In Joined Cases 27 to 29/58

COMPAGNIE DES HAUTS FOURNEAUX ET FONDERIES DE GIVORS, Établissements Prenat, a limited company having its registered office at Givors (Rhône), represented by the Chairman of its Board of Directors, Joseph Roederer, (Case 27/58),

SOCIÉTÉ D'EXPLOITATION MINIÈRE DES PYRÉNÉES, a limited company having its registered office at Ollette (Pyrénées-Orientales), represented by the Chairman of its Board of Directors, Edmond Verny, (Case 28/58),

COMPAGNIE DES ATELIERS ET FORGES DE LA LOIRE, a limited company having its registered office at Saint-Étienne, represented by the Chairman of its Board of Directors, Henry Malcor, (Case 29/58), assisted by Jean Rault, Professor of Law, Advocate at the Cour d'Appel, Paris, with an address for service in Luxembourg at the Chambers of Mr Margue, 6, Rue Alphonse-Munchen,

applicants,

v

High Authority of the European Coal and Steel Community, represented by its Legal Adviser, Raymond Baeyens, acting as Agent, assisted by Professor Georges Van Hecke, Advocate at the Cour d'Appel, Brussels, with an address for service in Luxembourg at its offices, 2 place de Metz,

defendant,

Application

In Cases 27/58 and 28/58:

for the annulment of the decision of the High Authority of 9 February 1958 addressed by letter of 12 February 1958 to the Government of the French Republic concerning special rates and conditions applicable to the transport of ore by rail and published in the Official Journal of the ECSC on 3 March 1958;

In Case 29/58:

for the annulment of the decision of the High Authority of 9 February 1958 addressed by letter of 12 February 1958 to the Government of the French Republic concerning special rates and conditions applicable to the transport by rail of mineral fuels intended for the iron and steel industry and published in the Official Journal of the ECSC on 3 March 1958;

THE COURT

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

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

gives the following

JUDGMENT

Issues of fact and of law

I — Conclusions of the parties

1. The *applicants* claim in the three joined cases that the Court should:

'Rule that the powers of the High Authority with regard to the rates and conditions in force when the latter was set up had expired when it addressed to the Government of the French Republic the letter of 12 February 1958;

Rule that the High Authority had no jurisdiction to take the decision which was adopted;

Rule that that decision is, moreover, void because it does not mention the opinion of the Committee of Experts which it was compulsory to obtain;

In consequence, annul the decision ordering the abolition of the rates and conditions in question;

Alternatively, with regard to the substance of the case:

Rule that the High Authority's refusal to give its consent to those rates and conditions was wrong and illegal.'

The applicants in Cases 27/58 and 28/58 withdrew, during the hearing on 21 January 1960, the request for the annulment of Paragraph 5(a) and (b) of the contested decision, which concerned Chapter 3, Paragraph I, considered in the context of its application to transport from the western mines, and Chapter 103, Paragraph I, of Tariff No 13 of the Société Nationale des Chemins de Fer Français.

The Court took cognizance of the withdrawal of that claim, and the alternative conclusions in Cases 27/58 and 28/58 may be summarized as follows:

That the Court should:
'Annul, in consequence, the decision of the High Authority of 9 February 1958 as reproduced in the letter addressed on 12 February 1958 by the High Authority to the Government of the French Republic and in particular the provisions contained in Paragraphs 4 and 5 of the chapter of the decision concerning Tariff No 13, Chapter 3, Paragraph I, considered in the context of its application to transport from the mines in the Pyrenees, and the provisions contained in Paragraphs 2, 3 and 4 of the chapter of the decision concerning Tariff No 13, Chapter 12, Paragraph I;

Order the High Authority to bear the costs.'

The applicant in Case 29/58 claims, moreover, in the alternative, that the Court should:

'Annul the decision of the High Authority

of 9 February 1958 as reproduced in the letter addressed on 12 February 1958 by the High Authority to the Government of the French Republic and in particular the provisions contained in Paragraphs 2 and 3 concerning Tariff No 7, Chapter 3, Paragraph IV and Chapter 11, Paragraph I;

Order the High Authority to bear the costs.'

2. The *defendant* contends that the Court should:

'Dismiss the application in Joined Cases 27/58, 28/58 and 29/58 with all the legal consequences, in particular with regard to the payment of the fees, costs and any other expenses.'

II — The facts

The facts which form the basis of this case may be summarized as follows:

(1) Cases 27/58 and 28/58

The Compagnie des Hauts Fourneaux et Fonderies de Givors produces converter and foundry pig from haematite and obtains its iron ore from the mines in the Pyrenees.

The Société d'Exploitation Minière des Pyrénées supplies the Compagnie des Hauts Fourneaux et Fonderies de Givors with almost all the ore extracted by it, and until the contested decision came into force it was allowed special rates for its consignments of ore.

