JUDGMENT OF THE COURT
12 JULY 1962[1]

Louis Worms v High Authority of the European Coal and Steel Community[2]

Case 18/60

1. *Equalization scheme — Imported Ferrous Scrap Equalization fund (OCCF) — Activities of that agency — Liability of the High Authority*
(ECSC Treaty, Article 53)

2. *Competition — Prohibited practices — Boycotting — Powers of intervention of the High Authority*
(ECSC Treaty, Article 65)

1. Only in cases where the OCCF's actions concern the functioning of the equalization scheme, and thus are in the nature of an official duty, can they be considered directly to give rise to the liability of the High Authority.

2. Article 65 (1) and (5) of the ECSC Treaty, prohibiting concerted practices tending to distort normal competition within the Common Market, enables the High Authority to intervene against the originators of a boycott which displays this feature.

In Case 18/60

LOUIS WORMS, residing at The Hague, assisted by J. L. Janssen van Raay, avocat-avoué, of Rotterdam, with an address for service in Luxembourg at the Chambers of Robert Krieps, 12 Avenue Marie-Thérèse,

applicant,

v

HIGH AUTHORITY OF THE EUROPEAN COAL AND STEEL COMMUNITY, represented by its Legal Adviser, B. van der Esch, acting as Agent, assisted by C. R. C. Wijckerheld Bisdom, advocate of the Hoge Raad der Nederlanden, with an address for service in Luxembourg at its offices, 2 Place de Metz,

defendant,

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

Application under Article 40 of the ECSC Treaty for reparation for injury suffered by the applicant caused by a wrongful act or omission on the part of the Community in the application of the said Treaty,

THE COURT

composed of: A. M. Donner, President, O. Riese and R. Rossi (Presidents of Chambers), L. Delvaux (Rapporteur) and A. Trabucchi, Judges,

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

gives the following

JUDGMENT

Issues of fact and of law

I — Conclusions of the parties

The *applicant* claims that the Court should:

1. 'Declare that it has jurisdiction in this matter and that it will entertain the application;
2. Rule that the applicant has suffered injury as a result of a wrongful act or omission on the part of the Community in the application of the Treaty establishing the ECSC;
3. Appoint one or more experts to prepare a report on the damage suffered by the applicant;
4. Award the applicant damages against the Community, the amount of which the Court should settle at a reasonable sum after hearing the experts' report;
5. Order the High Authority to pay the costs, including those incurred in connexion with the application for legal aid.'

The *defendant* contends that the Court should:

1. 'Declare that it does not have jurisdiction to hear the action which has been brought or, alternatively, declare it to be inadmissible or, alternatively, dismiss it as being unfounded;
2. Order the applicant to pay the costs.'

II — Summary of the facts

The principal facts alleged by the applicant in support of his claims may by summarized as follows:
The applicant had been a buyer and seller of ferrous scrap in the Benelux countries on behalf of the German Company Hansa-Rohstoff-Verwertung GmbH., since 1 January 1956. In 1957, he informed his principals that certain ferrous scrap dealings were covered by fraudulent certificates issued by an official of the Dutch Ministry of Economic Affairs. After exposing this fraud to the Ministry itself on 28 November

1957, the applicant found that his contract with Hansa was terminated by a letter dated 29 November 1957.

The applicant subsequently made several attempts to find other agencies as a scrap dealer, applying, but without success, to one of the directors of the Dutch iron and steel undertaking Hoogovens, who was at the same time President of the Caisse de péréquation (Equalization Fund) and of the Office commun des consommateurs de ferraille (OCCF), as well as of the Dutch regional office of the OCCF.

In a letter of 10 January 1958, the applicant asked the OCCF whether he could in any way be admitted into the circle of ferrous scrap dealers. The agency replied on 13 January 1958 that it would decide on his case after it had investigated his dispute with Hansa. A further letter from the applicant, dated 26 February 1958, repeating his request, received no reply and further offers to the OCCF dated 17 March, 31 March and 12 May 1958 were refused in replies dated 18 March, 2 April and 13 May 1958 respectively.

