In Joined Cases 55 to 59/63 and 61 to 63/63

55/63 — ACCIAIERIE FONDERIE FERRIERE DI MODENA, having its registered office in Modena, represented by its director, Alceste Giacomazzi, engineer,

56/63 — ACCIAIERIE E FERRIERE L. BOSIO, a company limited by shares, having its registered office in Sorezzo (Brescia), represented by its director, Carlo Antonini,

57/63 — FERRIERE E ACCIAIERIE NAPOLETANE, a company limited by shares, having its registered office in Naples, represented by Giovanni Scotto, Chairman of the Board of Directors,

58/63 — SIDERURGICA SARDA, having its registered office in Cagliari, represented by its sole director, Giulio Stefano.

59/63 — SIDERAL, a company limited by shares, having its registered office at S. Zeno Naviglio (Brescia), represented by its director, Bruno Zanardini,

61/63 — I.L.F.O., having its registered office in Odolo (Brescia), represented by Dante Donini, Chairman of the Board of Directors,

62/63 — O.R.I. MARTIN, having its registered office in Brescia, represented by Dr Roberto De Miranda, Chairman of the Board of Directors,

63/63 — STEFANA FRATELLI FU GIROLAMO, having its registered office in Nave (Brescia), represented by its director, Giulio Stefana, engineer,

all assisted by Pietro Gasparri, Professor at the University of Perugia and Advocate of the Corte di Cassazione, the applicant in Case 57/63 being assisted in addition by Carlo Selvaggi, Advocate at the Corte di Cassazione, with an address for service in Luxembourg at the Chambers of Camille Wagner, 31 rue des Roses,

applicants,

v

HIGH AUTHORITY OF THE EUROPEAN COAL AND STEEL COMMUNITY, represented by Italo Telchini, acting as Agent, assisted in Case 57/63 by Rodolfo De Nova, Dean of the Faculty of Law at the University of Pavia, and in *the remaining cases* by Feliciano Benvenuti, with an address for service in Luxembourg at 2 place de Metz,

defendant,

Application:

— for the annulment of Decision No 7/63 of the High Authority of 3 April 1963 and of the subsequent implementing measures;

— alternatively (except in Case 57/63) for a declaration that there is a claim for damages within the meaning of Article 40 of the Treaty arising out of wrongful acts or omissions by servants of the High Authority,

THE COURT

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

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

gives the following

JUDGMENT

Issues of fact and of law

I — Facts

The facts may be summarized as follows:

On 8 April 1963 the High Authority sent to each of the applicants a letter in which it referred to Decision No 7/63 which 'determines the contributions payable under Decisions Nos 22/54, 14/55, 26/55, 3/56, 2/57 and 16/58 . . . in respect of the equalization of imported ferrous scrap and scrap treated as such . . .' and in which

— it enclosed a complete statement of account 'of the credits and debits inclusive of principal and interest' of the undertakings concerned, stating in addition that the purpose of the statement of account, calculated up to 31 May 1963, in accordance with Decision No 7/63, was to adjust as closely as possible the account of each undertaking to the final position, subject to later amendments arising out of the settlement of certain outstanding difficulties;

— and, in accordance with the provisions of Article 6 of Decision No 7/63, it called upon each of the addressees to pay the equalization contributions based on the statement of account in question.

The letter in question states the amount payable by each addressee.

The present applications are made against Decision No 7/63 and the statements of account contained in the letter of 8 April 1963, to the extent that they are 'implementing measures subsequent' to the said Decision.

II — Conclusions of the parties

The *applicant* in Case 57/63 claims that

the Court should:

— 'declare to be illegal and annul Decision No 7/63 of the High Authority of the ECSC communicated by letter of 8 April 1963 and the implementing measures which it applies;

— declare that the calculation of the amount of ferrous scrap in respect of which the applicant undertaking must pay a levy and on which the total amount mentioned in the tables annexed to Decision No 7/63 (letter e) is based is computed by a method which is illegal as regards its form and incorrect as regards its substance;

— refer the matter back to the High Authority under Articles 33 and 34 of the ECSC Treaty, with the consequences thereby involved;

— order the High Authority to pay the costs.'

During the procedure this applicant asked the Court to order the following measures of inquiry:

'(a) To order production of all the documents concerning the declarations, calculations and checks, and the documents relating to purchases of ferrous scrap by the applicant which are in the possession of the High Authority and also the reports of the various checks carried out by the Société Fiduciaire Suisse;

(b) To admit production of the exhibits as annexes to the pleadings;

(c) To hear, if necessary, the evidence of the following persons: Luciano Gerini, of 24 Piazza Stazione, Bordighera, to verify the declarations in annex No 2; Augusto Caramalli of 93 Via Bagnoli, Pozzuoli, Emilio Scarpellino, of 101 Via Napoli, Pozzuoli, and Vitale Jovino, of 5 Via Pisciarelli, Pozzuoli, to verify the declarations in the legal attestation (annex No 3);

(d) To order the High Authority to produce particulars of the amounts improperly paid which are mentioned in the statement of account because they have not been recovered, and also all the figures upon which Decision No 7/63 is based.'

The *other applicants* submitted the following conclusions:

'A — In the first place:

(a) To declare to be illegal and to annul Decision No 7/63 and the statement of account rendered to the applicant undertaking pursuant to this Decision and communicated to it by letter of 8 March 1963 (*sic*);

(b) To refer the matter back to the High Authority under Articles 33 and 34 of the ECSC Treaty, with the consequences thereby involved.

