THE COURT

hereby:

1. **Annuls the individual enforceable Decision of 14 November 1962 addressed by the High Authority to the applicant;**

2. **Orders the High Authority of the European Coal and Steel Community to bear the costs.**

Donner Hammes

Delvaux Rossi Lecourt

Delivered in open court in Luxembourg on 16 December 1963.

A. Van Houtte
Registrar

A. M. Donner
President

OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 12 NOVEMBER 1963[1]

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Mr President,
Members of the Court,

The proceedings in respect of which I have to give my opinion originate in a Decision of the High Authority of 14 November 1962. This Decision calls upon the undertaking Macchiorlati Dalmas to pay 7 million lire by way of surcharges for delay in payment and in respect of arrears of levy payments from January 1953 to December 1960.

The very extensive history of the Decision is set out in detail in the report of the hearing so that I need not now go into it in detail. Only the following need be mentioned: the applicant, an undertaking within the meaning of the ECSC Treaty and liable to levy since the beginning of 1953 by virtue of Decisions Nos 2/52 and 3/52, totally failed for several years to give the High Authority particulars of its production. When it began in 1955 to supply these particulars its production figures did not cover the entire period which had elapsed since 1953. It did not pay any levy contributions. So the High Authority, in a letter of 17 March 1958, sent it a statement of the amounts payable (levy and surcharges for delay in payment). An exchange of letters and several discussions followed, in the course of which the debtor made reservations concerning the figures communicated to it by the High Authority and efforts were made to settle their differences.

As no settlement was reached the High Authority took a Decision on 13 February 1959 calling upon the firm Macchiorlati Dalmas to pay the sum of 21 541 543 lire. This sum consists of the general levy payable up to 5 November 1958 (16 060 945 lire) and of the surcharges for delay in payment accrued up to that date. The Decision states in addition that for every month's delay in payment after 5 November 1958 surcharges for delay of 1% of the outstanding levy would be payable.

The firm Macchiorlati Dalmas challenged the Decision by an application made on 8 April 1959. During the legal proceedings negotiations took place between it and the High Authority which resulted in the application of 28 April 1960 being withdrawn and removed from the Court register. Subsequently (according to the statement of the High Authority of 26 April 1961, First Schedule to the Rejoinder) the firm Macchiorlati Dalmas paid the arrears of levy amounting altogether to 20 645 897 lire. It corresponded with the High Authority on the question of a remission of the surcharges for delay in payment. The High Authority by a letter of 18 June 1962 allowed the request for remission in part by reducing the surcharges from 9 334 514 lire to 7 million lire. In answer to a fresh request it stated by letter of 2 August 1962 that a total remission was out of the question. Finally the High Authority fixed a time limit within which its

debtor was to submit proposals for payment. Upon the expiry of that time limit without any satisfactory result it took the Decision of 14 November 1962, which is the main subject of these proceedings.

The following conclusions are contained in the application:

— that the Decision of 14 November 1962 be annulled;
alternatively

— that after the annulment of the contested Decision an order be

— made remitting the surcharges for delay payable by the applicant;
alternatively

— that the contested Decision be varied by making an appropriate reduction in the surcharges for delay.

The application is drawn up in such a way that the legality of the individual Decision of 13 February 1959, which was the subject matter of Case 22/59, must be examined as well as the general Decisions relating to the levy upon which this individual Decision is based.

In so far as the submissions put forward refer to general Decisions, they complain of infringement of the first paragraph of Article 36, Article 47 and Article 50 (1) and (2) of the ECSC Treaty; in so far as they are directed against the individual Decision they rely on the inadequacy of the statement of the reasons on which it is based, infringement of Article 6 of Decision No 3/52, misuse of powers and the fixing of unreasonably high penalties for delay.

The High Authority contends that all these claims should be dismissed as being inadmissible or at any rate unfounded. It considers that the complaints relating to the individual Decision of 13 February 1959 and the general Decisions upon which it is based are inadmissible; it submits that the complaints relating to the individual Decision of 14 November 1962 and the general Decisions upon which it is based are unfounded.

