The legal justification of the payment exists independently of whether the equalization was paid directly to the scrap sellers or whether it was paid to the consumer undertakings to enable them to buy imported scrap.

In Joined Cases

1. MANNESMANN AG, Düsseldorf (Case 4/59),
2. RUHRSTAHL AG, Witten (Case 5/59),
3. GUSSTAHLWERK GELSENKIRCHEN AG, Gelsenkirchen (Case 6/59),
4. GUSSTAHLWERK WITTEN AG, Witten (Case 7/59),
5. NIEDERRHEINISCHE HÜTTE AG, Duisburg (Case 8/59),
6. BOCHUMER VEREIN FÜR GUSSTAHLFABRIKATION AG, Bochum (Case 9/59),
7. STAHLWERKE BOCHUM AG, Bochum (Case 10/59),
8. AUGUST THYSSEN-HÜTTE AG, Duisburg-Hamborn (Case 11/59),
9. HÜTTENWERK OBERHAUSEN AG, Oberhausen (Case 12/59),
10. PHOENIX-RHEINROHR AG, Düsseldorf (Case 13/59), assisted by Werner von Simson, Advocate at the Oberlandesgericht Düsseldorf, with an address for service in Luxembourg at the Chambers of the said Werner von Simson in Luxembourg, Bertrange,

applicants

v

HIGH AUTHORITY OF THE EUROPEAN COAL AND STEEL COMMUNITY, represented by its Legal Adviser, Frans van Houten, acting as Agent, assisted by Wolfgang Schneider, Advocate, of Frankfurt am Main, with an address for service in Luxembourg at its offices, 2 Place de Metz.

defendant

Application for the annulment of the individual decisions of the High Authority of 6 January 1959 'concerning the repayment of provisional equalization payments made by the Imported Ferrous Scrap Equalization Fund (Caisse de péréquation des ferrailles importées)' to the applicant undertakings,

THE COURT

composed of: A. M. Donner, President L. Delvaux, President of Chamber, O. Riese, Ch. L. Hammer (Rapporteur) and N. Catalano, Judges,

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

gives the following

JUDGMENT
Issues of fact and of law

I — Statement of the facts

The facts of the case may be summarized as follows:

A — The bases of the equalization scheme

1. The situation of the market in ferrous scrap in the Community, which is marked by the fact that the Community's internal resources in scrap are insufficient to cover the requirements of current consumption and at the same time to build up stocks to a level compatible with the undertakings' normal operation, makes it necessary to import scrap from third countries.

Imported scrap commands appreciably higher prices than scrap recovered within the Community. For this reason, with a view to ensuring an orderly supply of scrap at reasonable prices, the need for an equalization scheme for imported scrap was ascertained before the Common Market was established.

2. Since a first voluntary equalization scheme had proved inadequate, the High Authority, acting under Article 53 (b) of the ECSC Treaty, by Decision No 22/54 of 26 March 1954 (Journal Officiel de la CECA, 1954, No 4, p. 286), itself made a financial arrangement for the equalization of scrap imported from third countries, which was made compulsory for all scrap-consuming undertakings in the Community.

This new, compulsory equalization scheme was extended by Decision No 14/55 of 26 March 1955 (Journal Officiel de la CECA, 1955, No 8, p. 685), and Decision No 2/57 of 26 January 1957 (Journal Officiel de la CECA, 1957, No 4, p. 61), 'making a financial arrangement for ensuring an orderly supply of scrap to the Common Market'.

3. By these decisions, the High Authority:

established a scheme for the purchase of scrap on joint account, and

made a financial arrangement for the equalization of the prices of scrap imported from third countries, as well as scrap treated as such (shipyard scrap and other highly priced scrap).

4. In 1953 the governments of the six Member States enacted a general prohibition on exporting scrap; in the following year, they made an exception to it for such shipyard scrap as, after being compulsorily offered to the Joint Bureau, was not bought by the Joint Bureau for the Community.

5. Under the general decisions quoted above, the scrap-consuming undertakings enjoyed an equalization between the (higher) price of scrap imported from third countries or scrap treated as such, on the one hand, and the price of Community scrap, on the other.