B — Alternatively

(a) To declare that the mistakes of law and fact and the approximate, inadequate and incomplete computations, which it is the aim of Decision No 7/63 to rectify, constitute in whole or in part a wrongful act or omission within the meaning of Article 40 of the Treaty;

(b) To grant appropriate pecuniary reparation to the applicant company.

C — By way of an interlocutory order to suspend in the circumstances the application of the contested Decision to the applicant company in accordance with the second paragraph of Article 39; To order the High Authority to pay the costs; subject to the right to apply for an order that experts' reports be obtained.'

All the applicants reserve the right to contest by a separate application the individual decision by which the High Authority might decide to confirm and make enforceable the statement of account communicated in the letter of 8 April 1963; the applicant in Case 57/63 reserves in addition the right, if necessary, to appeal against Decision

No 7/63 in accordance with Article 36 of the ECSC Treaty, if it is held to be a general decision which cannot be contested in the present application.

The *defendant* contends that the Court should:

(a) *In Case 57/63*

— 'dismiss the application for production of evidence and declare that the application brought against the letter of 8 April 1963 is inadmissible;

— declare the application made against General Decision No 7/63 to be inadmissible or, alternatively, dismiss the said application, and in either event order the applicant to bear the costs;'

(b) *In the other cases*

— 'declare the applications for annulment by the applicant company to be inadmissible;

— and consequently declare that the claims for compensation are inadmissible in so far as they are dependent upon and subordinate to the said applications and in any event on the ground that the applicants have no existing legal interest in such claims;

— in any event dismiss all the applications made by the applicant as being in substance unfounded;

— order the applicant companies to pay the costs.'

III — Submissions and arguments of the parties

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

Admissibility

A — The applications for annulment

1. *The letter of 8 April 1963*

The *High Authority* maintains that the letter in question does not have the formal attributes of a genuine decision against which it is possible to institute proceedings within the meaning of Article 33 of the Treaty. Having emphasized that the applicants are making the same assertion, the High Authority admits that in Case 57/63 this letter 'is not unimportant or devoid of meaning and effect', but adds that any discussion of this point is irrelevant, since it is only necessary to know whether or not the letter in question is a decision against which proceedings can be instituted.

In the *other cases* the High Authority observes in addition that the letter of 8 April 1963:

— does not comply with the formal conditions laid down by Decision No 22/60 of 7 September 1960,

— was not notified in accordance with Article 4 of Decision No 22/60,

— contains a 'request' and not an order for payment,

— encloses an explanatory note, which, *inter alia*, calls upon the addressee to submit any observations it would like to make concerning the order for payment.

The *applicants* acknowledge that the letter of 8 April 1963 cannot be considered as a decision in the formal sense. They call attention however to the fact that this letter enlarges and explains an individual decision contained, *inter alia*, in Decision No 7/63. The applicant in Case 57/63 states on this point that the said letter sets out essential facts which are part of the logical construction of the contested Decision and that it should therefore have been explained in the statement of the reasons upon which the Decision is based. For this reason it concludes that this Decision and the letter in question are so closely connected that an action against the one necessarily entails an action against the second.

The applicants in the other cases submit in addition to this argument that, even if it is assumed that a formal decision is necessary in order to establish conclusively the damage they have suffered from Decision No 7/63, it is nevertheless a fact that the Decision

referred to above has caused some damage and that, for that reason, it would in any event be justified to refrain from dismissing the application as being inadmissible but instead to give an interlocutory judgment to stand until such time as all the facts of the case, including their quantitative aspects, are established.

2. *Decision No 7/63*

The *High Authority* recalls in Case 57/63 that misuse of powers is the only ground of complaint which individual undertakings can plead against a general decision. It notes that, according to the applicants, Decision No 7/63 amounts to a typical example of misuse of powers since it is on the face of it a general decision but in substance an individual decision and it states that, even allowing that this complaint is well-founded and that the application is admissible, in the light of the previous decisions of the Court concerning the grounds which individuals can plead against general decisions, it is nevertheless well established that the applicant cannot put forward any ground other than that of misuse of powers. If, however, this ground of complaint were held to be well-founded, the decision would *ipso facto* be illegal; if, on the other hand, it were regarded as unfounded, the contested Decision would then be confirmed as a genuine general decision and could not therefore be challenged by the undertakings on any ground.

It follows, according to the conclusion of the High Authority, that except in the case of misuse of powers all the other grounds pleaded by the applicants, and sometimes put forward in quite an arbitrary way as a form of misuse of powers, are inadmissible.

After putting forward this premise the High Authority also denies that this case discloses a misuse of powers, maintains that as a result the contested Decision is in substance a general decision and submits therefore that the application is also inadmissible from the point of view of misuse of powers.

In addition the High Authority, in the other cases, observes that Decision No 7/63, is not vitiated by misuse of powers:

— because this ground is excluded having regard to the principle laid down by the Court concerning the legal nature of general decisions;

— because the said Decision does not apply only to the applicants, so that the Decision only appears to be an individual decision because it is applied to individuals;

— because in this case the situation is analogous to the one in taxation laws, which always retain the character of general and abstract provisions even though the tax debt derives directly from them and the specific tax assessments are merely findings of fact.

The High Authority in addition remarks that to make an action brought by an individual against a general decision admissible it is not sufficient to plead misuse of powers. In such a case it would be necessary to set out 'plausibly' (see the judgment of the Court in Case 8/55) the grounds on which the misuse of powers is alleged, and show that the applicants have been affected by it: however in this case neither of these two conditions is fulfilled.