Legal consideration

Unlike the parties during the written procedure, I will to begin with refrain from defining the admissible issue in this action, that is to say from going into the question to what extent it is possible to go beyond the Decision which is directly contested and consider other individual and general Decisions in these proceedings. Instead I will deal at once with the submissions which directly relate to the contested Decision.

A — Submissions directed against the individual Decision of November 1962

I. In the first place the applicant submits that the demand for payment of surcharges for delay is unlawful, because in the course of the discussion held on 21 April 1960 it was given a binding assurance by the High Authority that these would be remitted. It relies therefore on a decision to remit them which must be deemed to have extinguished its debt.

The High Authority denies ever having given any such assurance. There is no written agreement, for example a minute of the meeting of 21 April 1960. In order to come to a conclusion upon this particular issue we must try a different approach.

In the first place the correspondence between the parties following the discussion is instructive (letter from the applicant to the High Authority of 30 April 1960, reply of the High Authority of 6 May 1960, letters from the applicant to the High Authority of 11 May 1960, 20 February 1962 and 4 July 1962). It

may be inferred from these letters that the discussion in April 1960 was clearly only concerned with the remission of the surcharges for delay in payment accrued up to November 1958 (amounting to approximately 5 million lire). The argument which I am now considering could not therefore in any circumstances lead to the annulment of the whole of the contested Decision.

In addition, apart from two letters from the applicant (letters of 30 April 1960 and 4 July 1962) the correspondence rather gives the impression that the High Authority did not make any firm promises but at most held out the prospect of a reasonable reduction upon the punctual payment of the outstanding contributions. This view is particularly confirmed by the fact that the applicant has made a specific request for remission of the surcharges for delay in payment and supported it on the ground of payment difficulties.

If, on the other hand, the applicant objects that the discontinuance of its application in Case 22/59 can only be understood in the light of its claim that the High Authority granted a remission of the surcharges for delay in payment, it must surely have to concede that granting the applicant permission to pay the outstanding amount by instalments instead of possibly enforcing by action payment of the entire sum, amounts to a concession equivalent to a compromise. Moreover we may infer from the applicant's letter of 11 May 1960 that it decided to discontinue its application in view of certain difficulties in proving the assessment of its production.

At all events the following reasoning is conclusive. As we are concerned with annulment proceedings relating to the legality of a demand for payment made by the High Authority, a promise to remit the debt is irrelevant unless it is binding and effective. From a question which I asked in the oral procedure we have learnt that on the High Authority's side only officials and not members took part in the conversations in dispute. Even if at this time Decision No 22/60, which I have recently discussed before you, had not yet been taken, there can be no doubt according to the case law of the Court (Joined Cases 42 and 49/59) that statements of subordinate officials are not regarded as binding measures adopted by the High Authority. Whatever view is taken of the conduct of the officials (for example on the question of administrative liability) it is not relevant for the purpose of determining the present issue, because it could not lead to an effective remission or promise of a remission within the meaning of Decision No 29/55. Therefore we must reject the applicant's first argument without going into all its disputed individual details.

II. In the second place the applicant criticizes the High Authority for having (in its letter of 26 April 1961) rounded up individual sums in its calculation of the surcharges for delay in payment. This results in an average rate of about 1.1%, which exceeded the limit permissible under Article 6 of Decision No 3/52.

The High Authority's reply to this complaint is that it reduced the original amount of the surcharges for delay in payment in its letter of 18 June 1962 from about 9.3 million lire to 7 million lire so that the applicant's objection in any event fails.

In fact at the present stage of these proceedings it is only necessary to know whether the surcharges for delay in payment amounting to 7 million lire were properly determined and demanded. The Decision of November 1962, which is of decisive importance for this purpose, thus does not reveal the defect which may possibly attach to the letter of 26 April 1961. This enables us to reject the applicant's second submission as well.

III. Finally the applicant fails to find in the disputed individual Decision an

exact and detailed statement of all the individual items for the various periods giving particulars of the dates when the respective levy payments fell due, or any reference to the provisions it has infringed or a statement of the reasons upon which the refusal was based. It concludes that the reasons upon which the Decision is based are inadequate both in law and in fact and that it must for this reason at least be annulled.