The rates and conditions in question, which are contained in Chapter 3, Paragraph I and Chapter 12, Paragraph I of Tariff No 13 of the Société Nationale des Chemins de Fer Français and offer reduced prices as compared with the general rates and conditions laid down in Chapter 1 of the same tariff, were notified to the High Authority by the Government of the French Republic as 'special internal rates and conditions' within the meaning of the fourth paragraph of Article 70 of the Treaty. The High Authority, having examined them in accordance with the seventh paragraph of Article 10 of the Convention on the Transitional Provisions, adopted on 9 February 1958 the decision ordering:

(a) The abolition before 1 January 1959 of the rates and conditions laid down in Chapter 3, Paragraph I and Chapter 103, Paragraph I, as regards consignments from the western mines;

(b) The progressive abolition, between 1 July 1958 and 1 July 1965, of the rates and conditions laid down in Chapter 3, Paragraph I, as regards consignments from the mines in the Pyrenees, and, before 1 July 1961, of the rates and conditions laid down in Chapter 12, Paragraph I.

That decision, which was notified to the Government of the French Republic by letter of 12 February 1958 and published in the Official Journal on 3 March 1958, is the subject-matter of Applications 27/58 and 28/58.

(2) Case 29/58

The Compagnie des Ateliers et Forges de la Loire, whose registered office is at Saint-Étienne, comprises a large number of iron works and workshops in the Centre-Midi area and, until the contested decision came into force, it obtained its mineral fuels in accordance with the special rates and conditions laid down in Chapter 3, Paragraph IV and Chapter 11, Paragraph I of Tariff No 7 of the Société Nationale des Chemins de Fer Français. Those rates and conditions, which offer price reductions as compared with the general rates laid down in Chapter 1 of the same tariff, were notified to the High Authority by the Government of the French Republic as 'special internal rates and conditions' within the meaning of the fourth paragraph of Article 70 of the Treaty. The High Authority, having examined them in accordance with the seventh paragraph of Article 10 of the Convention on the Transitional Provisions, decided on 9 February 1958 to order their progressive abolition by 1 July 1960.

This decision, which was notified to the

Government of the French Republic by letter of 12 February 1958 and published in the Official Journal on 3 March 1958, is the subject-matter of Application 29/58.

III — Submissions and arguments of the parties

The submissions and arguments of the parties may be summarized as follows:

The substance of the case

The submission concerning the lack of competence of the High Authority for the purposes of Articles 1 and 10 of the Convention on the Transitional Provisions

First, the *applicants* stress that the powers of the High Authority under Articles 1 and 10 of the Convention on the Transitional Provisions, with regard to the approval of or refusal to approve the rates and conditions referred to in the fourth paragraph of Article 70 of the Treaty which were in force when the High Authority was set up, had expired on 10 February 1958, while the contested decision was taken on 12 February 1958. They explain that it is unimportant for this purpose that the decision in question is dated 9 February 1958 since the date on which it was notified to the Government of the French Republic was 12 February 1958 and that the date on which the person concerned is informed of the measure constitutes that on which it is complete and legally valid.

The *defendant* replies that it is necessary to make a clear distinction between the validity of an administrative measure and the binding effect which it involves with regard to those concerned. The validity in fact can only depend on the essential factors which governed the drawing up of the measure, that is, the procedure by which it was adopted, the jurisdiction of the body which drew it up, the validity of the provisions upon which it was based and the correct or incorrect application of those provisions. Since the measure was adopted on 9 February 1958 in accordance with the rules which had to be observed, it exists in law as from that date and is completely valid.

Secondly, the *applicants* contest the proposition that proof of the date of a measure is provided merely because the measure has mentioned that date. they state that that proof can only result from an external formality carried out on the initiative of the authority in question and consisting in the notification of the measure or its publication.

The *defendant* replies that the argument in quesion is based on rules of French private law and that therefore it cannot be applied to the present case, which concerns relationships created by an administrative decision and governed by public law. With regard to the rules applicable to those relationships it recalls that in all the countries of the Community the contents of and in particular the date contained in administrative measures are presumed to be authentic until the contrary is proved.

Finally, the *defendant* points out that the seventh paragraph of Article 10 of the Convention on the Transitional Provisions can never interfere with the power and duty of the High Authority to eliminate at any time situations which are incompatible with the Treaty. The only restriction which is laid down by the seventh paragraph of Article 10 of the Convention concerns the manner in which that power and that duty are to be exercised, in that it expressly places the High Authority under a duty to allow during the transitional period such time for the abolition of protective rates which are incompatible with the Treaty as may be necessary to avoid any serious economic disturbance.

