decision is based and the conclusions drawn by the High Authority in its subsequent evaluation of the situation
(Treaty, Article 61).

5. *Applications for annulment*

(a) Examination of the evaluation of the situation based on the facts and economic circumstances — Conditions

A study of the market taking account of factors relating to the market structure and economic trends would constitute an evaluation within the meaning of the second sentence of the first paragraph of Article 33. The examination by the Court extends to the evaluation of the situation resulting from the economic facts and circumstances if the objection is supported by appropriate evidence. The mere assertion of a manifest failure to observe the Treaty is not sufficient to open the way to examination by the Court; on the other hand Article 33 does not require proof to be given in advance which would immediately entail the annulment of the decision
(Treaty, second sentence of the first paragraph of Article 33).

(b) Manifest failure to observe the Treaty — Concept

The term 'manifest' presupposes that a certain degree is reached in the failure to observe the legal provisions so that the failure to observe the Treaty appears to derive from an obvious error in the evaluation, having regard to the provisions of the Treaty, of the situation in respect of which the decision was taken. In the case of subparagraph (a) of the first paragraph of Article 61 the manifest failure to observe the Treaty can only result from the finding by the Court of the existence of an economic situation which, prima facie, *reveals no necessity for the contested measure in the pursuit of the objectives set out in Article 3 of the Treaty, in particular paragraph (c).*
(Treaty, second sentence of the first paragraph of Article 33).

6. *Misuse of powers — Proof*

Proof of the motives for the contested decision such as to establish misuse of powers may be evident either from the preparations, including the deliberations of the Consultative Committee and of the Council of Ministers, or else from the incompatibility of the contested decision with the avowed and evident aims of the decision
(Treaty, first paragraph of Article 33).

In the Case:

GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS with an address for service at the Netherlands Legation in Luxembourg, represented by J. H. M. Verzijl, Professor at the State University in Utrecht, G. M. Verrijn Stuart, Professor at the University of the City of Amsterdam, acting as Agents,

applicant,

v

THE HIGH AUTHORITY OF THE EUROPEAN COAL AND STEEL COMMUNITY, with an

address for service at its offices, 2 Place de Metz, Luxembourg, represented by its Legal Adviser, Doctor Walter Much, acting as Agent, assisted by Georges Van Hecke, Advocate of the Cour d'Appel, Brussels, Professor at the University of Louvain,

defendant,

Application for the annulment of Decisions Nos 18/54, 19/54 and 20/54 of the High Authority dated 20 March 1954,

THE COURT,

composed of: Massimo Pilotti, President, P. J. S. Serrarens and Ch. L. Hammes (Presidents of Chambers), O. Riese, L. Delvaux, J. Rueff and A. van Kleffens, Judges,

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

gives the following

JUDGMENT

The procedure and the conclusions of the parties

The course of the procedure was as follows:

1. By application lodged at the Court Registry on 7 May 1954 at the suit of its Envoy Extraordinary and Minister Plenipotentiary in Luxembourg, the Government of the Kingdom of the Netherlands, with an address for service at the seat of its Legation in Luxembourg, seeks the annulment of three decisions of the High Authority dated 20 March 1954 and published in the Journal Officiel de la Communauté (pp. 267 et seq.) under Nos 18/54, 19/54 and 20/54 claiming that the Court should:

'Annul the decisions of the High Authority dated 20 March 1954, No 18/54 concerning the principles governing the fixing of maximum prices for sales of coal within the Common Market by undertakings in the Ruhr coalfield and the Nord and Pas-de-Calais coalfield, No 19/54 concerning the establishment of price lists for undertakings in the Ruhr coalfield and No 20/54 concerning the establishment of price lists for undertakings in the Nord and Pas-de-Calais coalfield'.

Pursuant to two authorizations signed by the Ministers for Foreign Affairs and for Economic Affairs and lodged at the Registry on 23 August 1954, the Government of the Netherlands appointed as its Agents Professor Dr J. H. W. Verzijl of The Hague and Professor Dr G. M. Verrijn Stuart of Amsterdam.