If the statement of reasons for the Decision is examined, it certainly gives the impression to begin with that it is not very informative. It states that the surcharges for delay became payable as a result of the delayed payment of the levies during the period from 1 January 1953 to December 1960. It refers to Article 6 of Decision No 3/52; it mentions that, at the request of the applicant the total amount of the surcharges was reduced, it refers to a letter of the High Authority of 18 June 1962 to a letter of the High Authority of 2 August 1962 and also to a discussion which took place in Luxembourg on 26 September 1962.

There is no evidence in the Decision itself of an 'exact and detailed statement of all the individual items comprised in the claim' which the Court held to be necessary in the Meroni judgment, to which the applicant referred (Cases 9/56 and 10/56, Rec. 1958 (janvier-juillet) pp. 30 and 70). It therefore appears in fact, as did the Decision in the Meroni case, to be defective because the statement of the reasons upon which it is based is adequate.

Before this conclusion can be substantiated the facts must be more closely considered. They differ from the facts of the Meroni Case in that a letter from the High Authority to the applicant which explained as clearly as could be wished the composition of the debt for each period, preceded the enforceable Decision. This sum was subsequently reduced and moreover re-appears in the same form in the operative part of the contested Decision, whereas in the Meroni Case the amount mentioned in the Decision did not agree with the figure which had been previously notified by the equalization fund. Furthermore, the statement of the reasons upon which the Decision in this case is based refers indirectly (by the letter of 18 June 1962) to the detailed statement of account in the letter of 26 April 1961.

We must therefore in particular ask ourselves whether reference to an earlier letter sent to the applicant is an adequate statement of the reasons for a decision.

I hesitate to put forward this proposition as a general rule because it has always been my opinion that the statement of the reasons upon which a decision is based should be subject to strict requirements. I nevertheless believe that in a case such as this a certain easing of the formal requirements can be accepted, because we are considering what is plainly an individual decision which only affects the applicant, who had no difficulty whatsoever in obtaining a perfectly clear picture of the reasons for and objects of the decision by referring to the other measures taken by the High Authority. The fact therefore that the High Authority omitted to repeat word by word the documents referred to in the statement of the reasons for its Decision affords us no ground for suggesting that it infringed an *essential* procedural requirement. In addition, I fail to see such an infringement in the other points which have been put forward. Whatever legal provisions have been infringed by the applicant can be inferred from the statement of the underlying general Decisions in the preamble to the Decision. So far as its requests for remission are concerned, the treatment accorded to the first request can be seen clearly enough from the reference to the letter of 18 June 1962. But the

later requests for remission do not include any fresh arguments which the High Authority had to answer.
Therefore the complaint that the statement of reasons in inadquate must be dismissed in its entirety.

B — Complaints made against other Decisions

The applicant has in addition endeavoured to ensure the success of its application by challenging both the individual Decision of 13 February 1959 as well as the general Decisions on the levies.
It is open to the applicant to do so to the extent that the general Decisions provided the legal basis of the contested individual Decision. On this issue there have been since the Meroni case many decisions of the Court confirming this point.
I. However, in this case problems concerning the limits to be placed on the objection of illegality have arisen, for which the decisions of the Court to date do not provide any solution. They are the result of the attempt by the applicant to include in this case the Decision which was the subject-matter of Case 22/59, as well as general Decisions concerning the levies, which certainly influenced that individual Decision without, however, providing the legal foundation, in the sense of the Meroni judgment, of the Decision which is now contested. I will now examine these problems.
In order to justify its action the applicant relies on the third paragraph of Article 36 of the Treaty, which permits an appeal against a pecuniary sanction or a periodic penalty payment imposed or ordered under the provisions of the Treaty, to be supported by an allegation that the decision or recommendation, which it is alleged has not been observed, is defective.
Three questions of interpretation arise under this provision:

(i) Are surcharges for delay in payment pecuniary sanctions?
(ii) Does Article 36 refer to previous individual decisions or only to general decisions?
(iii) What must the connection be between the decision imposing the sanction and the previous decision, which is alleged to be defective in the application challenging the decision imposing the sanction?

