from consideration of this procedural question. As the Netherlands Government was entitled to assume, the use of the procedure in Article 88, in particular the adoption of a decision recording an infringement of the Treaty, was thus avoided.

4. Infringement of the right to be heard

As far as the Netherlands Government was concerned, there was no question of considering or criticizing the adoption of the other measures which were referred to in the letter of 12 August and which were the only ones repeated later in the decision of 18 February 1959; once it had made its choice there was no longer any reason for complying with the other measures.

Although, after that date, the High Authority, without getting in touch with the Governments, under pressure from one of those Governments and a private association and as the result of re-consideration on its own part, abandoned the earlier interpretation which the Netherlands Government was prepared to accept and on the basis of its new standpoint took a decision on the legal position within the meaning of Article 88, there is justification for the complaint that it failed to fulfil procedural requirements: contrary to its obligations, it neglected to give the Netherlands Government the opportunity to comment on the High Authority's new concept. However unfortunate the consequences (repetition of the procedure and loss of time) may be for the High Authority and for the Community and however formalistic this solution may appear in view of the explanations given during the proceedings, there is no other course open to the Court, as the custodian of the law and of the procedural rules, than to find that there has been this infringement.

C — Final outcome

Thus, the decision is in every respect without foundation.

There is, in consequence, no need to consider the other arguments of the parties or to decide whether the interpretation of the Treaty which the High Authority considers to be necessary is well founded. I am fully aware that this does not in any way resolve the important legal and economic question whether, in order to comply with the provisions of the Treaty on the subject of prices (Article 60 (2) (b)), the States are bound to apply tariffs to the carriage of goods by road and publish them.

If the High Authority considers that the regulations which it proposes ought to be applied, it can utilize the procedure in Article 88 in accordance with the rules to which I have referred.

Finally, I recommend that the Court should uphold the application of the Government of the Kingdom of the Netherlands, declare the High Authority's decision null and void, and order the latter to bear the costs, including the costs of the interveners.

ORDER OF THE COURT
19 FEBRUARY 1960[1]

In Case 25/59

GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS

applicant,

1 — Language of the Case: Dutch.

v

HIGH AUTHORITY OF THE EUROPEAN COAL AND STEEL COMMUNITY

defendant,

Application to intervene made on 9 November 1959 by

1. COÖPERATIEVE VERVOERSONDERNEMING INTERLIMBURG CA, Venlo, represented by its board, composed of F.G. van der Ven, President, G.W. Helmes, Vice-President and F. Faessen, Member,

2. REINHOLD COUMANS, proprietor of R. Coumans' Transportbedrijf, Geleen,

3. VENNOOTSCHAP ONDER FIRMA M. OVERDORP EN ZOON, Velsen-IJmuiden O., represented by its managers, Machiel Overdorp and Leendert Overdorp,

4. ROTTERDAMSCHE DROOGDOKMAATSCHAPPIJ NV, Rotterdam, represented by its director, Kornelis van der Pols,

5. VERENIGING VAN METAAL-INDUSTRIEËN, The Hague, represented by its General President, Dr J.C. Hooykaas, and its Secretary, M. Heinsius,

all with an address for service in Luxembourg at the Chambers of Jacques Loesch, 9, avenue de la Liberté,

and assisted by G. de Grooth, Buitengewoon Hoogleraar at the State University of Leyden,

Having regard to the letter of 24 November 1959 in which the applicant in the main action stated that it had no observations to submit regarding the application to intervene;

Having regard to the written observations and conclusions lodged on 27 November 1959 by the High Authority, the defendant in the main action, in which it contends that the intervention should not be allowed;

On 4 December 1959, the parties applying to intervene lodged a reply to the observations of the defendant in the original case.

However, Article 93 (3) of the rules of Procedure of the Court provides that, after the application has been served on the parties to the original case, only they shall be given an opportunity to submit their written or oral observations.

In the circumstances, the reply lodged on their own authority by the parties applying to intervene is out of order and cannot be the subject of argument.