2. The High Authority with an address for service at its offices, 2 Place de Metz, Luxembourg, in accordance with an order given at its request extending the time-limit for lodging its pleadings, lodged its defence on 30 June 1954 within the prescribed pe-

riod contending that the Court should:

'Reject as being without foundation the application of the Government of the Kingdom of the Netherlands of 7 May 1954 with all the legal consequences and order the applicant to bear the costs'.

By an authority to act signed by Jean Monnet, President of the High Authority and lodged at the Registry on 3 June 1954, Dr Walter Much was appointed Agent of the defendant and by a power signed by Franz Etzel, Vice-President of the High Authority and lodged at the Registry on 30 June 1954, Professor G. van Hecke, Advocate of the Bar of the Cour d'Appel of Brussels, was appointed Counsel in order to assist the abovementioned Agent of the High Authority.

3. On 31 August 1954 the applicant lodged its reply within the time-limit fixed by order of the President of the Court of 1 July 1954 and reaffirmed the claims set out in its application.

4. The rejoinder was lodged on 15 October 1954, within the time-limit laid down for the defendant by order of the judge acting as President of 31 August 1954 and the defendant reaffirmed its prior contentions.

5. The case having been placed on the roll of the Second Chamber the preliminary report provided for in the second paragraph of Article 34 of the Rules of Procedure of the Court was lodged on 7 November 1954 by Judge Hammes, the Rapporteur appointed by the President of the Court by letter of 15 October 1954.

6. The report recommended an inquiry to obtain the production of documents and the verification of the facts alleged by the parties and the fixing of a date for the commencement of such measures.

7. By order of the Chamber of 1 December 1954, after it had heard the Advocate General and reserved the possibility of other preparatory measures, the parties were required to supply before 13 December information and all the relevant documents on questions specified in greater detail in that decision.

By order of 10 December 1954 the time-limit was extended to 16 December 1954 at the request of the High Authority.

8. These requirements having been satisfied by the parties, the Advocate General having been heard, the Chamber, by order of 21 December 1954, in conformity with Article 45 (1) of the Rules of Procedure of the Court declared the inquiry closed.

By the same decision the defendant was required to submit by 24 December at the latest in addition to the documents it had already lodged further documents specified in greater detail in the order.

At the same time the parties were ordered to present their final written conclusions by 11 January 1955 at the latest.

The parties met these requirements within the specified time-limits.

9. In accordance with Article 45 (2) of the Rules of Procedure of the Court the file was passed to the Advocate General and subsequently to the President of the Court who fixed the date for the oral proceedings as the hearing of the Court on 1 February 1955.

All the written pleadings and the supporting documents were lodged and registered at the Court Registry.

They were notified to interested parties by the Registrar.

The course of the oral procedure was as follows:

(1) The public hearings were held on 1, 2 and 4 February 1955.

(2) At the commencement of the hearings the Judge-Rapporteur, in conformity with Article 21 of the Protocol on the Statute of the Court of Justice, read his report.

Represented by their agents and counsel

the parties submitted their pleadings, the reply and rejoinder.

In the course of the hearing the President asked the parties the questions set out in the minutes of the hearing 'without prejudice to any question of admissibility or substance'.

In accordance with Articles 11 and 21 of the Protocol on the Statute of the Court of Justice the Advocate General delivered his opinion to the effect that the application should be dismissed.

(3) The hearings were declared closed by the President in accordance with Article 50 (2) of the Rules of Procedure of the Court and the Court commenced its deliberations upon the case.

Facts

The following facts have given rise to the action by the applicant government:

1. The Common Market for coal, ore and scrap was opened on 10 February 1953.

2. With particular regard to coal the decisions taken by the High Authority on 12 February 1953, Nos 3/53 and 4/53 regulated the methods of price quotation, the conditions for publicizing the lists and the conditions of sale.