The submission relating to the infringement of essential procedural requirements laid down in the first paragraph of Article 15 of the Treaty

The *applicants* maintain that under subparagraph (3) of the third paragraph of Article 10 of the Convention the High Authority had to consult the Committee of Experts provided for in the first paragraph of that article. In fact, under that provision, an amendment of the rates and conditions in force when the High Authority was set up

requires prior examination of the costs and conditions of transport applicable to ore. Since neither the decision dated 9 February 1958 nor the letter of 12 February 1958 mentions that that formality was carried out, it follows that the decision is invalid because of infringement of essential procedural requirements.

The *defendant* replies that consultation with the Committee of Experts during the procedure prior to the contested decision could be invoked for the purpose of requesting its annulment only if that consultation was expressly laid down by the Treaty or the Convention. Since neither the seventh paragraph of Article 10 of the Convention nor the fourth paragraph of Article 70 of the Treaty, which are the legal provisions pursuant to which the tariffs in question were examined and subsequently prohibited, entails that duty, it follows that the High Authority did not in this case have to obtain the opinion of that Committee or, *a fortiori*, mention that opinion.

The alternative submission relating to the infringement and misapplication at Article 4 (b) and the fourth paragraph of Article 70 of the Treaty and the seventh paragraph of Article 10 of the Convention on the Transitional Provisions.

1. The *applicants* state first that the general principle of nondiscrimination laid down in Article 4 (b) of the Treaty is repeated and amplified in the first paragraph of Article 70. Under the latter provision, rates and conditions for the carriage of coal and steel must afford 'comparable price conditions to comparably placed consumers'.

In the present case, the condition of comparability can only be appraised with regard to industries established in the region served by the same railway network in which the rates and conditions in question were in force. There is no doubt that all the undertakings established in that region are in a comparable situation. The common features of their situation are, first, their distance from the iron and coal mines, and second, the impossibility for them, in practice, of using any means of transport other than the railway.

Since the concept of comparability is satisfied in the case of these consumers, it is permissible to state that the rates and conditions in question satisfy the requirement laid down in the first paragraph of Article 70.

The *defendant* replies by criticizing the concept of discrimination which the applicants put forward. It explains that since the applicants are not alone in the Community in being far from the iron and coal mines and in having to make do with the railway for the purposes of obtaining the ore and fuel necessary or delivering their products, it appears to the High Authority to be logical that in order to uncover any discrimination, its examination must not be limited exclusively to the area in which the applicants themselves are situated, that is the Centre-Midi area.

Moreover, the High Authority points out that special internal rates and conditions constitute by definition a preferential tariff allowed to certain undertakings in contrast to most consumers. Those rates and conditions are, therefore, discriminatory measures which are prohibited in principle by the Treaty and can only be authorized, in accordance with the fourth paragraph of Article 70 of the Treaty, if there are abnormal difficulties in a specific undertaking which are not caused by natural conditions particular to the undertaking.

2. The *applicants* then state that under the seventh paragraph of Article 10 of the Convention and by reference to the fourth paragraph of Article 70 of the Treaty, authorization by the High Authority is required only with regard to internal rates and conditions established 'in the interest of one or more coal- or steel-producing undertakings'.

They recall first that those rates and conditions are very old and date from the period when the railway network was created and, contrary to appearances, were laid down principally in the interests of the carrier and not of the coal- and steel-producing undertakings.

Finally, the *applicants* emphasize that rail-

way traffic constitutes one of the kingpins of regional economic policy, the legality of which was fully recognized in the Sixth General Report on the Activities of the Community and in Article 80 (2) of the Treaty establishing the European Economic Community.

The *defendant* points out first, in opposition to the argument that the rates and conditions in question are applied in the interests of the carrier, that the French Government itself, in application of the seventh paragraph of Article 10 of the Convention, notified the High Authority of those rates and conditions as being 'special internal rates and conditions' referred to in the fourth paragraph of Article 70 of the Treaty.

Secondly, with regard to the problem of the protection of regional economies, the *defendant* emphasizes that the High Authority must in principle inquire whether a protective tariff is justified in circumstances which are particular to the undertakings benefitting from it because the protection of regional economies cannot of itself justify all protective measures.

The alternative submission based on the infringement of the general objectives laid down in Articles 2 and 3 of the Treaty

The *applicants* claim that the contested decision contravened the second paragraph of Article 2 and Article 3 (c), (d) and (g) of the Treaty. The applicants in Cases 27/58 and 29/58 claim furthermore that there has been a breach of Article 3 (b) of the Treaty.