Upon hearing the parties;
Upon hearing the opinion of the Advocate-General;
The applicants seek to intervene in the proceedings instituted by the Government of the Kingdom of the Netherlands, in which the latter seeks annulment of Decision No 18/59 of the High Authority of 18 February 1959, published in the Journal Officiel of 7 March 1959;

That decision, which is based on the first paragraph of Article 88 of the ECSC Treaty:

records (in Article 1 thereof) that the Governments of the Member States are failing to fulfil an obligation under the Treaty so long as they do not sufficiently publish or notify to the High Authority the scales, rates and all other tariff rules of every kind applied to the carriage by road of coal and steel within the Community for hire or reward;

indicates (in Articles 2 and 3) alternative measures the promulgation of which, accompanied by appropriate supervision and penalties (Article 5), is required of the Governments of the Member States in order to fulfil the obligation referred to;

sets the Governments 30 June 1959 as the time-limit for the fulfilment of their obligation (Article 6).

The Government of the Kingdom of the Netherlands has brought proceedings under the second paragraph of Article 88 of the ECSC Treaty for annulment of this decision.

The application to intervene is brought under Article 34 of the Statute of the Court of Justice of the European Coal and Steel Community, which enables any natural or legal person without any distinction whatever to appear before the Court as an intervener subject to the two conditions that it establishes interest in the result of any case submitted to the Court and that its submission shall be limited to supporting or requesting the rejection of the submissions of one of the parties.

The present proceedings are concerned with the annulment of a complex decision.

The contested decision in the main action, firstly, records the failure of the Government of the Kingdom of the Netherlands to fulfil an obligation under the ECSC Treaty and, secondly, prescribes the measures necessary for the fulfilment of that obligation.

It is necessary to ascertain precisely which provision the interveners have an interest in having annulled.

Although undertakings having an interest can be allowed to intervene in a dispute arising under Article 88, such intervention can, however, be for the sole purpose of obtaining an interpretation of the Treaty, to the exclusion of any consideration of determination of the time-limit which the High Authority can set that State for the fulfilment of its obligations or the detailed rules for the application of any restrictive decision by the Authority against that State since, in these various cases, the very nature of these acts, which take place at the level of the relationship between States, public authorities and the High Authority as the Community agency, precludes the intervention of private persons; and argument on these issues must, therefore, be conducted exclusively between the main parties.

In consequence, the applicants' intervention in the present case can only be for the purpose of supporting the conclusion of the Government of the Kingdom of the Netherlands that Decision No 18/59 be declared null and void in that the decision records the failure of that Government to fulfil its obligations under the Treaty, in particular, by failing to prescribe regulations to be applied to carriage by road the methods of whose application are laid down in Articles 2, 3, 4 and 5 of the said decision.

In this context, the intervener, as carriers by road and as consumers of products carried by road are directly affected by the decision and their interest in the result of the case is established.

Accordingly, the application to intervene should, within the above-defined limits, be allowed.

THE COURT

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

Advocate-General: K. Roemer
Assistant Registrar: H.J. Eversen

hereby:

1. **Allows the intervention of**
Coöperatieve Vervoersonderneming InterLimburg GA Venlo; Reinhold Coumans, proprietor of R. Coumans' Transportbedrijf, Geleen; Vennootschap onder Firma M. Overdorp en Zoon, Velsen-IJmuiden O.;

Rotterdamsche Droogdokmaatschappij N.V., Rotterdam, Vereniging van Metaal-Industrieën, The Hague;

2. **Limits the conclusions of the interveners to supporting the conclusions of the Government of the Kingdom of the Netherlands that Decision No 18/59 of 18 February 1959, published in the Journal Officiel of 7 March 1959 be declared null and void in that the decision records a failure of that Government in its duty to make regulations to be applied to carriage by road and in that it lays down ways and means of so doing.**

3. **Reserves the costs.**

Luxembourg, 19 February 1960.

For the Registrar

H. J. Eversen
Assistant Registrar

A. M. Donner
President