3 April 1963 must be treated in the same way as the principal application, and also be declared inadmissible.

On the inadmissibility of the applications for damages

The applicant companies submitted in their applications subsidiary claims for damages on the grounds of an alleged wrongful act or omission on the part of the High Authority. The S.A. Métallurgique d'Espérance-Longdoz also submitted a subsidiary application for experts to be appointed whose main task would be to assess the damage it had suffered. However, the inadmissibility of the main applications for annulment on the ground that there has been no decision on the part of the High Authority rules out any consideration of the subsidiary claims and thus results in the inadmissibility of the applications for damages.

Costs

Under Article 69 (2) of the Rules of Procedure the unsuccessful party shall be ordered to pay the costs if they have been asked for in the conclusions of the successful party. Since the defendant has not made any formal submissions on this matter, the applicants cannot be ordered to pay the costs incurred by the defendant, notwithstanding that they have failed in their applications. The defendant must therefore bear its own costs.

Under Article 69 (3) of the Rules of Procedure moreover, it is open to the Court to order even a successful party to pay in whole or in part the costs incurred by the opposite party. The peremptory tone of the letters involved in the present proceedings, accentuated by the mode of despatch, and the setting of a time-limit for payment, were capable in themselves of creating uncertainty in the applicants' minds about the nature of the said letters. The High Authority, having by its own conduct induced the applicants to institute proceedings in order to safeguard their rights, must bear the greater part of the costs. It is appropriate that the High Authority should bear three-quarters of the costs of the applicants.

On those grounds,

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 the Treaty establishing the European Coal and Steel Community, especially Articles 14 and 33;
Having regard to the Protocol on the Statute of the Court of Justice of the European Coal and Steel Community;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities and especially Articles 69 and 91;

THE COURT

hereby:

1. **Rules that the applications submitted by the Société anonyme Usines Émile Henricot (Case 23/63), the Société anonyme Métallurgique d'Espérance-Longdoz (Case 24/63) and the Compagnie des Forges de Châtillon, Commentry et Neuves-Maisons société anonyme (Case 52/63) are inadmissible;**

2. Orders the High Authority of the European Coal and Steel Community to bear its own costs and three-quarters of the costs of the applicants, and the applicants to bear one-quarter of their own costs

Donner Hammes Trabucchi

Delvaux Rossi Lecourt Strauß

Delivered in open court in Luxembourg on 5 December 1963.

A. Van Houtte
Registrar

R. Lecourt
President

OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 16 OCTOBER 1963[1]

Mr President,
Members of the Court,

Since the oral proceedings in Cases 23, 24, 28 and 52/63 were for practical purposes dealt with in a single hearing, perhaps I may be allowed to present my opinion relating to these cases in a single statement. I think this is also justified in view of the fact that the principal legal point involved, that of admissibility, is identical in all four cases. The subsidiary conclusions, which were set out in different form in each case along with the main conclusions, will of course receive the appropriate individual treatment.

As in Cases 53 and 54/63 the applicant undertakings received letters dated 8 April 1963 from the High Authority, in which the Directorate-General for Steel, Marketing Division, calculated in connection with the liquidation of the equalization scheme for ferrous scrap the credits and debits of the undertakings in relation to the equalization scheme on the basis of Decision No 7/63 and requested them to remit certain sums of money to the High Authority by 31 May 1963 at the latest.

On various grounds, with which we need not concern ourselves at this stage of the proceedings, the undertakings consider the statements of account to be incorrect. They have, therefore, lodged applications with the principal aim of having these statements annulled.

The High Authority has not yet expressed its view as to whether the objections are well founded, but—as in Cases 53 and 54/63—contends that the applications are inadmissible on the ground that the letters are not in the nature of decisions. In the present cases, too, therefore, the Court will have to concern itself principally with the question whether the letters of 8 April 1963 can be regarded as decisions on which an application to the Court can be based.

1. The applicants are unanimous in leaving this question for the Court to determine as it sees fit. In particular they submit no arguments with regard to resolving this problem which would lead to any other result than that in Cases 53 and 54/63.

Consequently, I may be permitted to refrain from repeating my deductions and content myself with recalling the

1 — Translated from the German.