Those decisions are still in force; they were amplified by Decision No 30/53 of 2 May 1953, amended by Decision No 1/54 of 7 January 1954 whereby the vendor is bound by his price lists and conditions of sale save in the case of individual transactions or if identical differences apply to all comparable transactions.

3. Apart from those measures the High Authority by Decision No 6/53 of 5 March 1953 fixed the maximum prices for coal in a general recommendation which was to expire on 31 March 1954.

It laid down price limits for:

(a) certain categories of coal from a particular coalfield;
(b) certain grades from a particular coalfield;
(c) average prices for grades in each category.

The grounds for the differentiation are set out in paragraphs 3 and 4 of the preamble to the decision.

In application of those principles by its Decisions Nos 7/53 to 24/53 of 6 March 1953 the High Authority laid down the limits for prices in respect of each coalfield on the basis of its list specifically for the Ruhr coalfield by Decision No 9/53 and for the Nord and Pas-de-Calais coalfield by Decision No 13/53.

4. As those rules expired on 31 May 1954 they were replaced by new provisions dated 20 March 1954 Nos 18/54, 19/54 and 20/54 which entered into force on 1 April 1954 and expired on 31 March 1955.

It is those decisions which are contested by the application.

The amendments made to the earlier rules are as follows:

as to the undertakings affected, Decision No 6/53 on the one hand is henceforth solely applicable to the Ruhr and the Nord and Pas-de-Calais coalfields; on the other its validity has been extended to 31 March 1955;

as to its scope, the aforementioned decision was amended by the removal of the limits for average prices of grades in each category but at the same time maintained the maximum prices for different categories and specific grades of coal.

5. The new decision laying down a principle is based on Article 61 and Article 63 (2) of the Treaty.

The following are given as the grounds for it:

(a) in general terms the development of

the Common Market no longer necessitates the maintenance of the fixing of maximum prices for undertakings in all the coalfields of the Community;

(b) nevertheless in view of the present structure of the Common Market the selling agency in the Ruhr coalfield and of the Houillères du Nord et du Pas-de-Calais would in fact determine coal prices if the High Authority were to abolish all maximum prices;
furthermore, in view of the nature and the volume of production those organizations exert a decisive influence throughout the Common Market.

Such a state of affairs could have an effect on the Community contrary to the objectives referred to in Article 3 of the Treaty in particular with regard to prices, production and the employment of labour.

6. In order to attain those objectives the High Authority deemed it necessary for a limited period to adopt the measures contested by the application by rendering more flexible the methods previously used for fixing maximum prices, taking account in particular of the increase in revenue as a result of the elimination of certain special charges with effect from 1 April 1954.

Submissions of the parties

The submissions of the parties may be summarized as follows:

The applicant attacks Decision No 18/54 and the implementing Decisions Nos 19/54 and 20/54 for infringement of the Treaty, manifest failure to observe its provisions, misuse of powers and infringement of essential procedural requirements. It claims that in the given circumstances the prices should have been freed completely because maximum prices were inadmissible and futhermore were not necessary and that the market structure could not be taken into consideration in view of its illegal nature. The applicant further claims that in reality the High Authority had taken the decision in order to avoid an action against the selling agencies of the Ruhr coalfield and the Houillères du Nord et du Pas-de-Calais.
Finally the decision did not state the reasons on which it was based or at least did not do so sufficiently.
The defendant contends that the application should be dismissed as being without foundation and that the applicant should bear the costs.
It maintains that in adopting the contested decisions it acted well within the powers conferred on it by the first paragraph of Article 61; it made use of those powers within the spirit and within the system of the Treaty and had also complied with the procedural requirements set out in the Treaty.