Having criticized the very principle of the intervention by the High Authority in this case, the applicants also criticize the substance of that intervention which in their opinion is contrary to the second paragraph of Article 2 of the Treaty because it does not bring about 'the most rational distribution of production at the highest possible level of productivity, while safeguarding continuity of employment and taking care not to provoke fundamental and persistent disturbances in the economies of Member States'.

The *defendant* replies first that it does not understand how it can be criticized for 'the very principle of its intervention', that is, the fact that it intervened. Since the High Authority was, under the seventh paragraph of Article 10 of the Convention and the fourth paragraph of Article 70 of the Treaty, under a duty to give a decision on the special internal rates and conditions which were notified to it by the French government it could not refrain from requesting that government to amend those rates and conditions which were not compatible with the Treaty.

Then the *defendant* contests that the abolition of those rates and conditions might jeopardize efforts 'progressively [to] bring about conditions which will of themselves ensure the most rational distribution of production at the highest possible level of productivity' since, in its opinion, that objective, which is laid down in the second paragraph of Article 2 of the Treaty, must on the one hand be attained by the free play of market forces ('conditions which will of themselves ensure . . .'), and, on the other, cannot be appraised on the basis of one specific undertaking but on the basis of the Community in general.

It contests moreover that the abolition of the rates and conditions in question might jeopardize 'continuity of employment', since that continuity only means, in its opinion, that if the progressive adaptation of undertakings to new conditions makes redundancies necessary, the High Authority must ensure that such redundancies are not sudden and substancial and do not jeopardize the possibilities of re-employment and appropriate readaptation.

Finally, with regard to the argument that the High Authority did not take care not 'to provoke fundamental and persistent disturbances in the economies of Member States', the *defendant* points out that that principle must not be interpreted as meaning that the existence of such disturbances is sufficient in itself to make illegal any measure adopted by the High Authority.

Infringement of Article 3 (b)

The *applicants* maintain in Cases 27/58 and

29/58 that the increase in rates which was ordered would prevent them from obtaining access to sources of production in conditions comparable to those for similar industries (principle of non-discrimination).

The *defendant* merely replies that the purpose of that provision is to prohibit discrimination in the conditions of access to the sources of production between comparably placed undertakings and that a protective rate such as the rates in question has precisely the opposite effect.

Infringement of Article 3 (c)

The applicants maintain that an increase in the present rates would either prevent the establishment of the lowest prices or else would hinder necessary amortization and preclude all normal return on capital or, again, entail all these consequences at once.

The *defendant* observes that the protective rate is not a measure designed by the Treaty in order to enable undertakings to offer 'the lowest prices', since such a measure artificially distorts the natural and normal conditions of competition, while the Treaty pursues the objective laid down in that article only on the basis of those conditions and by compliance with them.

Infringement of Article 3 (d) and (g)

According to the *applicants* an increase in the rates in question could not 'encourage undertakings to expand and improve their production potential and to promote a policy of using natural resources rationally'. Nor can that increase 'promote the orderly expansion and modernization of production, and the improvement of quality'.

The *defendant* replies that in accordance with the fundamental reasons underlying the common market, it is impossible for the objectives laid down in those provisions to be pursued by means of protective rates such as the prohibited rates.

IV — Procedure

The procedure followed the normal course.

Grounds of judgment

The substance of the case

The submission concerning the lack of competence of the High Authority for the purposes of Articles 1 and 10 of the Convention on the Transitional Provisions

1. The applicants maintain that the powers of the High Authority under the Convention on the Transitional Provisions with regard to the examination of the rates and conditions referred to in the fourth paragraph of Article 70 of the Treaty which were in force when the High Authority was set up could be exercised only during the transitional period which ended at midnight on 9 February 1958. They allege that the contested decision, which conveys a refusal to approve those rates and conditions, was adopted on 12 February 1958, that is, the date on which it was notified to the Government of the French Republic, since the date of the notification of a measure is at the same time that on which it becomes valid.

Therefore, the applicants claim that the contested decision is illegal because of the lack of competence of the High Authority at the date on which it was notified, that is, 12 February 1958.

This argument is not well founded.

It appears from the oral arguments and from the explanations furnished at the hearing that the contested decision was taken on the evening of 9 February 1958 and that on that date it was laid down in every detail, as is proved by the production of the drafts discussed at the meeting and by the minutes thereof.

In order to enter into force that decision had to be notified to the Government of the French Republic and, in accordance with the rules of good administration, notified as quickly as possible—which was done. Nevertheless, that does not in any way alter the fact that in this case the decision was validly adopted on 9 February 1958, that is, during the transitional period.

Thus there is no doubt that the contested decision was taken within due time.

2. The applicants then allege that by reason of the economic and social consequences which may follow from the abolition of the special internal rates and conditions, the interested parties are entitled to claim the grant of the aids provided for in Article 23 of the Convention on the Transitional Provisions.