The High Authority challenges in addition *in all the cases* the admissibility of the other submissions by arguing that they have been wrongly brought under the head of misuse of powers, whereas, in fact, they differ from this submission in that they comprise infringement of an essential procedural requirement (absence of reasons) and infringement of the law; grounds which cannot be pleaded as such by individuals in respect of a general decision such as the one which is challenged.

The *applicant* in Case 57/63 maintains on the other hand that the ground of misuse of powers or abuse of powers is not

the only one which can be pleaded in respect of a decision which, from the point of view of form, has the form of a general decision but is in substance an individual decision. The contrast in the present case between the external forms and the actual content not only amounts to a misuse of powers, and, as such, is sufficient to render the measure in question null and void, but moreover imposes a duty to examine the true and actual content of the Decision, the latter prevailing over the aspect of form. Therefore, in such a case, all the grounds of action laid down in Article 33 of the Treaty may be pleaded and are automatically admissible if only so that doubts concerning the legal relationship, unlawfully defined by a general decision, between an individual and the High Authority be not left unresolved. The applicant concludes its argument by stating that the misuse of powers laid down by the second paragraph of Article 33 of the Treaty not only constitutes the defect inherent in the Decision but is also the precondition of the admissibility of an application against the individual content cloaked in the form of a general decision.

Having said this, the applicant reserves the right to contest any individual decision containing the order to pay the amount mentioned in the letter of 8 April 1963 and, in that connexion, to rely on the provisions of Article 36 of the Treaty in order to contest the legality of Decision No 7/63 should it be held to be a general decision.

The *applicants in the other cases* in addition make the following further comments:

There is no foundation for the High Authority's argument that the ground of misuse of powers (that is to say, using a decision which is general in form for purposes not intended for this kind of measure) is inadmissible because:

— such conduct could not be classified as a misuse of powers,

— it has never been asserted that the misuse in question has affected the applicants.

In fact:

— So far as the first argument is concerned it must be stressed that, in developing it, the High Authority has unconsciously been drawn into discussing the substance of this ground of complaint or whether it is well-founded. In order to restrict its arguments to the preliminary issue of admissibility the High Authority should only have shown that the ground of complaint put forward by the applicants on this point does not fall within the concept of 'misuse of powers' in the second paragraph of Article 33 of the Treaty. Had any such demonstration been given it would have conflicted with the narrowest of the interpretations given to the provision in question by doctrine or with the case-law of the Court which confirms (in Cases 3 and 4/54) that, in order to establish the admissibility of an action by an individual against a general decision, it is sufficient that he formally pleads a misuse of powers affecting him or, again, (Case 8/55) that general decisions as such and not only pseudo-general decisions may be vitiated by a misuse of powers affecting individual undertakings and may therefore be contested on this ground by such undertakings.

— With regard to the second argument it is sufficient to comment, still on the question of the preliminary issue, that the theory regarding the multiple individual nature of Decision No 7/63 must be accepted, without prejudice to arguments concerning its merits.

However it cannot be denied that if such theory is correct Decision No 7/63 included, *inter alia*, a provision affecting the applicants in their respective individual capacities and adversely affecting their interests. The amounts which are mentioned by implication by the said Decision and only stated explicitly

in the computerized statement of account enclosed with the letter of 8 April 1963 cause them individual damage.

They maintain in addition that, in general, it should be noted that by 'misuse' of powers or 'sviamento' is meant any defect capable of affecting the legality of a discretionary decision, in view of the fact that it transforms it into a decision different in kind from the one it should have been according to the legislative provisions and what Italian legal theory calls 'figure sintomatiche' are only manifestations of 'misuse' understood in this way. In this case Decision No 7/63 constituted a settlement of credits and debits between a given number of undertakings. However, in doing so, it failed to explain how the different credits or debits were determined and this failure is due to the fact that the Decision was in the form of a 'general' and not an 'individual' decision.

The applicants argue finally that it must not be forgotten that, according to the Court, a disguised individual decision remains nevertheless an individual decision and that, as a result, if the Court finds that Decision No 7/63 is a collection of individual decisions, each applicant can put forward any of the grounds provided by the first paragraph of Article 33 of the Treaty against the individual decision to the extent to which it is affected by that decision.

An examination of these grounds is moreover equally necessary in the event of the Court's acknowledging that the plea of misuse of powers is well-founded and Decision No 7/63 is therefore annulled for this reason. In fact such an examination removes the possibility of a disguised individual decision, annulled on the ground of misuse of powers, being reproduced in proper form as an individual decision but with defects different from the one contained in the latter decision which would necessitate a fresh application. Finally an examination of all the grounds for the application is all the more necessary because in this case each of the applications includes an alternative and ancillary claim for compensation.

The applicants on the other hand submit that it is impossible to exclude the possibility that a failure to state the reasons upon which an administrative act is based may amount not only to a misuse of powers but also to an independent defect of infringement of legal provisions.

B — Claims for compensation in Cases 55, 56, 58, 59, 61, 62 and 63/63

The *High Authority* argues that this alternative claim should meet the same fate as the principal claim in the same action and that it should therefore be considered as inadmissible for the same reasons as the main claim in accordance with the principle 'accessorium regitur principale'.

The High Authority states that, as it is impossible to discuss the merits of the application in connexion with an objection of inadmissibility, it is even less possible to discuss the validity of the claim for compensation. In addition, apart from these considerations, it must be emphasized that the applicants cannot complain that they have suffered any damage before an individual decision implementing Decision No 7/63 stating the amount which each of them is legally liable to pay has been issued.