First question: How is the concept of a pecuniary sanction to be understood in the system of the Treaty?
According to the literal meaning there is a sanction when by reason of non-compliance with a legal obligation legal penalties are imposed. A *pecuniary* sanction exists when the penalty consists of the payment of a sum of money. On the other hand there is no sanction when an undertaking which has fallen into arrears with its payments is only obliged to repay the benefits arising from the unlawful retention of the amount payable (the benefit of the interest).
It is clear that the surcharges for delay mentioned in the Treaty are not assessed in accordance with the latter example. According to Article 50 (3) of the Treaty surcharges of up to 5% for each quarter's delay, that is, 20% for each year's delay, can be imposed. Even when reduced to 1% per month (12% per year) by Decision No 3/52 the amount is still higher than the benefit normally obtained by retaining the capital sum concerned and from the point of view of the creditor covers more than the loss normally associated with delayed payment. The very amount of the surcharges for delay is thus an indication of their penal nature.
But in addition to this there are other matters which must be considered:
— The Treaty only fixes the maximum rate of the surcharges for delay in payment, so that there remains a discretionary power to determine the rate in particular cases and also the obligation

to determine such rate having regard to the particular circumstances of each individual case (seriousness of the infringement). Moreover according to the text of the Treaty (Article 50 (3)) surcharges for delay can be imposed not only upon undertakings which fail to make a payment but generally upon undertakings which do not comply with decisions taken under this Article. In both cases the surcharges for delay are more in the nature of fines and periodic penalty payments than simple interest on overdue payments.

— The general wording of the Treaty too justifies the assumption that the surcharges for delay in Article 50 must be regarded as pecuniary sanctions within the meaning of Article 36. The concept of pecuniary sanctions appears not only in Article 36 but also in Article 52, which deals with the transfers of funds derived from the levies, from pecuniary sanctions and periodic penalty payments, and also in Article 91 of the Treaty which confers upon the High Authority the right to suspend payment if an undertaking does not pay. a sum which it is *inter alia* liable to pay in discharge of a pecuniary sanction or periodic penalty payments imposed by the High Authority. In both cases it cannot be assumed that the surcharges in Article 50 are not intended to be covered. So the only remaining possibility is to describe them either as pecuniary sanctions or as periodic penalty payments. If we examine the text of the Treaty it must in addition be noted that, except in the case of fines and surcharges, the Treaty does not provide for any payments of money which can be regarded as pecuniary sanctions. When, however, certain provisions of the Treaty expressly refer only to fines (Articles 47, 54, 64, 65 (5), 66 (6), 68 (6)) the use of the wider concept of pecuniary sanctions in Article 36 can only mean that it also includes the surcharges for delay mentioned in Article 50.

— Finally, in support of this view, reference can be made to national legislation, in particular national revenue law, which also recognizes the concept of a surcharge for delay in payment (see for example the German law relating to delays in payment of taxes of 13 July 1961, BGBl I, p. 891). With particular reference to the amount of the surcharges for delay in payment the general view is that, from the point of view of legal classification, the surcharges are not to be regarded as interest but as a means of compelling payment of the outstanding tax (see 'Kommentar zur Reichsabgabenordnung' by Becker-Riewald-Koch, 9th edition, Vol. I, pp. 821 et seq.).

I do not therefore hesitate to apply the provisions of Article 36 and all their consequences to the surcharges mentioned in Article 50.

Second question: Does Article 36 restrict the objection of illegality to previous *general* decisions or does it also, as the applicant considers to be correct, make it possible to argue that earlier individual decisions, which are not directly challenged, are defective?