Since the abolition of the rates at issue was decided upon after the expiry of the transitional period or on the eve of the expiry thereof, the High Authority is said to have deprived the applicants of the possibility of claiming the grant of those aids.

This complaint cannot be accepted because at the time when the abolition of the rates at issue was decided upon the applicants were still entitled to the grant of those aids and had the possibility of doing so.

In fact the last paragraph of Article 23 of the Convention provides that aid may be granted by decision of the High Authority with the assent of the Council during the two years following the end of the transitional period.

The submission concerning the infringement of essential procedural requirements under the first paragraph of Article 15 of the Treaty

The applicants maintain that the seventh paragraph of Article 10 of the Convention places the High Authority under a duty to consult the Committee of Experts provided for by the first paragraph of that article.

Under the first paragraph of Article 15 of the Treaty it was necessary to mention in the decision that that formality had been carried out. Because that mention was omitted, the decision is invalidated because of an infringement of an essential procedural requirement.

That argument cannot be acepted.

It is important above all to know whether in this case the High Authority had to obtain the opinion of the Committee of Experts.

In this connexion the applicants state that the provisions of the first to sixth, eighth and ninth paragraphs of Article 10 of the Convention, which lay down the tasks of the Committee of Experts, must be interpreted as applying also to the seventh paragraph, particularly in view of its position within the context of that article.

That argument can only be accepted in so far as it is unnecessary to interpret the provisions concerned strictly.

In fact under the first paragraph of Article 10 of the Convention, the High Authority must convene the Committee of Experts to study the arrangements to be proposed to the governments for the carriage of coal and steel in order to attain the objects set out in Article 70 of the Treaty.

Under the following paragraph, those arrangements are intended to form the subject-matter of agreements between the governments, the High Authority merely proposing them and initiating negotiations between Member States and, where appropriate, between Member States and third countries concerned.

Therefore it is impossible to extend the application of the abovementioned provisions to the case envisaged by the seventh paragraph of the same article which concerns exclusively the measures to be taken by the High Authority alone.

Moreover, the intervention of the Committee of Experts, which is laid down in the first paragraph of Article 10 of the Convention, concerns the measures set out in the third paragraph of that article. Those measures, first, only relate to the application or introduction of transport tariffs with regard to traffic between the Member States and, secondly, their purpose is to achieve the harmonization, on a Community basis and under certain conditions, of the rates and conditions of every kind for the carriage of coal and steel. These measures only concern international transport between the Member States.

For that reason the purpose of those measures is quite different from that of the measures provided for in the seventh paragraph of Article 10 of the Convention, which is concerned with the approval of or prohibition on special rates and conditions which only concern domestic traffic and whose retention or modification do not tend to harmonize progressively international transport tariffs in the Community as a whole.

Therefore the High Authority was not bound in this case either to consult the Committee of Experts beforehand or *a fortiori* to mention the opinion of that Committee. The submission concerning the infringement of essential procedural requirements is therefore unfounded.

The alternative submission concerning the infringement of Article 4 (b) and the fourth paragraph of Article 70 of the Treaty and the seventh paragraph of Article 10 of the Convention on the Transitional Provisions

1. The applicants maintain that the High Authority has contravened the fourth paragraph of Article 70 and Article 4 (b) of the Treaty and the seventh paragraph of Article 10 of the Convention by taking a decision to abolish Chapter 3, Paragraph IV and Chapter 11, Paragraph I of Tariff No 7 of the Société Nationale des Chemins de Fer Français and Chapter 3, Paragraph I, within the context of its application to transport from the mines in the Pyrenees, and Chapter 12, Paragraph 1, of Tariff No 13 of the Société Nationale des Chemins de Fer Français, as being special internal rates and onditions applied in the interest of one or more coal- or steel-producing undertakings.

It is necessary to examine whether the special internal rates and conditions referred to in the fourth paragraph of Article 70 of the Treaty come within the application of the provisions of Article 4 (b) and the extent to which those provisions are applicable to them.

Article 4 (b) prohibits measures 'which discriminate between ... consumers, especially in ... transport rates and conditions'. As that prohibition is an essential condition for the establishment and the functioning of the common market, it cannot be subject to any exception or give rise to derogations save as otherwise provided in the Treaty.

Where the provisions of Article 4 are referred to, repeated or amplified in other parts of the Treaty, the provisions relating to the prohibition on discrimination must be considered as a whole and be applied simultaneously.

The provisions of Article 4 (b) of the Treaty are repeated first paragraph of Article 70 which provides that it is necessary to apply such rates and conditions for the carriage of coal and steel as will afford comparable price conditions to comparably placed consumers.