On 11 July 1958 the applicant made a fresh offer and for the first time it appeared that the OCCF was willing to take action, but once again nothing resulted from it. The applicant concluded from this last failure that the policy of the OCCF consisted solely of showing itself willing to deal with him and then finding an excuse to avoid the transaction.

Finally, a letter from Hoogovens of 16 July 1958, signed by Mr Bentz van den Berg, disclosed that the writer had, until that moment, been under the impression that 'Luxembourg' would have objections to the OCCF's dealing with the applicant, but in fact he now understood from a telephone conversation with Mr Spierenburg 'that this was not and never had been the case'. The applicant considers that this letter provides proof that the OCCF's refusal to deal with him was based on the opinion (unfounded, as it subsequently appeared) that the High Authority would have such objections.

In support of his argument that the boycott of which he had been the victim would not have succeeded if the High Authority had intervened seriously in the case of the ferrous scrap frauds, the applicant relies chiefly on the fact that the request for authorization of certain agreements made on 26 April 1954 by Dutch ferrous scrap dealers had not been rejected by the High Authority until 2 June 1960.

The *defendant* disputes these allegations in part or, alternatively, considers that they are irrelevant to the present dispute. The application was made on 1 July 1961.

III — Submissions and arguments of the parties

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

A — *Brief outline of the submissions*

1. The *applicant* makes three claims:

(1) The High Authority failed to use its power over the OCCF to ensure that Mr Worms could carry on business;

(2) It failed to intervene to break the boycott of the Dutch ferrous scrap dealers against Mr Worms;

(3) It failed to act in a determined manner to end acts of fraud in scrap-dealing and to proceed against those responsible.

According to the applicant, these facts constitute wrongful acts or omissions on the part of the High Authority in two respects.

First, these facts constitute illegal acts committed against him by the OCCF and give rise to the liability of the High Authority because they involve the functioning of the equalization scheme and because the Brussels agencies must

be considered as being organs of the High Authority.
Secondly, the facts complained of constitute a wrongful act or omission on the part of the Community with regard to Mr Worms, quite apart from the actions of the OCCF, in so far as the High Authority itself has not complied with its obligations and has failed in its duty as a public authority.

2. According to the applicant, the *injury* which he has suffered comprises:

(1) The loss of the ship-breakers' yard at Dordrecht and of the sales office in Rotterdam;

(2) Loss of earnings as a scrap-dealer and as a ship-breaker;

(3) Expected profits from transactions entered into and not concluded as a result of the boycott.

Having regard to its nature, this damage must be estimated *ex aequo et bono* and the applicant requests that its amount be fixed by experts.

3. The applicant offers *to prove* his assertions by examination of witnesses. Further, the applicant requests the Court 'to order the production of all letters, memoranda, notes, telegrams or internal instructions of the OCCF, the CPFI or the regional offices, which relate to Worms, including those emanating from Mr Bentz van den Berg, in whatever capacity'.

B — *As to admissibility*

1. On the admissibility of the first submission: the boycott of Worms by the OCCF.

The *defendant* disputes the admissibility of this submission in the two respects envisaged by the applicant, that is to say, the alleged wrongful act or omission attributed to the High Authority by reason of the fact that the OCCF is an organ of the High Authority and of the wrongful act or omission on the part of the High Authority itself which has failed in its duties as a public authority.