The *applicant's* objection to this view is that the High Authority mistakes the alternative claim for an ancillary claim. They state on this point that a claim is 'ancillary' when it supplements another claim in some way, whereas a claim is 'in the alternative' when it is a substitute for the main claim. The claim submitted in this case belongs to the second type of claim. It is therefore wrong to infer from the objection that the first claim is inadmissible that the alternative claim must also be inadmissible: the admissibility of each claim is determin-

able according to two entirely separate sets of circumstances.

However, even if it is accepted that Decision No 7/63 should be considered as a general decision and therefore cannot be annulled under the second paragraph of Article 33 of the Treaty, it would still be possible to challenge the conduct of the High Authority by an action based upon Article 40, as the concept of 'wrongful act or omission' is connected neither with the concept of a general nor of an individual decision, but can be applied to a series of acts or omissions over a period of time or to simple delays which exceed the necessary and foreseeable time required in order to arrive at the decision which has to be taken.

The High Authority retorts that in order to avoid the consequences of the principle 'accessorium regitur principale' the applicants amended in their reply the wording of the claim for compensation and also the 'causa petendi', since, instead of making this claim independent of the main claim, they joined it directly to the examination of the conduct of the High Authority in connexion with the carrying out and liquidation of the equalization scheme. This new claim is inadmissible because it was submitted too late. As a result the High Authority maintains the objections which it has raised on the inadmissibility of the alternative claim for compensation.

On the substance

A — Application for annulment

1. *Misuse of powers*

The applicants submit in particular that Decision No 7/63 deals with the data relating to the consumption of ferrous scrap by the applicant undertakings, data which, although questionable and vague, were taken into account by the High Authority in order to calculate the amount of ferrous scrap chargeable. It follows therefore that Decision No 7/63 contains a series of individual computations with regard to the applicants. The applicants then define the concept of general decisions, analysing what is meant by 'general', 'abstract' and 'preparatory', concepts which, according to them, are characteristic features of a decision of this kind. They state on this point that a provision is 'general' when the number of those to whom it is addressed is to all intents and purposes unlimited, 'abstract' when at the time it is made it refers to cases not yet identified; finally, a decision is 'preparatory' when it contains, assesses and makes provision for consequences arising out of facts to be ascertained in the future. After enlarging on these concepts the applicants state:

Decision No 7/63 is not in substance a general decision. Instead of being addressed to an 'open' class of addressees it is addressed to a 'closed' class of addressees, in fact, to iron and steel undertakings, which during the period of equalization have used ferrous scrap in their furnaces, and whose number and names could not be unknown to the authors of the Decision. The individual nature of Decision No 7/63 is moreover confirmed by the provisional nature of the results to which it leads, a provisional nature mentioned directly or indirectly by the wording of the Decision (Article 5) as well as by the letters of 8 April 1963 and again by the statements of defence. In fact as the determination of the basis for assessment in the case of certain undertakings is still not complete, or has been challenged by the undertakings in question, it is clear that changes may be made in the final calculation of the amounts of equalization contributions payable and that these changes result from the interdependence of the various amounts chargeable and their effect on the rate of equalization. In these circumstances no one can deny that each undertaking by reason of the fact that its

position influences the position of all the others is individually referred to by Decision No 7/63.

The contested Decision is not abstract. It is only necessary to read the reasons upon which it is based to be certain that they do not contain instructions which are abstract or relate to a situation which might occur in the future or might have occurred in the past. The situation taken into consideration by the provisions in question is the result of specific situations which have already been evaluated and examined in the case of each of the undertakings referred to: thus the total amount of ferrous scrap mentioned in the annexes of the Decision are in fact the total consumption of ferrous scrap debited to each individual undertaking liable to pay equalization contributions. This 'concrete' character of Decision No 7/63 moreover emerges from the wording of the letter of 8 April 1963 and is confirmed by the amendment of the word 'criterion' which had been mistakenly used in the Italian text, and the substitution for it of the expression 'new calculations'.

Decision No 7/63 is also not 'preparatory'. Instead of making rules for the conduct of iron and steel undertakings in the future, it determines the existence of debits and credits in the case of undertakings which have acquired ferrous scrap in the past and for specific periods. The decision in question is therefore retroactive.

The individual, concrete and retroactive nature of Decision No 7/63 is moreover confirmed by the fact that the period between the taking of the Decision and the letter of 8 April 1963 is so short that it would have been impossible to make the necessary calculations affecting each undertaking, if the basic data had not been 'pre-existent'. In fact even before the adoption of Decision No 7/63 all the documents relating to each of the undertakings, containing the facts upon which the calculations referred to above were based, were ready. On the other hand it is important to note that the letter of 8 April 1963 contained the 'data' forming the basis of the Decision which must therefore logically and chronologically have preceded them and that furthermore the content of this letter was a simple calculation and — what is more — a computerized one. Such a calculation cannot be regarded in itself as a legal measure, even a declaratory one. It merely clarifies a result already achieved, from the very beginning, in Decision No 7/63 and in the figures relating to the individual contributions, and without them the Decision could not have been taken.

The applicants submit therefore that the contested Decision is in its essence the aggregate of as many individual decisions, dependent upon each other, as there are undertakings subject to the equalization levy but made in the form of a single general decision.