Therefore the mandatory nature of the principle of non-discrimination laid down in Article 4 (b) of the Treaty and its application to rates and conditions for the carriage of coal and steel are confirmed in the first paragraph of Article 70.

2. Under the first paragraph of Article 70 of the Treaty the discriminatory nature

of special internal rates and conditions consists in the fact that they afford different price conditions to comparably placed consumers.

The comparability of the situation of consumers must, within the context of the abovementioned article, be appraised solely on the basis of the means of transport in question.

It is necessary to reject the argument of the applicants that a comparison between coal- and steel-producing undertakings must not be restricted to their situation solely from the point of view of transport but that this comparison must take into account all the circumstances in which they are placed, in particular the place of production, the profitability of the deposits worked and the fact of being in an economically less favoured region.

Even if it were applied with caution, the result of that argument would be that every undertaking would be comparable only to itself and thus the concept 'comparably placed' and therefore that of 'discrimination' would be rendered meaningless.

3. It appears from Article 4 of the Treaty that in Article 70 the intention of the authors of the Treaty was to eliminate distortions in the common market by the harmonization of transport rates and conditions and thus to ensure that the common market would function in accordance with the principles laid down by the Treaty.

In giving expression to that intention they cannot have been unaware that the transport industry is a branch of industry which is independent of that of the production of coal and steel and that it has its own problems, needs and procedures. Nor can they have failed to understand that so long as that industry has not been integrated into the common market its distinct nature must be respected and that it must merely be prevented from jeopardizing the objectives of the Treaty by its actions.

Therefore, as regards international transport, Article 70, whilst envisaging the future harmonization of national rates and conditions, leaves tariff policy uncontrolled and confines itself to the requirement that within each national system any discrimination based on the point of departure or destination must be abolished.

Similarly—as is shown by the fifth paragraph—in respect of internal transport, Member States are free to practise their own commercial policy, subject to the provisions of the Treaty.

There can be no doubt that the States or transport undertakings would come into conflict with those provisions if, in setting their rates and conditions, they took

into account the advantages and disadvantages of the location of undertakings producing coal or steel or the quality of the deposits worked.

The treaty requires rather than in drawing up their tariff provisions the States or undertakings should consider transport conditions alone and, therefore, the comparability of the different routes and locations from the point of view of transport.

4. Under the fourth paragraph of Article 70 of the Treaty special internal rates and conditions are those which are applied in the interest of one or more coal- and steel-producing undertakings.

The rates and conditions in question, which allow price reductions to certain consumers but which are not justified by the transport conditions of the consumers who benefit from them, afford different price conditions to consumers who are or who might be comparably placed with regard to transport. They therefore constitute rates and conditions prohibited by Article 4 (b) and the first paragraph of Article 70.

Moreover, the common market is based on the principle that conditions of competition between coal- and steel-producing undertakings must result from their natural and undistorted production conditions. All special internal rates and conditions involving an element of aid or subsidy contravene that principle in that their effect is artificially to alter the production conditions which are characteristic of the undertakings which benefit from them. They are also prohibited by Article 4 (c) of the Treaty.

The applicants allege that the prohibition laid down in Article 4 (c) should have been applied in the circumstances laid down in Article 67, according to which if an action by a Member State which is liable to have appreciable repercussions on conditions of competition in the common market is having harmful effects on the coal or steel undertakings within the jurisdiction of that State, the High Authority may authorize it to grant aid to these undertakings.

This argument must be rejected because Article 67 merely lays down protective measures which the Community may adopt against an action by a Member State which, whilst having an appreciable effect on conditions of competition in the coal and steel industry, does not immediately and directly concern that industry.

Such protective measures, far from contravening Article 4 (c), are intended only to compensate for the economic disadvantages which result in the common market from an action by a Member State which the High Authority does not have the power to bring to an end directly.

5. However, the fourth paragraph of Article 70 enables the High Authority to

agree to the application of special internal rates and conditions which appear to be compatible with the principles of the Treaty.

It is necessary to appraise the compatibility of such rates and conditions with those principles on the basis of the second paragraph of Article 2 of the Treaty according to which the Community must progressively bring about conditions which will of themselves ensure the most rational distribution of production at the highest possible level of productivity.

That distribution is based in particular upon the composition of production costs from output, that is, from the physical and technical conditions under which the various producers operate and their individual efforts.

Thus the agreement referred to in the fourth paragraph of Article 70 can only be given if the protective rates authorized enable the undertakings in whose favour they are made to overcome exceptional temporary difficulties resulting from unforeseeable circumstances which are likely to result in a situation in which the composition of production costs no longer corresponds to their natural conditions.

The applicants maintain that such agreement could also be given if account were taken of the requirements of regional policy. They invoke the principles laid down in Article 80 (2) of the EEC Treaty in support of their statement.