There is no doubt that the wording of the Treaty provides the applicant with a powerful argument in support of its view. Whereas other provisions of the Treaty refer expressly to general decisions, when references to them alone is intended, (the second paragraph of Article 33, Article 50 (2), Article 58 (2)) or to individual decisions when the Treaty only has them in mind, (the second paragraph of Article 15, the second paragraph of Article 33) and whereas in certain provisions of the Treaty a distinction is expressly made between special requests, that is, individual measures, and regulations, that is to say a body of rules of general application (Articles 65 (3) and 66 (4)), the third paragraph of Article 36 simply refers to decisions. Furthermore, it is not true—and the applicant has also drawn attention to this—that, in general,

sanctions are imposed for non-observance of general decisions and that the third paragraph of Article 36 must be interpreted on the basis of such a generalization. A glance at the provisions of the Treaty shows that they often include the threat of a fine for non-observance of individual decisions (this is the case in Articles 47, 54, 64 read in conjunction with Articles 60 and 63, in Article 66 (6) read in conjunction with Article 66 (4) and in Article 68 (6)). It therefore has to be acknowledged that there is a certain substance, from the point of view of principle, in the applicant's view of the scope of Article 36.

There is however another and indeed legitimate question, namely how far this textual exegesis needs to be revised having regard to the system of legal protection established by the Treaty, which in Article 33 lays down time limits for instituting proceedings on the expiration of which, in the interests of legal certainty, decisions of the High Authority cannot in principle be subject to judicial review. We do not, however, have to consider this question any further in these proceedings because, as I will immediately show, its answer clearly has no bearing on this case.

The third question provides a good reason for examining the connection between the Decision which is directly challenged and the Decision of February 1959.

Let us recall once more the course of events.

The Decision of 13 February 1959 states that the applicant did not pay any levies for the period 1 January 1953 to 31 October 1958. The levy it was liable to pay was calculated for the period from 1 January 1953 to 31 March 1958 according to production figures supplied by the undertaking, and for the period April to October 1958 on the basis of estimates. As a result on 5 November 1958 levies amounting to 16 060 945 lire and surcharges for delay of 5 480 598 lire were payable. It was stated at the same time that, if the arrears of the levy were not paid, a surcharge for delay from 5 November 1958 at the rate of 1% per month of the amount of levy (i.e. 160 609 lire) would become payable.

As the applicant, even after this Decision, at first did not make any payment either in respect of the levy or of the surcharges for delay, its liability increased. From May 1960 onwards it paid off the arrears of the levy so that after February 1961 there were clearly no outstanding arrears of levy. On the other hand, there still remained outstanding the surcharges for delay in payment; these included the surcharges on the debt owing in respect of the levy, the figures for which were given in the Decision of February 1959 and also on the levy payments which had fallen due after November 1958. In a letter of 26 April 1961 the High Authority informed the applicant of the total amount of the surcharges for delay, calculating them at 9 334 514 lire. At the request of the applicant it remitted on 18 June 1962 2 334 514 lire of this sum. A demand for payment of the remainder of the 7 million lire was finally made in the contested Decision of November 1962.

It is clear from the administrative proceedings that if the Decision of November 1962 is properly construed, it consists of three parts:

(i) It includes surcharges for delay in payment, which were dealt with in the Decision of February 1959, to the extent to which they relate to the non-payment of the levies which had fallen due up to November 1958;

(ii) It includes surcharges for delay in payment on the levy which fell due on and after November 1958;

(iii) It confirms the partial remission of the surcharges for delay in payment which was granted by the letter of 18 June 1962.

So far as the first point is concerned the

Decision of November 1962 is not a decision made in implementation of the Decision of February 1959 or a decision imposing a sanction for non-compliance with one of the obligations laid down in the latter Decision, but a *repetition* of that Decision amended to the extent of the grant of the partial remission.

With regard to the second point, it is clear that the obligation to pay the levy, the non-compliance with which led to the surcharges for delay in payment, has not yet been the subject of an individual decision and thus was not the subject of the Decision of February 1959, but derives directly from the general Decisions relating to the levy.

Therefore there is not in fact the necessary relationship between the content of the Decision of November 1962 and the Decision of February 1959 to justify an application under Article 36 of the Treaty and this precludes the resubmission for review to the Court of the Decision of February 1959 and the general Decisions upon which it is based.

II. On the other hand, Article 36 and the generally recognized objection of illegality make it possible to examine those general Decisions which have formed the legal basis of the directly contested individual Decision or in respect of which surcharges for delay became payable because they were not observed, provided that there are no other procedural obstacles.