The better to emphasize the differences between Decision No 7/63 and a legislative measure, the applicants go on to make a comparison between the Decision in question and provisions under revenue law. They first state that provisions under revenue law lay down a rate of tax in abstract form and for the future without the legislature's knowing or being able to know who the tax payers will be or still less the basis upon which individual assessments are to be made (which explains why it is impossible to calculate the amounts payable by each tax payer and the total tax which is likely to be raised until the tax payers and their tax basis have been ascertained). The applicants then point out that the contested Decision has adopted the opposite procedure because it

— assumes that the persons liable to pay contributions and the basis of their contributions (that is, amount of scrap consumed in each case) are already known;

— assumes that the total amount of contributions to be collected in order

to conclude the accounting procedures relating to the equalization scheme is already known;

— determines *a posteriori* on the basis of these facts that rate of equalization and fixes with reference to this any debit or credit balances of undertakings which have participated in the equalization scheme.

The applicants go on to assert that the traditional type of standard measure with which Decision No 7/63 can be best compared is perhaps the liquidation of a group organization (consortium). This results from the history of the origin of the equalization scheme which was first created by private initiative and then made obligatory by the High Authority for all iron and steel undertakings without however changing its basic structure.

The applicants conclude their submissions by rejecting the objection that the general nature of Decision No 7/63 follows the fact that it modifies prior general decisions. The only general decisions relating to equalization are those introducing the equalization scheme in respect of which the class of persons to whom such decisions were addressed was 'open' and indefinite. However, after Decision No 28/58 had begun the liquidation of the equalization scheme and in particular after the decisions fixing the date of cessation had been taken, all the Decisions relating to equalization refer to a definite class of persons and to their individual specific situations.

In Case 57/63 the *High Authority* replies by observing in particular that in its opinion, if the definition of the applicant is applied, a decision would undoubtedly be general if it were of general application. Therefore everything would turn on ascertaining whether the measure applied to several individual persons or those at least 'mentioned' one by one by the draftsman, or whether, on the other hand, it refers to a class of persons whose description is stated, although the authors of the measure do not nevertheless refer to or know all of them individually. The High Authority refers to the judgment of the Court of Justice in Case 8/55, according to which a decision must be regarded as general even if it relates to specified undertakings if it can automatically be applied to other undertakings which might meanwhile come into existence and submits that this criterion is in itself sufficient to classify a decision of the High Authority as a general decision, all the more so if account is taken of the fact that, having regard to the limited number of undertakings subject to the ECSC Treaty, the persons to whom the decisions of the High Authority are addressed can almost always be identified when a decision is made.

Moreover, the High Authority continues, it is not possible to interpret the criterion of the 'open class' only with reference to the future. A class of addressees can also be regarded as 'open' if the number of addressees already known to be subject to the provisions in question is capable of being altered as a result of more accurate calculations. Such a situation may easily arise even in the case of retroactive decisions.

According to the High Authority Decision No 7/63 belongs to precisely this category of measures and it must therefore be held to be a general decision both as regards its form and its content. In fact, contrary to what the applicant has asserted, the Decision in question refers to situations which have not been clarified and to addressees which have not been finally ascertained. It certainly fixes the rates of equalization, but only provisionally, because the facts necessary for determining the final rate are in process of being collected.

Therefore, for example, possible changes in the determination of assessable scrap charged to each individual undertaking and consequently in the chargeable base may lead to borderline cases where one debtor is not assessable whereas another

is liable to pay contributions.

For these reasons the High Authority submits that the application is not only inadmissible but also unfounded; since Decision No 7/63 is in fact a general decision the complaint of misuse of powers submitted by the applicant has no foundation.

In the other cases the *High Authority* puts forward identical arguments and in addition the following arguments:

— The contested Decision is general because it varies previous general Decisions relating to the same subject matter.

— This Decision does not bring into effect a liquidation of the scheme but only lays down the conditions for such an operation. It was intended to apply to an indefinite number of specific situations, of which the authors did not even know the actual facts, so that they had to allow for possible changes in the calculations contained in the Decision.

— In the actual text of the Decision those to whom it is addressed are treated as individuals only to the extent that they belong to the same class; on this point it must not be forgotten that all general decisions of the ECSC are notified to a closed class of addressees because their purpose is to regulate operations which are already in progress at the time they are taken.

— The general nature of a decision does not involve 'a virtually unlimited number of addressees', because, in such a case, it would be also necessary to deny the existence, which no one doubts, of retroactive general laws, which for the very reason that they are retroactive, refer to persons ascertained at the date of the decision.

— The argument that the contested Decision is not 'abstract' because it contains actual calculations confuses two things: the existence of data and investigations prior to the adoption of the provision and the interpretation of the purpose of the specific cases. In fact Decision No 7/63 confines itself to providing for certain possible situations, within certain well defined limits, and imposes on the executive bodies the duty to check whether the specific facts can be fitted into these abstract categories. It should moreover be noted that the contested Decision does not impose upon undertakings an obligation to make any payment. Therefore the fact that the Decision is in part retroactive in no way reduces its abstract and general character, its preparatory aspect not being an essential legal criterion.

— The contested Decision is not based on the individual circumstances of a specific undertaking, because it was impossible to ascertain the particular circumstances with any final degree of certainty.

— The short period of time between the adoption of Decision No 7/63 and the communication to the applicants of the statement of account is explained by the good administrative organization of the departments of the High Authority.

2. *Infringement of the Treaties or of any rules of law relating to their application, of the decisions introducing the ferrous scrap equalization scheme and of the principles governing the latter*

The *applicants* argue that Decision No 7/63 fails to achieve its object because it uses for its calculations data which do not yet exist or have not been finally verified, that is to say, only those facts known on 31 March 1963, which are moreover not accurate. In fact Decision No 7/63 resembles an order for the winding up of an association and it is the general rule that the liquidation is carried out in two phases: the preparatory procedure and the final account which determines once and for

all the relationships between the association and its members on the one hand and between the members *inter se* on the other hand. Therefore it is wrong to infer, as the High Authority would like to do, that the final stage of the liquidation may be effected 'by successive approximations', but individual decisions are necessary to determine specifically the definite figures upon which the drawing up and passing of the final balance sheet and the ascertainment of the final individual balances may be calculated.