In support of their submissions the parties put forward the following arguments:

1. *The infringement of the Treaty*

(a) In the opinion of the applicant paragraph 6 of the preamble to Decision No 18/54 infringes Articles 5 and 61 of the Treaty because the High Authority bases its argument on the possibility that one of the objectives of Article 3 might not be achieved instead of stating the need for its intervention. In particular it should have indicated the consequences which the freeing of prices would in fact have entailed and the aims which would not have been achieved in the absence of the rules. In particular it should have stated that one or more of those objectives would not in fact be achieved if maximum prices were not fixed. Without such indications it would indeed be possible for the High Authority to intervene continually in infringement of Article 5 of the Treaty.
As no price increase was to be feared the laying down of maximum prices constituted a manifest failure to observe the provisions of Article 61 of the Treaty.
The applicant further maintains that the effect of the decisions both on the controlled prices and on the free prices was insufficient to justify the affirmation that the new prices were noticeably lower than they would have been without the intervention of the High Authority.

There is no evidence whatever to support the High Authority's contention that maximum prices were fixed in order to achieve the lowest level of prices having regard to the situation of the market and that the fixing is based on the hypothesis that the prices would not have fallen substantially if they had been freed.
Furthermore, in the opinion of the applicant, prices would have fallen after a certain time even in the absence of such intervention.
Finally, the applicant states that having regard to the market situation the fixing of maximum prices was in fact harmful because in practice they became fixed prices.
In reply to these arguments the defendant states:
On the basis of its studies of the situation of the market and following discussions with producers it had reached the conclusion that if prices were freed when the earlier rules expired the prices would not have been the lowest possible as required by Article 3 (c) and consequently the fixing of maximum prices was necessary.
The defendant concedes that mere expectation of harmful effects is not sufficient to enable it to intervene. On the other hand, however, in the economic sector there is no absolute certainty. Furthermore the activities of the High Authority must in essence be of a preventive nature.
In the present instance the discussions with producers of the Ruhr coalfield had shown with a probability bordering on certainty that the reduction in prices as sought by Article 3 (c) would not take place without intervention and in any case a substantial decrease would not have occurred. Possibly the downward trend would have been felt in the long term but such had not been the case in the short term.
With regard to the Nord and Pas-de-Calais coalfield the reason for apprehension had been the artificial protection enjoyed by that coalfield. Therefore it had been necessary to fix the lowest possible prices as maximum prices.
There is no proof at all for the allegation of the applicant that prices would in any case have fallen because of the market situation; even if that was the case the fall would not have occurred immediately and the High Authority had not wished to run that risk.
(b) The applicant maintains that the High Authority infringed Article 61 in taking into account a market structure contrary to the provisions of the Treaty and thereby approving the existence of an unlawful structure.
This was inadmissible on the ground that in Articles 65 and 66 the Treaty provides measures against such an unlawful situation. The absence of such measures cannot justify the exercise of a power given for other purposes and provided for a market situation which is not vitiated by the existence of prohibited agreements.
In reply to this the defendant states that the fixing of maximum prices does not depend solely on the market situation. As the structure of the market was not contrary to the Treaty, having regard to Article 12 of the Convention on the Transitional Provisions, and as it was an incontrovertible fact the High Authority could and indeed had to take it into account in so far as the prices could be influenced by it.
The existence of monopolistic organizations gave rise to the fear that such undertakings might abuse their dominant position by preventing the establishment of as low a level of prices as possible. In the opinion of the defendant the existence of agreements and concentrations was not unlawful at the time when the decisions were taken. So long as the High Authority had not decided to refuse the authorization, the prohibition in principle set out in Article 65 of the Treaty has no effect in respect of existing organizations which have sought such authorization in acordance with Article 3 of Decision No 37/53 of 11 July 1953.

2. *The misuse of powers*

(a) For the reasons set out under (b) above the applicant argues that at the same time the High Authority had been guilty of misuse of powers: in reality it had adopted the contested decision in order to combat the activity of certain organizations which it should have done by applying not Article 61 but the methods provided by Article 65; furthermore, it was under an obliga-

tion to apply those methods in order to dissolve those organizations without delay.
In this respect the defendant states that it will certainly not fail to take steps against the organizations and dominant undertakings on the market and that, on the contrary, it has already initiated the necessary steps which, however, must only be taken with caution.
Moreover it had immediately done all that was possible to combat by a temporary measure the most dangerous effects of that situation.
The question whether the High Authority failed to take the measures which it was obliged by Articles 65 and 66 of the Treaty to take is not the subject of the present proceedings and should be the subject of proceedings for failure to act under Article 35.
In addition the defendant states that a long and difficult process of transformation and adaptation is necessary and at the present time it has no obligation to conclude it nor has there been any possibility of its doing so.