All the scrap-consuming undertakings in the Community were obliged to pay the contributions necessary for the equalization transactions and for the purchase of scrap in third countries.

6. Under Decisions Nos 22/54, 14/55 and 2/57, the functioning of the equalization scheme was entrusted, under the responsibility of the High Authority, to the Joint Bureau of Ferrous Scrap Consumers (Office commun des consommateurs de ferraille, or OCCF) (hereinafter referred to as 'the Joint Bureau') and to the Imported Ferrous Scrap Equalization Fund (Caisse de péréquation des ferrailles importées, or CPFI) (hereinafter referred to as 'the Fund'), which are cooperative associations incorporated under Belgian law in 1953 by twenty-two Community steel producers.

(a) The Joint Bureau had authority over the purchase of scrap for the account of Community undertakings; it was also for it to submit its proposals to the Fund on all questions concerning equalization of scrap.

According to Decisions Nos 14/55 (Article

5) and 2/57 (Article 11), after obtaining the agreement of the Fund, the Joint Bureau were to negotiate the purchases for the joint account.

It could also directly conclude contracts of purchase 'to the extent necessary for an orderly supply to the Common Market' for the account of consumers to be named subsequently.

(b) The Fund was the executive organ of the financial arrangement; it decided on the tonnages of scrap to be brought in for equalization, issued decisions on the rate of the contributions, fixed the accounting periods, determined the amount of the contributions to be paid by the undertakings, gave the undertakings notice of the time for payment and was empowered to collect the relevant amounts; it also effected payment of the equalization amounts.

7. In each of the Member States regional offices existed, as auxiliaries to the equalization scheme, which:

informed the Joint Bureau of the requirements of the undertakings of imported scrap in each of the countries of the Community and thus enabled it to negotiate purchases; indicated to the seller of the scrap the undertakings which were to receive it;

informed the Fund of the tonnages of scrap qualifying for equalization which had been delivered to the undertakings within their area; on the basis of these reports, the Fund calculated the total amount of equalization due in the Community, the equalization contribution calculated per metric ton of scrap purchased, and the credit or debit balance of each country;

collaborated with the Fund in the settlement of the amounts due in respect of equalization.

Contingent provisions governing the organization, the composition and the functioning of the regional offices are not contained in any decision by the High Authority. The regional offices were set up by the scrap-consuming undertakings before the establishment of the compulsory equalization scheme and were later taken over by the scheme.

8. In Germany, the regional office was the Deutsche Schrottverbraucher-Gemeinschaft GmbH (DSVG). In addition to its activites described above, in the service of the financial arrangement, the DSVG was also entrusted with acting for the scrap-consuming undertakings in the execution of contracts prepared or concluded by the Joint Bureau with the scrap suppliers; in particular it paid the seller for the account of the buyers.

B — The actual situation

1. During the period from 31 August 1956 to 8 July 1957, the Joint Bureau concluded six general agreements with the company Hansa Rohstoffverwertung GmbH, Düsseldorf (hereinafter referred to as 'Hansa') for the account of undertakings to be subsequently named. These agreements are annexed to the Court's file (and are referred to in the Joint Bureau's letters as 'contracts'). Confirmed by the Joint Bureau as constituting a 'purchase', these agreements contain details on the quantity, price and provenance of the scrap. As far as provenance is concerned, the letters indicate Iceland, England and other territories outside the Community.

As to provenance, two of the letters of confirmation mention substitute scrap.

2. The contracts of purchase expressly refer to the general provisions of the Joint Bureau's contract, which stipulate *inter alia:*

that the purchase shall always be carried out by order of and for the account of undertakings to be named subsequently and that the regional offices are authorized to name the undertakings which are to receive the material;

that athe seller must provide indisputable documentary evidence that the material comes from the country indicated in the letter of purchase.

The contract also contains the following provisions:

For shipyard scrap within the Community, a list shall be sent to the OCCF (the Joint Bureau) with the names of the ships, including the weight and the tonnage. furthermore, the customs declarations on entry and the contracts of sale of the ships must be produced, as well as a certificate from the administrative authority under the supervision of which the breaking took place . . .

For the batches of scrap arising from these sources or from similar sources, the CPFI (the Fund) or its representatives shall have a right of inspection over the breaking-up of the scrap.