The *High Authority* replies that the calculations in Decision No 7/63 are necessarily provisional until the last contribution has been paid and until all the objections raised by the undertakings have been disposed of. Once the general principles which are applicable to the liquidation have been fixed the only way of achieving the object of the liquidation is therefore to use the method of successive approximations. Moreover such a method does not entail any discrimination between one undertaking or the other and public administrations have always been able to choose suitable ways of achieving their aims. In addition the applicants are wrong to compare Decision No 7/63 with measures governed by private law when it is clear that the equalization scheme for ferrous scrap is governed by public law.

3. *Absence of reasons*

The *applicants* argue that Decision No 7/63 does not adequately state the data for the calculations which formed the basis of the High Authority's Decision. The tables annexed to the Decision only contain the totals and not the individual items and, for this reason, they do not mention the contribution payable by each of the applicants. It is useless to argue on this point that it was impossible in practice to state reasons, because there was no reason why each item and all the factors used for the calculations should not have been set out, since all these data had already been confirmed and established.

The *applicant* in Case 57/63 submits in addition that it is inadmissible for the High Authority to take refuge behind the obligation of professional secrecy, because this privilege covers information on communications between the undertakings and the High Authority but not in this particular case, where there is a multilateral relationship between several undertakings and the factors relating to each undertaking are items which must be used in calculating the debits and credits of the other undertakings. With regard to the principle put forward by the High Authority that administrative measures are presumed to be lawful, it must be noted that this principle has no connexion with the principle of the burden of proof characteristic of private law. In administrative law and in the legal system of the Community the rules of proof are governed by the principle of the presumption of the validity of official acts, having regard to the public interest which is broadly speaking the dominant factor in the implementation of administrative law.

The applicants call attention in addition to the fact that Decision No 7/63 must be considered as a winding up document finalizing the debits and credits between a specified number of participants and, as such, it should have not only given each undertaking an account of its debits and credits but should also have given each of them an opportunity to ascertain the credits and debits of the other undertakings as well as the method of calculation adopted to determine them, having regard to the interdependence between the amount of credits and debits of one undertaking and those of the others. They submit that such a defect amounts not only to a misuse of powers but also to an infringement of the law.

The *applicant* in Case 55/63 in addition places greater reliance on certain documents which it produced with its reply,

the better to demonstrate that such a defect exists in its case.

The *High Authority* replies, in Case 57/63, that this contrary view is based on the false assumption that Decision No 7/63 is similar to the report of the liquidator of a private company. In this latter case it is obvious that each member has the right to know the financial position of the others, whereas in the present case each undertaking subject to the equalization scheme must itself prove any mistakes which may have been made relating to itself. Apart however from the obligation of professional secrecy it must not be forgotten that the High Authority is a public body and as such its acts are presumed to be in compliance with the law.

With regard to the duty to state reasons, this is confined to a statement in abstract terms of the reasons upon which the contested Decision is based and need not, as the applicant maintains, include an individual account. In addition the statement of all the factors used in the calculations, which have been ascertained or evaluated, is inadmissible not only in the case of the contested Decision but also in the case of the individual decisions which will be taken, when the time comes, against defaulting undertakings; this is all the more so because it is not clear how the various factors upon which the calculations and the total results have been based could have been brought in practice to the notice of the undertakings.

In the other cases the *High Authority* maintains in addition that, since a general decision is concerned in this case, the reasons for it cannot include factors which must be mentioned in the individual decisions which will have to be taken at a later date. After mentioning the reasons why the relationship *consumption of electricity/scrap purchased* should be regarded as correct and the procedure whereby the provisional computations were made in the case of undertakings which did not comply with the order to submit their invoices for consumption of electricity, it states that the provisional nature of certain provisions in Decision No 7/63 and the amount of the equalization rate is due to the fact that the determination of the basis for assessment has not yet been fixed: this situation does not necessarily call for a statement of reasons.

Finally *in all the cases* the *High Authority* observes that the equalization rate has not in fact been increased by the contested Decision, as the rate in question includes, in addition to the various amounts required for the operation of the equalization scheme, the interest payable by undertakings which did not pay it on the dates laid down for that purpose. It concludes that in such circumstances it was quite unnecessary for the contested Decision to explain this point, and there can be no question of any delay in the determination of the new rate.

4. *Infringement of the law: incompatibility with Community rules relating to publication of prices*

The *applicants* argue that Decision No 7/63, instead of fixing a rate which, even if only provisional, ought to have been based on established facts, subject of course to the necessary adjustments, adopted new criteria for sharing the equalization charges and claim that this change is so substantial that it is not one of the factors which could reasonably have been foreseen by the undertakings when they determined their prices and made public the price lists referred to in Article 60 (2) of the Treaty.