(b) The proof that the fixing of the maximum price was carried out for a purpose other than to obtain the lowest possible prices in accordance with Article 3 (c) is, in the opinion of the applicant, derived from the fact that the new maximum prices fixed are not appreciably lower than the list prices which were applied previously by producers.
The defendant state with regard to the level of the maximum prices which it has just fixed that the old and the new table of price limits are not in every way comparable; nevertheless, from that comparison and from a comparison of the old and the new lists there is evident a substantial reduction in the price of grades for which no fall in price would have occurred if the prices had been freed; in the free sector there has in certain cases even been an increase in price.

(c) If and in so far as the High Authority feared detrimental effects on production and the employment of labour this apprehension could in the opinion of the applicant only have arisen from the expectation of a considerable fall in prices; on that hypothesis, however, only the fixing of minimum prices would be required and therefore from this aspect as well the decision constitutes a misuse of powers.
In this respect the defendant has stated repeatedly that it had not and could not have counted on an immediate reduction in prices and consequently the argument of the applicant is not valid as the decision was only directly aimed at effects on prices.

3. *Infringement of essential procedural requirements*

The applicant argues that by not setting out the genuine reasons for its decision the defendant has failed to state the reasons or failed to state sufficient reasons for its decision and consequently infringed the obligation as to essential procedural requirements contained in Article 15.
In this respect the High Authority has admitted this in that in its defence submissions it gives in support of its decisions arguments which were not referred to in the reasons for that decision.
The applicant takes the view that the reasons put forward by the High Authority for the first time in its defence submissions cannot be taken into consideration.
The defendant believes that the reasons stated in the decision are sufficient both as to the form and as to the substance as they contain all the essential points.
It argues that in this respect it must be allowed to develop an appropriate method gradually.
In conformity with Article 15 it set out the facts and the provisions of the Treaty on which its action was based; it is not obliged to state the reasons for its reasons.
There can certainly not exist an infringement of an essential procedural requirement in the present case as the substance of the decision was not in any way influenced.

4. *The Court's right of investigation*

The applicant believes that the argument derived from the misuse of powers and the manifest failure to observe the Treaty is sufficient to enable the Court to examine the assessment of the facts or economic circumstances.

The defendant contests the allegation of the applicant to the effect that the Court has unlimited jurisdiction to judge the suitability of the decision as the applicant has failed to establish sufficiently a manifest failure to observe the Treaty or misuse of powers.
The right to examine the situtation resulting from the economic facts or circumstances in the light of which a decision was taken only exists in very exceptional circumstances. In the present case the applicant is challenging the High Authority's economic forecast with its own and this is not sufficient to establish manifest failure to observe the Treaty.

Law

A — The admissibility of the action

The admissibility of the action gives rise to no criticisms by the Court of its own motion and moreover has not been the subject of any objection.

B — The scope of the action

It should be emphasized that the action only relates to Decisions of the High Authority Nos 19/54 and 20/54 in so far as they constitute the implementation of the principle laid down in Decision No 18/54.

C — Infringement of essential procedural requirements

(a) The applicant first alleges that Decision No 18/54 fails to state sufficiently the reasons on which it is based because the High Authority has merely justified its measures by stating in a purely hypothetical form that the structure of the Common Market could compromise the achievement of the objectives of Article 3 of the Treaty.
Under Article 61 it should have found and stated that the necessity existed and should have specified the objective or objectives compromised if the maximum prices were to be abolished altogether.
The general provisions of Articles 5 and 15 of the Treaty oblige the High Authority to state reasons for its decisions and to make those reasons public.
However, no details are given as to the form or extent of that obligation.
Reasonably understood those requirements oblige the High Authority to mention in the reasons for its decision the essential elements of the findings of fact on which the legal justification for the measure depends.
The Treaty does not require that it should state, and still less that it should refute, the opinions expressed in this regard by consultative bodies or by certain of their members.
The measures referred to in Article 61 (a) of the Treaty can be applied if the High Authority 'finds that such a decision is necessary to attain the objectives set out in Article 3, and particularly in paragraph (c) thereof'.