Let us consider what objections to this view must be considered in this case.

1. So far as the surcharges for delay in payment relating to the amounts of levy due up to October 1958 are at issue, it must not be forgotten that they had already been the subject of the Decision of February 1959. In my opinion the doctrine of confirmation ('wiederholter Verwaltungsakt' or 'acte confirmé) can be applied. When, according to this doctrine, it is impossible to challenge directly an administrative measure which was the subject of an earlier decision having the same content, a right of action against the general decisions, which provides the legal basis for the measure confirmed, is also precluded. An action can only be contemplated if new elements of fact and law are apparent when the measure is repeated. In our case this means that, since the Decision of November 1962 adopts the final figures in the Decision of February 1959 and makes allowance only for those deductions resulting from the partial remission for the year 1961, the measure granting this remission is the only legal act relating to this amount which is relevant and capable to review. All the contrary arguments, put forward with reference to the calculation of the debt due in respect of the levy, which is the decisive factor for determining the surcharges for delay in payment, must be ignored, because they could have been submitted in Case 22/59.

2. This principle cannot be applied to the surcharges on the levy which have become due since November 1958. They were dealt with for the first time in the contested Decision. However the possibility must be considered of limiting to some extent the admissibility of the submission put forward concerning the calculation of the debt due in respect of the levy.

(a) We must first consider the form in which the complaints have been submitted. In fact the question is first broached in one single sentence of the application stating that the general Decisions concerning the levy infringed Article 50 (1) of the Treaty. It reads: 'The High Authority is therefore not entitled to fix the rate for the levy at a level which allows it to cover other expenses not listed in Article 50 and the establishment and maintenance of a guarantee fund or special reserve fund'. Even though according to the provisions of the Statute of the Court of Justice and the Rules of Procedure there is only

required a brief statement of the grounds on which the application is based, this general statement, which gives no particulars whatever, does not comply with the requirements in force.

(b) The following consideration is however more significant: The debt in respect of levy for the period November 1958 until the end of the period of default in payment (December 1960) is determined by the Decisions concerning the levy of which the essential particulars (rate of the levy, procedure for the determination of the rate of the levy) have been unchanged since Decision No 13/57 of 17 April 1957.

The High Authority, in a letter to the applicant of 17 March 1958, stated for the first time the aggregate arrears of levy. After this date the applicant in several letters and conversations discussed the matter with the High Authority without criticizing the rate of the levy or the procedure for its determination. Its only complaints related obviously to the calculation of the chargeable value of its production. Even in Case 22/59, the subject-matter of which was in fact an individual decision relating to the levy, no arguments were put forward concerning the rate of the levy. Finally, since May 1960 to the present, the applicant has paid the levy for all the periods of assessment without challenging *directly* the correctness of the rate and the procedure for its determination. Having regard to these facts the question may justifiably be asked whether the conduct of the applicant in matters connected with the levy, which has covered many years and is characterized by exhaustive arguments with the High Authority in administrative and Court proceedings, has not deprived it of the right to criticize *indirectly* the system of the levy, when contesting a decision imposing sanctions.

I believe this question should be answered in the affirmative. Whoever answers the question in this way does not unjustly curtail the legal rights of defence of Community undertakings, but provides a degree of legal certainty without which no administration can carry out its task in a proper manner. Therefore all the arguments concerning the determination of the amount of the rate of the levy, that is, the application of the levy for specific purposes (guarantee fund, special reserve) and also all those arguments concerning the procedure for determining the rate (consultation with the Council) are inadmissible because they are no longer tenable.

III. With regard to the general Decisions concerning the levy, according to the views I have just expounded only those complaints are admissible which relate to the legal basis of the surcharges for delay in payment, that is to say, to Article 6 of Decision No 3/52 and to Decision No 29/55, and I will now turn to these provisions.