(a) *Liability of the High Authority arising from the fact that the OCCF is one of its organs*

The *defendant* states that, at the time when the facts forming the subject-matter of the dispute took place, the equalization system was regulated by Decision No 2/57 of 26 January 1957, Article 11 of which delegates to the OCCF the power to make proposals to the Caisse de péréquation des ferrailles importées, in particular on the tonnages to be assessed for equalization and the equalization price. The question of the legality of such delegation was settled by the Court in its judgment in Joined Cases 9 and 10/56 (Meroni, Rec. 1958, pp. 42 to 48). But in this case the question is not whether the OCCF must be considered as an organ of the High Authority when it exercises the powers delegated by the latter. In fact, although the High Authority has empowered the OCCF to negotiate the purchase of ferrous scrap on behalf of the industry in general and, subject to certain conditions, to conclude contracts of purchase and charter-parties direct, there is no question thereby of any delegation of power by the High Authority. In fact, the High Authority itself does not in any event have the power to purchase ferrous scrap; such purchases are made exclusively on behalf of and at the risk of the consumer industry. The OCCF is not therefore an organ of the High Authority when it purchases ferrous scrap. This activity is outside the competence of the High Authority which is unable to delegate a power which it does not itself possess. In accordance with the principle set out above, the representative of the High Authority at the OCCF did not therefore have the power to interfere in the decisions of a commercial nature taken by that agency. The defendant contends therefore that the alleged irregular acts committed by the OCCF in the sphere of scrap purchases cannot

involve the liability of the High Authority and that the Court must declare that it does not have jurisdiction in respect of this submission or at least rule it to be inadmissible. It adds that, although it might require of the OCCF, as of any other legal person governed by the Treaty, the agency should carry out its task properly and refrain from illegal discrimination, which moreover the OCCF has not failed to do, this power does not imply that the OCCF has in this affair been an organ of the High Authority capable of involving the liability of the latter under the terms of Article 40 of the Treaty.

The defendant further contends that the injury alleged by the applicant had already occurred even before he had come into contact with the OCCF. The defendant states in fact that it emerges from the letters sent by Mr Worms to the OCCF on 10 January 1958 and to the High Authority on 4 March 1958 that the applicant considered that he had already been ruined by the actions of Hansa-Rohstoff-Verwertung GmbH., even before the alleged boycott by the OCCF could have made itself felt.

(b) *Liability of the High Authority arising from its obligations as a public authority*

The *defendant* contends that the arguments adduced under point (a) above indicate that the facts disclosed are also incapable of constituting a direct wrongful act or omission on the part of the High Authority, since it remained entirely apart from everything relating to the commercial aspect of the OCCF's activities. Article 8 of the Treaty imposes on the High Authority the duty to ensure that the objectives set out in the Treaty are attained, but these objectives do not include a guarantee to traders for the disposal of their goods. The defendant contends that in this respect the submission is inadmissible.

In response to the arguments under points (a) and (b) above, the *applicant* states that the High Authority certainly did involve itself in the commercial affairs of the OCCF. This emerges from the letter of 14 November 1955 sent by the OCCF to the Luria Brothers group and from letters sent by the High Authority to Worms dated 20 August, 22 and 29 September 1958.

The applicant claims therefore that the High Authority's argument cannot be maintained and that the resultant deductions must be rejected.

2. On the admissibility of the second submission: the boycott of Worms by the Dutch scrap-dealers

The *defendant* disputes the admissibility of this submission, by reason of the fact that it is not supported by a single properly established fact.

The failure to intervene to break the alleged boycott by the Dutch traders cannot be an act or an omission of the OCCF because that agency had no opportunity of intervening in the matter. Moreover, the application does not cite any concrete fact in support of this allegation: it does not specify the period or nature of the boycott or the measures which the High Authority should have taken. Further, the applicant provides no proof that, at the time, the High Authority was aware of the alleged boycott or that it had an opportunity of acting. One cannot mitigate the absence of facts by relying on 'common knowledge' or press reports.

The defendant contends that the condition laid down by Article 38 (1) (c) of the Rules of Procedure for the proper form of the application, that is to say, a brief statement of the grounds on which the application is based, has not been fulfilled and that the second ground of the application must be considered as inadmissible from the outset or, at least, as being unfounded.