This argument cannot be accepted. Since the integration aimed at by the Treaty establishing the European Coal and Steel Community is only partial, the High Authority is not in a position to appraise all the factors upon which regional policy depends and is not authorized to adapt its action to the requirements of such a policy.

6. The tariffs in question afford reductions in price as compared with the rates and conditions of general application which are laid down in Chapter 1 of Tariffs Nos 7 and 13 of the Société Nationale des Chemins de Fer Français and they therefore constitute special internal rates and conditions. They were introduced in order to counteract the structural difficulties experienced by the applicants with regard to their production conditions in comparison with competing undertakings.

The reason for the reductions in price granted by those measures is not that, with regard to transport, the applicants are not comparably placed in relation to competing undertakings.

The applicants wrongly allege that the tariffs in question were applied in the interest of the carriers as well as in that of users and that that fact proves that those tariffs are not special internal rates and conditions applied in the interest of one or more coal- or steel-producing undertakings.

Competive tariffs enable the carrier to maintain its traffic in face of real or potential competition from another means of transport.

In the present case, the tariffs in question, as special internal rates and conditions, were applied primarily in the interest of users.

The applicants have not brought evidence that those tariffs were introduced primarily in the interest of the carrier. Therefore they are special internal rates and conditions referred to in the fourth paragraph of Article 70 of the Treaty and subject to the prohibition laid down in Article 4 (b) and the first paragraph of Article 70.

7. The rates and conditions in question were in force when the High Authority was set up and therefore they come within the application of the seventh paragraph of Article 10 of the Convention. That article does not introduce any derogation from the rules laid down in Article 4 (b) and in the first and fourth paragraphs of Article 70 but merely places the High Authority under a duty, during the transitional period, to allow such time for the modification of protective rates and conditions in force at that date as may be necessary to avoid any serious economic disturbance.

The applicants maintain that the period laid down is not sufficient to obviate such disturbances.

That complaint must be rejected *in limine* because it was raised for the first time and without any further comment in the reply. Moreover the applicants have not brought sufficient evidence of their allegation to enable the Court to appraise that situation.

The alternative submission concerning the infringement of the general objectives laid down in Articles 2 and 3 of the Treaty

1. The applicants allege that the contested decision contravened the second paragraph of Article 2 and Article 3 (c), (d) and (g) of the Treaty. In cases 27/58 and 29/58, they also allege that there has been an infringement of Article 3 (b).

It is necessary to state that the objectives laid down in Articles 2 and 3 cannot all be attained at the same time and to the highest degree. To ensure the legality of the decision taken by the High Authority in this field, it is sufficient for those objectives to have been reasonably observed according to the special features and the possibilities of the case in question and to have been pursued for the purposes of the common interest referred to in the first paragraph of Article 3. That interest is not limited to the sum of the individual interests of the undertakings in the Community. It goes beyond the range of those individual interests as is defined

in relation to the general aims of that Community which are laid down in Article 2.

2. Under the second paragraph of Article 2 of the Treaty 'The Community shall progressively bring about conditions which will of themselves ensure the most rational distribution of production at the highest possible level of productivity, while safeguarding continuity of employment and taking care not to provoke fundamental and persistent disturbances in the economies of Member States'.

That provision, while expressing two reservations, clearly states the essential objective of the common market, according to which the general policy of the High Authority must be to promote—and this also applies in the application of Article 70—the progressive establishment of conditions which will of themselves ensure the most rational distribution of production.

The authors of the Treaty realized that this policy could have the result that certain undertakings might be forced to cease or change their activity. This appears in particular from the Convention on the Transitional Provisions, of which the seventh paragraph of Article 10 has been applied in the present case.

The Convention makes provision both for establishing the common market by putting an end to situations which are incompatible with the principles of that market and are of such a nature as to jeopardize the achievement of the objectives defined notably in Articles 2 and 3, and for remedying the disadvantageous consequences which the establishment of the common market could have in certain cases.

It expressely provides, in Article 23 in particular for measures of readaptation which can even take the form of the setting up of new undertakings not subject to the Treaty, and for assistance both to undertakings and to workers.

The fact that the contested decisions might result in a temporary reduction in employment and in the closure of some undertakings cannot render those decisions illegal on grounds of infringement of Articles 2 and 3. It could be argued that, on the contrary, such measures are necessary in order to enable the common market to achieve its stated objectives, since the disappearance of undertakings which could only subsist with the help of constant and massive subsidies would strengthen its resistance to crisis.

However the figures and calculations submitted to the Court do not provide sufficient evidence at law for the proposition that full employment and the productivity of the undertakings are seriously threatened by the contested decisions. Moreover, it is necessary to remind the applicants that nothing in those decisions stands in the way of a further request based this time directly on the fourth para-

graph of Article 70 if, before the expiry of the period laid down, circumstances seem to justify a new special rate.