In these submissions the applicant argues that the first paragraph of Article 36 has been infringed because the surcharges for delay in payment in Decision No 3/52 were fixed on a rigid pattern and because they became due on non-payment of the levy from a specified date. Article 6 of Decision No 3/52 disregards therefore the right of an undertaking to submit and substantiate its views before pecuniary sanctions are imposed.

In fact the first paragraph of Article 36 provides that, before imposing a pecuniary sanction or ordering a periodic penalty payment as provided for in this Treaty (to which, as we have seen, the surcharges for delay under Article 50 must be added) the High Authority must give the party concerned the opportunity to submit its comments. Article 6 of Decision No 3/52 does not appear to take this into account when it states that if a levy payment is not made by the fifth day of the month following that in which payment falls

due, the amount of levies owed shall be increased by 1%. In addition the fact that Decision No 29/55 makes it clear that the High Authority may at the request of the undertaking concerned remit in whole or in part the surcharges for delay in payment, cannot remove the apparent incompatibility of Decision No 3/52 with Article 36 of the Treaty. An application for remission of surcharges after they have fallen due is not the same as consultation before their determination.

The defect which possibly attaches to Decision No 3/52 would however only be of importance in evaluating this case if it left its mark upon the individual Decision, that is to say, if the procedure which led to the contested individual Decision was incompatible with Article 36 of the Treaty.

This is, however, clearly not the case. Before taking the Decision the High Authority in a letter of 26 April 1961 gave the aggregate figures of the surcharges and detailed particulars of how they were made up. It is true that this letter does not actually contain a request for comments to be submitted, although this was the meaning which it conveyed. Subsequently the High Authority received from the applicant a request dated 20 February 1962 for the reduction or remission of the surcharges. The High Authority in a letter of 18 June 1962 granted the request in part. The applicant lodged another request by a letter dated 4 July 1962.

The course which in fact was taken by the administrative procedure thus shows us that when the applicant received the contested Decision it was not unprepared; on the contrary it had had sufficient opportunity to discuss with the High Authority whether the surcharges were justified.

Therefore the question what procedural opportunities could in fact have been available to the applicant under Decision No 3/52 ceases to have any significance in this case. Its examination must be excluded because it is impossible to accept that a private applicant has an interest in a purely abstract review of a general decision.

C — Having regard to the result of this examination, the principal conclusion of the applicant cannot succeed. There remains however for consideration its alternative application for a reduction of the surcharges. This claim is certainly admissible if—as I have endeavoured to show—the surcharges are classified as pecuniary sanctions.

In this connection in particular the the reference in the applicant's submissions to the relationship which the surcharges for delay bear to the capital sum owed is of importance. It is remarkable that the surcharges are very high; they are about one third of the whole of the levy payments. The amount of the surcharges is explained by the applicant by the fact that the directors of this family business clearly did not acquaint themselves with the Treaty establishing the European Coal and Steel Community and took no account in their business and financial arrangements of the obligations on undertakings arising out of the Treaty. It is only recently that there was a change in the management of the undertaking when the head of the family died. There were therefore very special social circumstances in the case of the applicant undertaking which justify the raising of the question whether these circumstances, in which continuing misconduct on the part of the management of the undertaking had developed, did not justify a lenient approach when determining the whole of the surcharges. So far as the conduct of the High Authority is concerned the question also arises whether the continuance over a period of years of the consequences of the circumstances described above was not also the fault of the High Authority. The administration of the High Authority could have taken effective measures against this under-

taking earlier, either by informing it of the position or by written or oral negotiations or by taking decisions appropriate to the facts. Under national revenue laws, the revenue administration by virtue of the expiry of periods of limitation loses its right to assess and collect taxes if it fails to take any action within the period of time prescribed by law.

After carefully evaluating all the facts of this case, I submit that the Court should reduce the total amount of the surcharges, although it does not appear to me to be necessary to mention a specific sum in my opinion.

D — To summarize the results of my examination, I submit that the principal conclusion of the applicant seeking the annulment of the contested Decision should be dismissed, but that in accordance with Article 36 of the Treaty, the surcharges should be reduced.

So far as the costs are concerned the applicant should be ordered to bear the greater proportion and the High Authority should be ordered to bear the smaller proportion of the costs.