The *applicant* replies that his exposure of the ferrous scrap frauds to the Dutch authorities on 28 November 1957 led

to a systematic boycott by the scrap-dealers, a small, privileged group of which supply the Dutch consumers. From an economic point of view, all other scrap-dealers are entirely dependent on this privileged group. This situation is common knowledge in the Netherlands and is denounced regularly in the press. An article in the 'Algemeen Handelsblad' of 28 September 1961 reports that in the course of an action for libel brought against Mr Worms the Officier van justitie of The Hague condemned those manoeuvres saying, 'as a result of performing his civic duty, Worms has been the victim of a shameful boycott'. The refusal of the High Authority to intervene in the matter strengthened the immunity of the cartel of ferrous scrap suppliers, whereas a positive attitude on its part would have encouraged the dealers favourable to Mr Worms to resume business relations with him.

Furthermore, this cartel of Dutch scrap-dealers requested from the High Authority on 26 April 1954 the authorization provided for in Article 65 (2) of the Treaty, and this request was refused only on 2 June 1960. From this the applicant deduces that if the High Authority had exercised due diligence and if, as a consequence, the cartel had ceased to exist at the time when the facts in dispute occurred, Mr Worms would have been able more easily to establish normal business relations with buyers of ferrous scrap.

3. On the admissibility of the third submission: the failure of the High Authority to act in the affair of the ferrous scrap frauds

The *defendant* points out that all factual definition of the act or omission of which the High Authority is accused in this matter is lacking. The opinion of the members of the 'Comité contre les fraudes de ferrailles' (Committee for the suppression of ferrous scrap frauds) is clearly insufficient in this respect. The applicant's statement of the grounds on which his application is based fails to establish any relationship of cause and effect between, on the one hand, the action of the High Authority in the ferrous scrap fraud and, on the other hand, the injury which Mr Worms claims to have suffered.

The defendant contends therefore that the third submission must be considered as inadmissible from the outset or, at least, as being unfounded.

The *applicant* replies that he is not alone in complaining of the High Authority's dilatoriness in suppressing the acts of fraud in ferrous scrap. The Comité contre les fraudes de ferrailles issued a public statement in the Netherlands on 30 March 1961 and published a report on 5 May 1961. The High Authority's inquiry was opened so late and was so incomplete that there could no longer be any question of good faith. Mr Worms refers in this respect to the Report of the High Authority of 8 April 1961.

C — *On the substance of the case*

1. Whether the first submission — the boycott of Worms by the OCCF — is well founded

The *applicant* claims that the High Authority failed to exercise its powers over the OCCF to ensure that he could carry on business.

His principal arguments have been summarized above (See Summary of the facts, II, and Admissibility, III, B, 1).

In order to establish the existence of an illegal act by the OCCF in its refusal to do business with Mr Worms, the applicant 'requests the Court to order the production of all letters, memoranda, notes, telegrams or internal instructions of the OCCF, the CPFI or the regional offices, which relate to Worms, including those emanating from Mr Bentz van den Berg, in whatever capacity'.

The applicant submits that the CPFI should be included in the investigations

because of the relationship existing between it and the OCCF.
As an annex to his reply, the applicant produced a report from the American anti-trust authorities on the Luria Brothers group with the aim of 'spotlighting the illegal practices of the OCCF which was not afraid to give scandalous preference without commercial justification to a group of American scrap-dealers'. According to the applicant, this report constitutes an additional justification for the necessity to require production of the documents as requested.
The applicant observes that the manner in which he made his offers to the OCCF was in no way unusual. If in fact they were required to contain specifications as to price, which is denied, the OCCF should have informed him of this. Furthermore, the OCCF's manner of doing business with the American continent, without going through European intermediaries, has no legal justification. Moreover the report of the American authorities quoted above justifies the suspicion that there were illegal reasons for preferring to deal with the American group, Luria Brothers.
The *defendant* replies first with the arguments summarized above (see Admissibility, III, B, 1).
With regard to the applicant's request for the Court to order the production of certain documents, the defendant observes that the documents referred to cover too wide a field and that, if the Court were to accede to this request, the documents to be produced must be specified more precisely. Furthermore, the defendant states that Mr Worms requests that documents belonging to private persons or institutions not parties to the proceedings should be added to the file. Moreover, there would be valid objections on the part of the administration to the production of documents of an internal nature. The defendant notes finally that the OCCF produced all documents relating to its dispute with the applicant, at the time of Application 35/58 made by Mr Worms on 17 July 1958.
On the subject of the document concerning the American Company Luria Brothers referred to by the applicant in his reply, the defendant notes that the applicant's comments on that document bear no relation to the present dispute.
As to the objective value of the offers made by Mr Worms to the OCCF, the defendant asserts that the applicant must prove, or establish as probable, that those offers were rejected for other than commercial reasons. An offer normally indicates the price and gives a specification of the products and if the OCCF did not point out these omissions to Mr Worms it was because his offers were already unacceptable for other reasons.
The fact that the OCCF did not use European intermediaries in its dealings with the American continent cannot constitute discrimination against Mr Worms, since the OCCF was conforming to its normal practice; in March and May 1958 other European dealers offered lots of ferrous scrap plainly identical to those offered by Worms and they also met with a direct refusal.

