ORDER OF THE PRESIDENT OF THE COURT
20 MAY 1959[1]

Case 21/59 R

In Case 21/59 R[2]

GOVERNMENT OF THE ITALIAN REPUBLIC, represented by Professor Riccardo Monaco, Head of the Legal Department of the Ministry of Foreign Affairs, acting as Agent, assisted by Pietro Peronaci, Sostituto Avvocato Generale dello Stato, with an address for service in Luxembourg at the Italian Embassy,

applicant,

v

HIGH AUTHORITY OF THE EUROPEAN COAL AND STEEL COMMUNITY, represented by its Legal Adviser, Giulio Pasetti, acting as Agent, assisted by Mario Berri, Legal Adviser to the High Authority, with an address for service in Luxembourg at its offices, 2 place de Metz,

defendant,

By an application lodged at the Court Registry on 4 April 1959, the applicant requested the annulment of Decision No 18/59 of 18 February 1959 on the publication or notification to the High Authority of 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.

On the same day the applicant lodged an application requesting the Court:

'To suspend the operation of the contested decision until the Court has given judgment on the substance of the case brought by the Italian Government'

The defendant has not yet lodged a defence to the main action.

On 15 April 1959 the defendant lodged its observations on the application for the adoption of interim measures in which it asked the Court:

'To dismiss the application made by the Italian Government on 4 April 1959 for a stay of execution of Decision No 18/59 of the High Authority.'

1 – Language of the Case: Italian.
2 – This case relates to Case 20/59.

The applicant, whilst alleging that Decision No 18/59 fixes 30 June 1959 as the period within which the Italian Government must comply with the obligations imposed on it by the decision, relies in particular in the application for the adoption of interim measures on the following reasons to justify its request:

1. If the applicant were to find itself unable to comply with the contested decision, the High Authority would be in a position to apply the sanctions provided for in Article 88;

2. Whatever the decision of the Court of Justice (giving judgment in the main action), that is to say, whether it annulled or confirmed the contested decision, it could not make good or avoid the serious damage which would in the meantime have been caused to the Italian Government and the Italian economy.

In the aforementioned statement the defendant observes that the application of the said sanctions and the procedure laid down in the last paragraph of Article 88 are subject to the previous dismissal of the action and that as a result the High Authority will not be able to apply these sanctions before the Court has given final judgment in the main action.

The defendant states alternatively that no irreparable damage could be caused as a result of compliance by the Italian Government with the contested decision.

The parties have been summoned in due form and appeared on 20 May 1959 before the President of the Court and submitted their oral observations, adhering to their conclusions.

Law

Article 88 of the ECSC Treaty, on which the decision contested by the applicant in the main action is based, gives the High Authority only the power to find that a State has failed to fulfil an obligation under the Treaty and to set a time-limit for the fulfilment of its obligation.

Under the third paragraph of that article the High Authority cannot adopt sanctions against the Italian Government for any non-fulfilment of its obligations until its action has been dismissed by the court having jurisdiction.

In these circumstances the provisions of Article 39 of the Treaty on the suspension of application cannot apply in the present case; it appears from the terms of the provision itself that it is aimed only at the suspension of measures of application initiated by the High Authority or where appropriate third parties and taken against the person concerned.

The applicant has also claimed that should the main action be dismissed the High Authority could adopt sanctions against it with retroactive effect and that for this reason the claim is justified.

This fear however does not appear well founded since the measures provided for in Article 88 cannot be retroactive by reason of their nature.

As a result the application for suspension of operation must be dismissed.

On those grounds,

Having regard to Article 39 of the Treaty establishing the ECSC, Article 33 of the Statute of the Court of Justice of the ECSC and Articles 83, 84, 85 and 86 of the Rules of Procedure,

THE PRESIDENT OF THE COURT OF JUSTICE OF THE EUROPEAN COAL AND STEEL COMMUNITY

hereby orders:

1. **The application is dismissed;**
2. **The costs are reserved.**

Luxembourg, 20 May 1959.

A. Van Houtte
Registrar

A.M. Donner
President