been unreasonably incurred within the meaning of the second paragraph of Article 69 (3) of the Rules of Procedure and must therefore be borne by the applicants.

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 Article 33 of 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;

THE COURT

hereby:

1. **Declares that there is no ground for proceeding to judgment;**

2. **Orders that the High Authority shall bear the costs with the exception of the costs incurred after the notification of the decisions revoking the individual decisions which shall be borne by the applicants.**

Donner Hammes Catalano

Riese Delvaux Rueff Rossi

Delivered in open court in Luxembourg on 1 June 1961.

A. Van Houtte
Registrar

A. M. Donner
President

OPINION OF MR ADVOCATE-GENERAL LAGRANGE DELIVERED ON 20 APRIL 1961[1]

Mr President,
Members of the Court,

Each of the three applicant companies, Meroni, FERAM and SIMET, appealed by separate applications against the decisions of the High Authority of 28 October 1959 taken pursuant to Article 92 of the Treaty and ordering these companies to pay outstanding sums in respect of equalization of imported ferrous scrap together with interest for delay in payment. On 18 May 1960 the Court ordered that the three cases should be dealt with jointly.
The written procedure followed the normal course up to and including the lodging of

1 – Translated from the French.

the rejoinder. In that pleading, the High Authority, without going any further into the substance of the case, told the Court that it had just served on the applicants the decisions 'revoking' the contested decisions. The High Authority explained in the recitals in the preamble to these decisions, copies of which were annexed to the rejoinder, that it appeared to it to be advisable to recalculate all the contributions payable (which are, moreover, provisional assessments) taking into account the new rates and new and more accurate factors for the calculations. Naturally the new decisions will be able to be challenged in their turn.

For this reason the applications plainly no longer had any purpose. The applicants could have discontinued their applications and, if they had done so, the costs would certainly have been awarded against the High Authority in the order which would have recorded the discontinuance (application of Article 69 (4)). It is to be noted in this respect that, contrary to the applicants' arguments in their last written submissions, the application for annulment in this case has been made under Article 33 and is not an application in proceedings where the Court has unlimited jurisdiction. The position is the same in these cases as it was in the original Meroni cases, Cases 9 and 10/56, decided on 13 June 1958, that is to say, there is an application against a decision taken under Article 92 and not against a decision ordering a fine or a periodic penalty payment taken under Article 36. Moreover, the conclusions in the applications clearly seek annulment. Therefore the discontinuance would not have had to be one of the terms of a settlement between the parties in accordance with the first paragraph of Article 77 of the Rules of Procedure: the procedure would have been governed by the second paragraph of Article 77 and by Article 78 of the Rules of Procedure, which do not require that the dispute should be settled.

However, the applicants were not compelled to discontinue. But in such circumstances the opening of the oral procedure could not be avoided, because it is doubtful whether a decision that there is no ground for proceeding to judgment, which is a decision on the substance of the case, can be made in any other way than by a judgment delivered after the normal oral procedure. It is this oral procedure which is taking its course today.

So far as the substance of the case is concerned it is clear that the applications no longer have any purpose, since the contested decisions have been 'abrogées' (revoked) (*revocata* is the word used in the Italian text; it would be better to say in French 'rapportées', since the act in question is an individual administrative measure which is of necessity annulled with retroactive effect). It is therefore necessary to deliver a judgment stating that there is no ground for proceeding to judgment.

The question of costs is a more difficult problem.

Article 69 (5) of the Rules of Procedure provides that

> 'When a case does not proceed to judgment the costs shall be in the discretion of the Court.'

It is clear that, having regard to the circumstances of this case, the costs of the action must in principle be borne by the High Authority. But must the entire costs, including those which relate to the oral procedure be borne by it?

One might be tempted to apply the second paragraph of Article 69 (3) of the Rules of Procedure which provides that

> 'The Court may order even a successful party to pay costs which the Court considers that party to have unreasonably or vexatiously caused the opposite party to incur.'

This provision, however, has little relevance, because almost certainly either the 'costs incurred' by the High Authority arising out of the oral procedure are negligible or it did not incur any such costs at all. The question which arises in connexion with the costs incurred during the oral procedure *by the applicants* is this: must they be awarded against the High Authority? As we have seen, under Article 69 (5) any order for

costs in this any order connexion is in the discretion of the Court.

In my opinion it would be unfair to make the defendant bear these costs, because they could and should have been avoided. There were two ways of doing this: either the applicants discontinued proceedings in which event the oral procedure would have been avoided, or took care not to incur any costs during the oral procedure, since such costs, having regard to the nature of the case, appeared from the very beginning to be manifestly unnecessary.

I submit that

—the Court rules that there is no ground for the applications to proceed to judgment,

—costs be awarded against the High Authority with the exception of the costs relating to the oral procedure which shall be borne by the applicant companies.