2. Whether the second submission — the boycott of Worms by the Dutch scrap-dealers — is well founded

The *applicant* claims that the High Authority did not intervene to break the boycott against him by the Dutch scrap-dealers.
His principal arguments are summarized above (See II, Summary of the facts, and Admissibility, III, B, 2).
The *defendant* replies first with the arguments summarized above (See Admissibility III, B, 2).
It adds that in 1959 Mr Worms obtained an export licence for a consignment to Japan of 10 000 metric tons of ferrous scrap which he had bought in Germany and the Netherlands. He had no reason

at that time therefore to complain of a boycott by scrap-dealers.
It was only by a letter of 21 June 1960 that Mr Worms complained to the High Authority of a boycott by the Dutch scrap-dealers. He had contacted by circular 150 dealers who showed little enthusiasm for doing business with him. It emerges from an inquiry carried out by the High Authority that these dealers acted for reasons generally in accordance with commercial practice and that there was no agreement relating to a boycott or a concerted practice within the meaning of Article 65 of the Treaty.

3. Whether the third submission — the failure of the High Authority to act in the affair of the ferrous scrap frauds — is well founded

The *applicant* claims that the High Authority failed to act in a determined manner to end acts of fraud in scrap-dealing and to proceed against those responsible.
His principal arguments are summarized above (see II, Summary of the facts, and Admissibility, III, B, 3).
The *defendant* replies first with the arguments summarized above (see Admissibility, III, B, 3).
In order to justify its course of action in the affair of the ferrous scrap frauds, the High Authority refers to the Report which it presented to the European Parliamentary Assembly (Report on the High Authority's course of action in checking the origin of ferrous scrap accepted for equalization by the CPFI — special schedule to the 'Ninth General Report', April 1961).

IV — Procedure

The procedure followed the normal course.
On 24 October 1960 the applicant lodged an application for legal aid at the Court Registry.
The first Chamber of the Court granted this application by Order dated 24 January 1961.
At the hearing on 19 January 1962 the Court, after hearing the report of the Judge-Rapporteur and the opinion of the Advocate-General, requested the parties to furnish certain information and to produce certain documents.
The replies to those questions were lodged on 8 February 1962 by the defendant and on 30 March 1962 by the applicant.

Grounds of judgment

The applicant invokes Article 40 of the Treaty establishing the ECSC to obtain reparation for the injury he has suffered as a result of a wrongful act or omission on the part of the Community in the application of the Treaty and bases his application on the following three submissions:

1. The High Authority failed to exercise its powers over the Office commun des consommateurs de feraillle (OCCF) to compel the latter to ensure that the applicant could carry on his trade as a scrap-dealer. The High Authority is liable for the damage arising from this omission by the OCCF because it concerned the functioning of the equalization scheme, a sphere in which that agency (OCCF) must be considered as an organ of the High Authority. Furthermore, the latter is responsible for the situation because it failed in its duty as a public authority to comply with its obligations.

