ORDER OF THE PRESIDENT OF THE COURT 30 JANUARY 1959[1]

Case No 2/59 R

In Case *

1. NIEDERRHEINISCHE HÜTTE AG, Duisburg,
2. PHOENIX-RHEINROHR AG, VEREINIGTE HÜTTEN- UND RÖHRENWERKE, Düsseldorf,
3. GUßSTAHLWERKE GELSENKIRCHEN AG, Gelsenkirchen,
4. RUHRSTAHL AG, Witten,
5. GUßSTAHLWERKE WITTEN AG, Witten,
6. MANNESMANN AG, Düsseldorf,
   on behalf of the companies Mannesmann Hüttenwerke AG and Hahnsche Werke AG, reconstructed in the name of the applicant above and struck off the trade register,
7. BOCHUMER VEREIN FÜR GUßSTAHLFABRIKATION AG, Bochum,
8. AUGUST THYSSEN-HÜTTE AG, Duisburg-Hamborn,
9. STAHLWERKE BOCHUM AG, Bochum,
10. HÜTTENWERKE OBERHAUSEN AG, Oberhausen,

applicants,

represented by Werner von Simson,

v

HIGH AUTHORITY OF THE EUROPEAN COAL AND STEEL COMMUNITY, Luxembourg,

defendant,

represented by its Legal Adviser, Frans van Houten, acting as Agent,

THE PRESIDENT OF THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES makes the following

1 — Language of the Case: German.
* Case 3/59 R relating to Cases 4 to 13/59

ORDER

Facts

By their statement of case of 27 January 1959 the applicants claimed that the Court should make an interim order granting a suspension of the operation of the decisions of the High Authority which were annexed to the application. Those decisions are addressed separately and individually to each of the applicants. They enjoin them to pay a certain amount to the Imported Ferrous Scrap Equalization Fund by 31 January 1959 at the latest. Under Article 92 of the Treaty establishing the European Coal and Steel Community the decisions are enforceable.

Furthermore, the applicants declared 'that they intend to bring an action for the annulment of the decisions' and 'that the period of time allowed for bringing an action against the said decisions will expire on 15 February 1959'.

The parties were duly summoned and appeared at the hearing on 30 January to hear the decision on the case.

On the other hand, the Agent of the High Authority contends that the Court should dismiss the application and order the applicants to pay the costs of the proceedings. He gives the following reasons for his conclusions:

'Until now, the High Authority has not initiated the measures of enforcement and it does not intend to initiate them before the time-limit has expired. Moreover, the preparatory procedure for such measures requires such a long period that there is no reason to fear measures of enforcement under Article 92 of the Treaty.'

The applicants maintain their conclusions.

Law

The applicants rely upon Article 63 (1) of the Rules of Procedure of the Court of Justice of the European Coal and Steel Community and stress 'the danger which exists of the High Authority's beginning enforcement before the undertakings referred to have been able to complete the preparation of their application and thus acquire the right to bring an action before the Court of Justice'.

However, Article 63 of the Rules of Procedure of the Court provides that 'no interim application for a suspension of enforcement referred to in the second paragraph of Article 39 of the Treaty can be made unless the decision or recommendation of the High Authority has been conested in an earlier or at least concomitant main action'.

In accordance with the foregoing the application must be inadmissible, because the applicants have not contested the cecisions in an earlier or at least concomitant main action.

It should also be considered whether the application is admissible under Article 64 of the Rules of Procedure of the Court, which provides that:

'An application for the suspension of the enforcement of a decision of the High Authority which imposes a pecuniary obligation can be made when there is reason to fear that enforcement will take place.'

However, it has not even been proved that the procedure necessary for enforcement has been initiated, so that it cannot be accepted that the fear of such measures was justified. Assuming that the application is based on Article 64 it is therefore also inadmissible.

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

On those grounds,

Having regard to Articles 39 and 92 of the Treaty establishing the European coal and Steel Community, Article 33 of the Statute of the Court of Justice of the European Coal and Steel Community and Articles 60, 63 and 64 of the Rules of Procedure of the Court,

THE PRESIDENT OF THE COURT OF JUSTICE

hereby:

1. **Rejects the application as being inadmissible;**
2. **Orders the applicants to bear the costs.**

Luxembourg, 30 January 1959.

H. J. Eversen
Acting Registar

A. M. Donner
President