The contested decision refers to and affirms this necessity and indicates that it results from the existence of certain organizations having a decisive influence on the market in such a way that all effective competition is excluded.
It expressly refers to a position which is detrimental to the achievement of the objectives of Article 3 with regard to prices, production or the employment of labour.
Although they do not state precisely which objective or objectives referred to in Article 3 are specifically envisaged the statement of the reasons on which the decision is based can be regarded in its present form as satisfying the conditions for the application of Article 61 (a).
The statement of reasons thus satisfies the requirements as to form, which are applicable.

(b) In accordance with the opinion of the Advocate General it is appropriate to examine whether the procedural requirements laid down by the Treaty for the adoption of the contested decisions were complied with.
As they were intended to ensure that the measures concerned were formulated with all due care and prudence these procedural requirements may be regarded as essential and, consequently, the question whether they have been observed must be examined by the Court.
Article 61 of the Treaty provides that the decision of the High Authority fixing maximum prices must be taken:

(1) 'On the basis of studies made jointly with undertakings and associations of undertakings, in accordance with the first paragraph of Article 46 and the third paragraph of Article 48';

(2) after consulting the Consultative Committee;

and

(3) after consulting the Council of Ministers.

It appears from the evidence submitted that the studies required by Article 61 have been carried out.
The text of the decision affirms that the consultations with the Consultative Committee and the Council were held.
That affirmation can not relieve the Court of the duty to carry out an examination with regard to the application of the above-mentioned requirements.
In the present instance the consultations referred to in the first paragraph of Article 61 related both to the appropriateness of the measures in question and to the level of prices.
Consequently in this respect no procedural requirement for the validity of the decision has been infringed.

D — Infringement of the Treaty

(a) It is necessary to examine the intrinsic legality of the decision having regard to the terms of the first paragraph of Article 61 of the Treaty which gives the High Authority the power to fix maximum prices 'for one or more of the products within its jurisdiction'.
On the one hand that text must be reconciled with Article 5 which provides for limited measures of intervention such as those in the present instance. On the other in providing for the establishment of maximum prices within the Common Market the Treaty merely distinguishes the Common Market from the external market but was not intended to prohibit a measure or measures which only affect certain sectors of the Common Market. Furthermore the measure in question indirectly affects the whole of that market.

(b) In support of the argument based on the breach of the Treaty the applicant claims that the contested decision refers to a market structure of an illegal nature. It states that the defendant is acting in infringement of the Treaty in stating as the reasons for its decision the existence of agreements and concentrations of undertakings which are expressly prohibited by Articles 65 and 66 of the Treaty. That argument would only be valid if, by virtue of the Treaty, agreements and concentrations which conflict with those articles were deprived of all legal effect. On the one hand in application of the second paragraph of Article 12 of the Convention on the Transitional Provisions the existence of agreements was provisionally authorized subject to certain conditions by Decision No 37/53 of the High Authority of 11 July 1953 with the reservation that such agreements might subsequently be prohibited. In this respect Article 12 of the aforementioned Convention provides no time-limit for the intervention of the High Authority and the latter therefore possesses a discretionary power in this respect within the limits of the transitional period.
On the other hand the applicant finds that a structure contrary to the Treaty is constituted by the fact that the Nord and Pas-de-Calais coalfield exercises a dominant influence on the French market and argues that that situation falls exclusively within the provisions of Article 66 (7).
The existence of a situation which might justify the application of the provisions of Article 66 (7) does not in itself constitute an obstacle to the exercise by the High Authority of the powers assigned to it by subparagraph (a) of the first paragraph of Article 61.
Consequently there is nothing to prevent the effects of such agreements and concentrations in so far as they affect the level of prices on the Common Market and the achievement of objectives set out in Article 3 from being opposed by the defendant with the aid of powers conferred on it by Article 61 of the Treaty.