2. The High Authority failed to intervene to break up the boycott which the applicant suffered at the hands of both the Dutch scrap-dealers and the OCCF.

3. The High Authority failed to act in a determined manner to end acts of fraud in scrap-dealing and to proceed against those responsible.

A — As to admissibility

The defendant contests the admissibility of the three submissions relied on:

1. With regard to the first submission, the defendant states that under the terms of Decision 2/57 (Official Journal of 28 January 1957) the OCCF is not an organ of the High Authority when it buys ferrous scrap and that the alleged irregularities committed in this respect by the OCCF cannot give rise to liability on the part of the defendant.

This line of argument deals with the question whether the existence of a wrongful act or omission on the part of the Community (a condition precedent for an application based on Article 40 of the Treaty) is not precluded in this case on the ground that certain acts of the OCCF fall outside the framework of the Community's activities. This is a question concerning the merits of this submission and not its admissibility.

2. With regard to the second submission, the defendant refers to the fact that the application specifies neither the period nor the nature of the alleged boycott, nor the steps which the High Authority should have taken, and therefore the brief statement of the grounds on which the application is based, as required by Article 38 (1) (c) of the Rules of Procedure, is defective.

In his application the applicant has stated clearly the submission relating to the boycott. He has subsequently completed and amplified this submission during the proceedings. The defendant's objection cannot be sustained.

3. With regard to the third submission, the defendant emphasizes that there is no relationship of cause and effect between the steps taken by the High Authority in the suppression of the scrap frauds and the injury alleged by the applicant.

This argument of the defendant, which deals with the remoteness of causation between the alleged wrongful act or omission and the injury suffered, is a question of substance and not of admissibility.

For these reasons, the preliminary objections of inadmissibility raised by the defendant must be dismissed. Furthermore no objection can be raised by the Court of its own motion against the admissibility of the application.

The application is therefore admissible.

B — On the substance of the case

I. (a) It must first be considered whether the High Authority is liable for the wrongful act or omission that the OCCF is alleged to have committed by refusing to consider the applicant's offers to sell ferrous scrap.

According to Articles 11 and 12 of Decision 2/57 of the High Authority, the Caisse de péréquation des ferrailles importées is the executive organ of the financial arrangements and is alone competent to make decisions to ensure the functioning of those arrangements. In this field the OCCF can only make proposals to it. The powers belonging to the OCCF are of a commercial nature and consist in negotiating purchases of ferrous scrap on joint account and in concluding direct contracts for the purchase of ferrous scrap on behalf of consumers subsequently to be designated.

Consequently the activities at issue here bear the characteristics of private law as is shown by the general scheme of the above-mentioned Decision.

A contrario it appears from Article 15 (2) thereof that the right reserved to the High Authority to make decisions itself in certain cases does not exist with regard to the activities which are the subject of this application, and which are provided for in Article 11 (2) and (3).

When carrying on its strictly commercial activities, the OCCF, a Belgian company under private law, is governed by national law. It is only in cases where the OCCF's acts concern the functioning of the equalization scheme, and on that account have the character of a public duty, that they can be considered as directly giving rise to the liability of the High Authority.

There is no doubt in this case that the offers to sell ferrous scrap made by the applicant to the OCCF had an exclusively commercial character and, in law, were no different from those made by him to the undertakings using scrap.

Furthermore, it appears from the documents produced by the applicant that he made three offers to sell ferrous scrap to the OCCF by letters dated respectively 17 March, 31 March and 12 May 1958. The first two offers

contained no indication of price and were imprecisely drafted, as the Court was able to establish by comparing the applicant's offers with other offers from third parties to the OCCF, so that the OCCF's refusal to accept the applicant's offers cannot be considered to be discriminatory.

Although the offer of 12 May 1958 was drawn up in greater detail, the OCCF's refusal to accept it equally cannot be considered to be discriminatory with regard to the applicant because, as the defendant asserted — and the applicant has not denied —, an identical offer, made by a third party to the OCCF on 1 May of the same year and obviously referring to the same batch of ferrous scrap, had been refused in similar terms.