The argument continues: it is useless to invoke the principle upheld by the Court of Justice that the requirement of legal certainty must to some extent give way to the necessity that the equalization scheme must be operated, because this principle was upheld subject to the reservation that the producers concerned must be enabled to take account of possible increases in the equalization

rate. In the present case it was impossible to anticipate such increases.
The applicants then examine the discrepancies and changes which they found in the tables annexed to Decision No 7/63 compared with the tables annexed to the Decision of 1960, and underline the general nature of these differences, and the absence of any reasons given for certain of the debts. They therefore reject the charge that they have shown a lack of acumen and have not complied with their obligations under the equalization scheme and conclude their argument by stating that they cannot be held in any way responsible for the increase in the charges for which they are now liable.
In addition the *applicant* in Case 57/63, with reference to this issue, deplores 'the infringement of the principle of legal certainty and of the presumption of legality attaching to the acts of a public authority' and invokes the ground of 'misuse of powers affecting the applicant'.
The *High Authority*, having repeated the reasons why the new rate is not to be regarded as a substantial increase, submits that the words 'new criteria for sharing the charges', upon which the contrary argument is based, is due to a mistake of translation in the Italian text and should be amended to read 'new calculations'.
It disputes, particularly in Case 57/63, that the applicant adopted a price and production policy different from the one which it would have adopted if it had had prior knowledge of the new charges, since it is well known that the fixing of selling prices is based on supply and demand and not just on production costs.

5. *Infringement of the law: incompatibility with Community rules concerning competition*

The *applicants* state that the increase of equalization charges arising out of Decision No 7/63 places them in particular, having regard to the existing market situation, in circumstances which reduce their ability to compete in comparison both with undertakings which according to the Decision probably have a large credit balance and undertakings which, at any rate for the time being, have been assessed on the basis of their declarations. This distortion of equalization, which the applicants deplore, is due to the fact that the debits and credits stated in Decision No 7/63 only come into operation so many years after the commercial transactions to which they refer and in a new market situation.
On this point too the *applicant* in Case 57/63 submits that it is the victim of a misuse of powers.
The *High Authority* replies that the equalization rates have not in fact been increased and that, on the other hand, the applicants cannot complain about paying now what they should have paid before, and that it follows from this that there has been no discrimination between them and other undertakings which have made proper declarations and have discharged their liabilities punctually.
Moreover the *High Authority* goes on to say, in Case 57/63, that the value of the equalization scheme exists independently of the trading conditions in which it operates and that in a system imposed, like this one, as a matter of public policy the persons subject thereto cannot put forward their own wishes and interests in support of the argument that they are unable to make appropriate forecasts.

6. *Misuse of powers: inaccurate recital of the facts and incorrect determination of the amounts of ferrous scrap chargeable*

The *applicants* in Cases 56, 57, 58, 59, 61 and 62/63, having repeated the risks inherent in the inductive system of computation adopted by the High Authority, explain by means of a consider-

able number of facts and technical considerations, for which they offer to adduce evidence, the reasons why the computation of the contributions of each particular undertaking in Decision No 7/63 should be held to be inaccurate.
The *applicant* in Case No 57/63 states on this point that the new rate of contribution was made higher than necessary because the High Authority:

— did not take into account the consumption of ferrous scrap by the foundries belonging to the factories which mill and otherwise process metal;
— exempted from equalization ferrous scrap actually used in the foundries and steelworks originating from other undertakings or other sectors of the same industry: ferrous scrap which, on the contrary, should have been subject to equalization charges;
— included in the statements of payments made by the equalization fund amounts which were overpaid by way of equalization but which have not been recovered.

The *High Authority* in Cases 56, 58, 59, 61 and 62/63 observes in particular that the criticisms of the applicants do not relate to general Decision No 7/63 but, if at all, to the individual implementing decisions which are to be taken later, should the occasion arise. On the other hand the very fact that the equalization rate fixed by the contested Decision is provisional means in fact that possible errors in establishing the basis of assessment are avoided.
The High Authority then challenges the validity of the arguments submitted by the applicants: arguments which in its view are to some extent inconsistent or technically inaccurate.
For this reason the High Authority in answer to the arguments of the applicant in Case 57/63 makes the following observations with special reference to this case:

— The complaint in question against the equalization scheme should have been made when the applicant discharged the payments it was called upon to make. At all events it is clear that it is not a valid criticism by the undertaking of the administration of such a scheme to allege that the High Authority has not extended its application beyond the limits laid down by the Treaty. The making of financial arrangements is subject to the unanimous assent of the Council of Ministers and it is reasonable to assume that assent would have been refused if these limits had been exceeded.
— The question of the exemption of 'own arisings' from equalization charges has already been settled by several judgments of the Court.
— As the applicant expressly refuses to make any application under Article 40 of the Treaty, it is logical to proceed on the basis that the charges arising out of payments not owed but not recoverable should be borne by all the undertakings subject to the scheme.

B — Claim for damages

Whilst the *applicant* in Case 57/63 reserves the right to deal with the question of liability in a separate application, the applicants in the other cases claim compensation for damage caused by 'a wrongful act or omission' of the High Authority in the liquidation of the equalization fund, on the ground that this liquidation was carried out with considerable delay and resulted in entirely unforeseeable liabilities being imposed upon them.
'Subject to the provision of further particulars' the applicants state the facts upon which their application is based and those which caused the damage which they have suffered.
The *High Authority* points out that in this case the circumstances in which damage could arise do not exist at present because, until any individual decisions implementing the contested

general Decision have been made, the applicant undertakings cannot suffer any damage. It refers to the arguments already put forward and deduces from them that the submissions put forward by the applicants are not valid and moreover goes on to point out that these submissions refer to the conduct of the High Authority prior to the adoption of Decision No 7/63 and that they are not therefore relevant to the examination of the 'subject matter of the dispute'.

IV — Procedure

The procedure followed the normal course.

The applications in Cases 55, 56, 57, 58 and 59/63 were lodged on 22 May 1963 and applications in Cases 61, 62 and 63/63 on 24 May 1963.