It would in any case be contrary to the meaning of the Treaty to authorize existing special rates on the sole ground that it would be difficult or impossible for the undertakings concerned to adapt themselves to the common market.

Consequently, the second paragraph of Article 2 of the Treaty may not be relied on in support of the proposition that, in applying the fourth paragraph of Article 70, the High Authority is required, as a general rule, to authorize special rates when the profitability of an undertaking might be adversely affected if such rates did not exist.

The applicants maintain moreover that the contested decision is likely to provoke fundamental and persistent disturbances in the French economy and that therefore that decision contravenes the second paragraph of Article 2.

That argument must be rejected as the existence of such disturbances may only, because of their general effect on the national economy, be invoked by the State concerned and under the procedure laid down in Article 37. The Government of the French Republic has not intervened in these proceedings and has not made use of the procedure open to it under that article.

3. The applicant in Case 27/58 alleges that the contested decision contravenes Article 3 (b) in that the abolition ordered therein of Chapter 3, Paragraph I of Tariff No 13, considered in the context of its application to transport from the mines in the Pyrenees, and of Chapter 12, Paragraph I, would entail such an increase in transport costs that the applicant will no longer have access to the sources of production in conditions comparable to those of similar industries.

That argument cannot be accepted, since the application of Article 3 (b) must comply with the requirement laid down in the second paragraph of Article 2 according to which the most rational distribution of production at the highest possible level of productivity must be based on the composition of production costs resulting from the physical and technical conditions particular to the various producers.

The rates and conditions in question have the result of distorting by means of aid or subsidies the composition of the production costs of the applicant undertaking and artificially equate the production conditions in which that undertaking finds itself with those of similar industries which are not entitled to reduced rates.

4. In the three cases the applicants maintain that the contested decision, by abolishing the rates and condition in question, thereby entailing a rise in production

costs, jeopardizes the establishment of the lowest prices under the conditions laid down in Article 3 (c).

This argument must be rejected. In fact, in view of the second paragraph of Article 2, the establishment of the lowest price must comply with the fundamental principle of competition which is at the basis of the common market and the lowest price must result from the natural production conditions to which the producers are subject. The rates and conditions in question have precisely the effect of distorting those conditions so that the price which can be established by means of them is not the lowest which competition would allow.

Moreover, although Article 62 of the Treaty provides that the High Authority may, by derogation from the principle prohibiting all aid, authorize equalization payments to prevent coal from being priced at the level of the production costs of the mines which have the highest costs, that derogation is however only allowed in so far as it is recognized that those mines should be temporarily maintained in service in order that the tasks laid down in Article 3 may be performed.

Therefore the rates and conditions in question, being permanent aid, could not be authorized.

5. The applicants wrongly allege that the abolition of the rates and conditions in question, which involves an increase in the cost price, jeopardizes the attainment of the objectives laid down in Article 3 (d) and (g).

In fact it follows from the foregoing considerations that the attainment of those objectives is based on compliance with natural and undistorted conditions of production in coal and steel undertakings and that it precludes any aid.

As regards in particular the objective laid down in Article 3 (g), it is necessary to recall that the fourth paragraph of Article 54 prohibits the financing of a programme or the operation of the installations therein planned if it would involve subsidies, aids, protection or discrimination contrary to the Treaty.

Therefore it was necessary to prohibit the retention of the rates and conditions in question as being aid contrary to the Treaty since they do not comply with the conditions which are necessary for the attainment of the objective laid down in Article 3 (d) and (g).

Costs

Under Article 60 (1) of the Rules of Procedure of the Court of Justice of the ECSC, the unsuccessful party shall be ordered to pay the costs.

In the present case, the applicants have failed in all heads of their applications.

They must therefore be ordered to pay the costs of the proceedings.

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 Articles 2, 3, 4, 5, 15, 31, 33, 37, 53, 54, 62, 67, 70 and 80 of the ECSC Treaty and Articles 10 and 23 of the Convention on the Transitional Provisions;
Having regard to the Protocol on the Statute of the Court of Justice of the ECSC;
Having regard to the Rules of Procedure of the Court of Justice of the ECSC, especially Article 29 (3) and Article 60 (1),

THE COURT

hereby:

1. **Dismisses the applications in Joined Cases 27, 28 and 29/58 as unfounded;**
2. **Orders the applicants to pay the costs.**

Donner Delvaux Rossi

Riese Hammes

Delivered in open court in Luxembourg on 10 May 1960.

A. Van Houte — Registrar

A. M. Donner — President

OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 11 FEBRUARY 1960[1]

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1 — Translated from the German.