(c) In support of the arguments based on the infringement of the Treaty the applicant objects that in its decision the High Authority relies on the general objec-

tives of the Treaty and that that general reference cannot constitute sufficient reasons because the special provisions of subparagraph (a) of the first paragraph of Article 61 refer to specific hypotheses.
That reasoning is without legal foundation. In fact Article 61 refers expressly to the objectives set out in Article 3.

(d) The applicant alleges that the contested decision is based on reasons which are wrong in substance.
The fixing of maximum prices was not necessary as, in view of the development of the market, prices already showed a downward trend and in any case maximum prices could not bring about a fall in prices but solely a price freeze.
On the other hand the developments in production and employment could only be threatened by a fall and if it were sought to counteract that danger minimum prices should have been introduced.
Having regard to those arguments a distinction should be made between the finding of facts and economic circumstances on which the decision was based and the conclusions drawn by the High Authority in its subsequent evaluation of the situation.
In the present instance the decision in fact states that in spite of the trends existing on the market and because of the market structure coal prices were determined by the selling agency of the Ruhr coalfield and by the Houillères du Nord et du Pas-de-Calais.
By documents submitted to the Court (Market Division of the High Authority of 3 and 15 February 1954, Nos 728 and 6523) the content of which is not disputed by the applicant the High Authority proved that in the German and French coalfields there was no trend towards a general reduction in prices. On the contrary producers let it be known that they intended to maintain their prices at the existing level.
More particularly after intensive discussion the representatives of the Ruhr coal producers opposed the reduction in prices and the representatives of the Houillères du Nord et du Pas-de-Calais, after looking at the possibility of an increase in prices but in the end not adopting it, declared that they wished to apply current prices with the proposed changes even if prices were freed which did not constitute an undertaking such as to remove all necessity for fixing maximum prices.
In the light of the existing situation the High Authority came to the conclusion that the fixing of maximum prices was necessary; the correctness of this conclusion is contested by the applicant which argues that in the present circumstances such a measure could not cause or set off a fall in prices but at the very most a price freeze. Thus it claims that the decision is not well founded.
The evaluation of the situation resulting from the economic facts or circumstances in the light of which the High Authority took its decisions is not subject to examination by the Court save where the High Authority is alleged to have

misused its powers or to have manifestly failed to observe provisions of the Treaty.
A study of the market taking account of factors relating to the market structure and economic trends would constitute such an examination.
It is therefore necessary to examine with regard to their general scope and their presence in this instance the two conditions which alone allow of an examination of the proper economic foundation of a decision, that is to say manifest failure to observe the provisions of the Treaty and misuse of powers.

E — Manifest failure to observe provisions of the Treaty

It should be emphasized that the objection of the manifest failure to observe the provisions of the Treaty was not raised by the applicant as a separate ground for annulment but solely with a view to having the examination by the Court extend to an assessment of the situation arising from the economic facts and circumstances in the present instance.
In this respect Article 33 does not require that the objection raised be supported by full proof in advance; this moreover would immediately entail the annulment of the decision for infringement of the Treaty.
On the other hand the mere assertion of a manifest failure to observe the Treaty is not sufficient to open the way to examination by the Court of the economic evaluation as otherwise a submission of this kind could become a mere formality.
It is necessary and it is sufficient that the objection is supported by appropriate evidence.
Such is the case in the present instance and that evidence should be examined from the point of view of manifest failure to observe the Treaty.
The term 'manifest' presupposes that a certain degree is reached in the failure to observe legal provisions so that the failure to observe the Treaty appears to derive from an obvious error in the evaluation, having regard to the provisions of the Treaty, of the situation in respect of which the decision was taken.
In the present instance the 'manifest' failure to observe the Treaty can only result from the finding by the Court of the existence of an economic situation which *prima facie* reveals no necessity for the contested measure in the pursuit of the objectives set out in Article 3 of the Treaty, in particular paragraph (c).
The statement in the contested decision that the fixing of maximum prices was necessary to serve the objectives set out in Article 3 of the Treaty for reasons relating to the market structure does not conflict *a priori* with the text or the spirit of subparagraph (a) of Article 61 which, unlike subparagraph (b) does not envisage any condition relating to the economic cycle.
The applicant's reasoning to the effect that the maximum prices in fact constitute a minimum which stabilizes and freezes prices does not *prima facie* exclude all necessity for maximum prices and consequently is not sufficient to constitute manifest failure to observe the Treaty.