By an order of 18 February 1964 the Court ordered that all the above Cases be joined for the purposes of the written and oral procedures and of the judgment.

On 5 March 1964 the High Authority appointed its Legal Adviser Italo Felchini, as its Agent in the absence of its previous Agent Giulio Felchini.

Grounds of judgment

A — The application for annulment

1. *Decision No 7/63*

Admissibility

(a) The defendant submits that Decision No 7/63 is a general decision and can therefore only be contested by the applicants if they can make out a *prima facie* case of misuse of powers affecting them.

The applicants, on the other hand, argue that Decision No 7/63 is a collection of individual decisions concerning undertakings subject to the financial arrangements for the equalization of ferrous scrap and that it can, therefore, be contested by each of the undertakings upon all the grounds laid down by the first paragraph of Article 33 of the ECSC Treaty.

In support of this argument the applicants submit that the contested Decision is directed to a specific category of addressees, that is, undertakings which utilize ferrous scrap, and that, instead of containing abstract rules for factual situations which may arise in the future, it is solely intended to regulate facts and situations which have arisen in the past, namely the purchase of scrap, by a given number of undertakings.

In order to ascertain whether a decision of the High Authority is general or

individual its content must in particular be examined to establish whether its provisions are likely to affect directly and individually the situation of the persons to whom they apply.

It emerges from the content of Decision No 7/63 that the High Authority is not establishing a definitive statement of account of the amounts payable by each undertaking by way of equalization contributions, since it is only concerned with the determination of the general factors necessary for making a provisional calculation of the equalization rate on the basis of data which are known and in part still disputed.

For the determination of these factors it relied chiefly on the total consumption of ferrous scrap in the Common Market without taking into account the amounts actually used by each undertaking.

Therefore, so far as its content is concerned, Decision No 7/63 does not individually and directly affect the legal position of undertakings using ferrous scrap.

(b) Under the second paragraph of Article 33 of the Treaty an application brought by undertakings against a general Decision of the High Authority is only admissible if they can make out a *prima facie* case of a misuse of powers affecting them. Therefore the grounds other than misuse of powers, put forward in this case by the applicants, are inadmissible.

So far as the ground of misuse of powers is concerned it is not admissible in as much as it is based on the same argument as is put forward in support of the other grounds of action mentioned in the first paragraph of Article 33 of the Treaty.

In addition this ground is only admissible, in an action brought against a general decision, if the applicant shows that there has been a misuse of powers 'affecting' it, by giving convincing reasons why the adoption of the contested decision is directly prejudicial to its interests. In this case, as the contested Decision affects all the applicants in the same degree, it is impossible to maintain that it directly damages the individual interests of each of them and that it is vitiated by a misuse of powers 'affecting them'.

It is therefore clear that the misuse of powers has not been made out.

Therefore the present applications are inadmissible in so far as they challenge Decision No 7/63.

2. *The letters of 8 April 1963*

Admissibility

The letters referred to above, in spite of their apparently peremptory style, cannot be regarded as decisions within the meaning of the Treaty.

Moreover the applicants themselves admit that the letters of 8 April 1963 do not have the characteristics of a decision which can be contested under Article 33 of the Treaty.

For the reasons mentioned under 1 above the applications by the applicants against the letters of 8 April 1963 are inadmissible.

B—The claim for damages

With the exception of the applicant in Case 57/63, the other applicants also put forward claims in the alternative for damages; they submit in respect of this claim that, even if the Court were to hold that Decision No 7/63 is valid, it should find that the High Authority has committed a wrongful act or omission in the management and liquidation of the ferrous scrap equalization scheme.

As has already been stated, the final statement of account of all the credits and debits of each undertaking subject to the financial arrangements has not yet been drawn up by the High Authority and Decision No 7/63, far from stating the final financial position of each undertaking in the liquidation of the said scheme, attempts to facilitate this liquidation by confining itself to the determination of the factors for computing the provisional equalization rate. Nor does it not impose any legal obligation on these undertakings.

In these circumstances it is impossible to know at the present time whether and to what extent the applicants will suffer any damage arising out of the liquidation of the financial arrangements for the equalization of ferrous scrap and out of the final statement of account of the credits and debits of each undertaking, as Decision No 7/63 provides for a possible variation or correction of the calculations upon which it is based.

Moreover the applicants themselves have not produced to the Court any factual evidence to enable it to assess the damage in question.

For all these reasons the claim for damages fails.

Costs

Having regard to the complexity of the questions concerning the admissibility of the applications made against Decision No 7/63, the Court, having regard to the first paragraph of Article 69 (3) of the Rules of Procedure, adjudges that each party shall bear its own costs.

On these grounds,

Upon reading the pleadings;
Upon reading the report of the Judge-Rapporteur;
Upon hearing the parties;
Upon hearing the opinion of the Advocate-General;
Having regard to Articles 14, 15, the first and second paragraphs of Article 33 and to Article 40 of the Treaty establishing the European Coal and Steel Community;
Having regard to the Protocol on the Statute of the Court of Justice annexed to the Treaty establishing the European Coal and Steel Community;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities, especially the first paragraph of Article 69 (3),

THE COURT

hereby:

1. **Dismisses the applications as inadmissible to the extent to which they seek the annulment of Decision No 7/63 and of the letters of 8 April 1963;**

2. **Dismisses the applications as unfounded to the extent to which they seek payment of damages;**

3. **Orders each party to bear its own costs.**

Donner Hammes Trabucchi
Delvaux Rossi Lecourt Strauß

Delivered in open court in Luxembourg on 9 June 1964.

A. Van Houtte — A. M. Donner
Registrar — President