Consequently the above-mentioned facts were not of such a nature as to require the High Authority to intervene with the OCCF.

(b) The applicant maintains that the High Authority, acting as a public authority, had a duty to exercise its powers over the OCCF in order to get that agency to enter into business relations with him. This allegation must be dismissed. In fact, the OCCF's choice of sellers with whom it negotiates the purchase of ferrous scrap is an activity governed by private law in which the High Authority has no power to interfere.

II. (a) The applicant alleges that the High Authority was guilty of a wrongful act or omission in refraining from intervening to break the boycott set up against him by both the OCCF and the scrap-dealers.

It is generally admitted that a boycott constitutes an illegal act when the end in view or the means used are unlawful or contrary to morality, for example, when such schemes tend to satisfy a desire for revenge or a feeling of jealousy without being of any use to their originators, or when there exists an obvious disproportion between the advantage sought and the injury suffered by the victim.

However, it must be considered whether the Treaty establishing the ECSC gives the defendant the power to act against the boycott from which the applicant claims to have suffered. Article 65 (1) and (5) of the Treaty, which prohibits concerted practices tending to distort normal competition within the Common Market, enables the High Authority to intervene against the originators of a boycott which presents this feature. In this case, however, the applicant has failed to show that the boycott which he alleges he has suffered had the effect of preventing, restricting or distorting normal competition within the Common Market, within the meaning of Article 65 of the ECSC Treaty.

The High Authority did not have the necessary powers to take steps against the boycott alleged and described by the applicant. Therefore the facts alleged do not fall within the competence of the High Authority.

(b) The applicant complains that the High Authority waited six years before, on 2 June 1960, it refused a request for authorization made on 26 April 1954, in pursuance of Article 65 (2) of the Treaty, by the cartel of scrap dealers recognized by the Dutch iron and steel works as direct suppliers. The injury suffered by the applicant lies in the fact that, if the High Authority had been more diligent, the said cartel would have ceased to exist at the time when the scrap frauds occurred and thus the applicant could more easily have established business relations with the purchasers of scrap.

This argument must be dismissed. Indeed, the possible negligence of the High Authority in examining the request for authorization of the above-mentioned cartel could have caused the applicant only indirect damage which in other respects is not sufficiently proved in law.

III. The applicant alleges that the High Authority failed to act in a determined manner to end the acts of fraud in scrap-dealing and to proceed against those responsible.

The applicant has failed to produce proof that he has suffered direct injury as a result of an alleged omission on the part of the High Authority in this respect. On the contrary, it appears from the documents which he has produced that he considered he had already been ruined by the begining of 1958, after the loss of his position as Hansa's representative. His allegations thus amount to asserting that he could have found himself a new means of livelihood if the High Authority had intervened more energetically over the question of the scrap frauds.

The applicant has not produced any proof of the existence of a link of causation between the injury which he claims to have suffered and the lack of energy on the part of the High Authority in the suppression of the scrap frauds. This argument must be dismissed and the application must therefore be declared to be unfounded.

C — Costs

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

As the applicant has failed in all his submissions, he must bear the costs, including those in connexion with the application for legal aid.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the parties;
Upon hearing the opinion of the Advocate-General;
Having regard to Articles 40, 53 and 65 of the Treaty establishing the European Coal and Steel Community;
Having regard to the Protocol on the Statute of the Court of Justice of the European Coal and Steel Community;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities;

THE COURT

hereby:

1. **Dismisses the application made by Louis Worms against the High Authority to obtain reparation for the injury he claims to have suffered as a result of the wrongful act or omission on the part of the Community in the application of the Treaty establishing the ECSC;**

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

Donner Riese Rossi

Delvaux Trabucchi

Delivered in open court in Luxembourg on 12 July 1962.

A. Van Houtte
Registrar

A. M. Donner
President