It is further appropriate to examine whether the manifest lack of necessity for the measure results from the amounts of the prices fixed.
It is clear from the table drawn up by the parties together that the new figures are not identical with the old figures and that according to the defendant's contention, not contested by the applicant, the prices which were freed have shown a tendency to increase.
These findings do not therefore reveal manifest lack of necessity.
Having regard to the objectives of Article 3 of the Treaty the lack of necessity of the measure is not evident immediately from the rate of the prices fixed.
That article of the Treaty obliges the High Authority to ensure the establishment of certain economic conditions and this might justify preventive intervention even if certain reassuring declarations have been made which contain no commitment as to the extent of their validity.
In this context paragraph (c) more specifically envisages the establishment of the lowest prices but does not require an attempt to reach the absolute minimum but merely a price which, while being the lowest within the meaning of Article 3 (c), takes account of the other objectives imposed by this article on the actions of the High Authority.
In this respect as well a failure to observe the Treaty is not manifestly evident from the decision.

F — Misuse of powers

This submission seeks a ruling that in determining maximum prices on the basis of Article 61 the High Authority was not so much pursuing its declared objectives, in particular the lowering of prices, but in reality was seeking to combat agreements and concentrations of undertakings.
Consequently it had made use of the powers assigned to it by Article 61 for a purpose other than that for which they were conferred upon it.
Proof of the motives for the contested decision may be evident either from the preparations, including the deliberations of the Consultative Committee and of the Council of Ministers, or else from the fact that in view of their level relative to the prices in the lists applicable before 1 April 1954 the new prices are incompatible with the avowed and evident aims of the decision.
However, the documents submitted by the parties do not reveal any covert intent.
As to the argument derived from the fact that the new prices are identical or almost identical with the old prices the Court has already dismissed this allegation with regard to the manifest failure to observe the Treaty and in addition even freezing prices at their level at that time might not have been wholly without its use in view of the possibility of increases inherent in the market structure.

Moreover, the arguments of the High Authority clearly relate to a disquieting

situation with regard to prices and it is impossible to regard the contested decision as a measure whose aims are incompatible with the aims for which the power to establish maximum prices was conferred on the High Authority.

The misuse of powers has not been established.

Costs

Under Article 60 of the Rules of Procedure of the Court the unsuccessful party shall be ordered to pay the costs.

The applicant government should therefore be ordered to bear the costs.

Upon reading the pleadings;
Upon hearing the parties;
Upon hearing the opinion of the Advocate General which accorded with the view of the Court;
Having regard to Articles 3, 5, 33, 35, 61, 65, 66 and 84 of the Treaty and Article 12 of the Convention on the Transitional Provisions;
Having regard to the Protocol on the Statute of the Court of Justice;
Having regard to the Rules of Procedure of the Court and the rules of the Court on costs,

THE COURT

hereby:

Dismisses the application for the annulment of Decisions Nos 18/54, 19/54 and 20/54 of the High Authority dated 20 March 1954;

Orders the applicant to pay the costs.

Pilotti Serrarens Hammes

Riese Delvaux Rueff Van Kleffens

Delivered in open court in Luxembourg on 21 March 1955.

M. Pilotti
President

Ch. L. Hammes
Judge-Rapporteur

A. Van Houtte
Registrar