. . .

For other materials in Community territory which do not come under the provisions of the High Authority, declarations by the government agencies or other administrative authorities responsible therefor should be supplied certifying that those materials or the scrap arising from them have qualified for export to third countries, the OCCF having declined to purchase . . .

3. In accordance with the provisions of the contract, the DSVG named the applicants as undertakings entitled to check, accept and sign for the scrap in question; during the following months, Hansa made various deliveries to scrap-consuming undertakings. The deliveries to the consumer undertakings were in each case preceded by notices of allocation from the DSVG to the undertakings which were to receive the goods; after taking delivery of the scrap, the undertakings sent acknowledgements of receipt to Hansa and scrap accounts to the DSVG. According to a customary practice, Hansa's invoices were addressed to the DSVG. The DSVG gave the recipient undertakings notice to settle their debts (based on the internal price of scrap, that is, net of equalization). This was done, according to a clearing scheme, by transfer of amounts for which the scrap-consuming undertaking was liable in respect of purchase of scrap or in respect of equalization contributions to the account of a scrap seller named by the DSVG. This seller could be, but was not necessarily, the one who had delivered the scrap to the undertaking which was making the payment; in that case, the undertaking was credited by the DSVG with the payment made against the sums for which it was liable in other respects. The sums to which each undertaking acquiring scrap was entitled in respect of equalization, on the basis of the details which it gave to the fund, were paid by the DSVG not to that undertaking itself, but directly to the seller of the scrap in part of the purchase price.

4. The certificates sent by a Netherlands seller of scrap, the Zeeuwse Metaalmaatschappij, to Hansa and by Hansa to the DSVG to prove entitlement to equalization were declarations signed by the head of the Iron and Steel Division of the Netherlands Ministry for Economic Affairs.

These declarations stated *inter alia:* '. . . according to the information in my possession, you may apply for export licences up to a maxium of . . . metric tons of steel scrap arising from the breaking of the steamship . . .'.

5. The ships specified in these declarations were either not handed over for breaking or had at that time already been broken; a quantity of shipbreaking scrap corresponding to the tonnage indicated in the declarations was not therefore available.

6. By a letter of 27 November 1958, the High Authority informed the applicants that the payments in respect of equalization with which their accounts had been credited had been made in error and invited them to repay amounts equivalent thereto to the financial arrangement.

7. This repayment was refused, and the High Authority took the contested individual decisions of 6 January 1959, by which the applicants were ordered to repay certain amounts to the Imported Ferrous Scrap Equalization Fund in Brussels or to the Deutsche Schrottverbraucher-Gemeinschaft in Düsseldorf, on behalf of the Fund, before 31 January 1959. These decisions

'shall be enforceable' within the meaning of Article 92 of the ECSC Treaty.

8. On 14 February 1959, the ten applicant undertakings brought identical actions against these decisions.

II — Conclusions of the parties

The *applicants:*

1. Claim that the Court should:

'(a) Annul the individual decisions of the High Authority of 6 January 1959 'concerning the repayment of provisional equalization payments made by the imported Ferrous Scrap Equalization Fund' to the applicant undertakings;

(b) Order the High Authority to pay the costs.'

2. In the alternative, suggest that the case be adjourned until such time as the organs of the financial arrangement have submitted their final accounts, and that, if necessary, time-limits be laid down for this purpose;

3. In the further alternative, should the claims of the High Authority be upheld, assert, if and in so far as appropriate, rights to a set-off based on an action for damages against the High Authority for wrongful acts or omissions by its organs.

The *defendant* contends that the court should:

'(a) Dismiss the actions as unfounded;

(b) Dismiss the claim for a set-off as inadmissible, or at all events as unfounded;

(c) Dismiss the claim for adjournment of the case as unfounded;

(d) Order the applicants to bear the costs.'

III — Submissions and arguments of the parties

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

A — Lack of competence of the High Authority to take decisions under Article 92 of the ECSC Treaty

The applicants take the view that the High Authority was not competent to order by administrative measures the repayment of the equalization amounts demanded by the contested individual decisions.

1. The *applicants* criticize the fact that the contested decisions were taken in the form of enforceable decisions within the meaning of Article 92 of the ECSC Treaty.

The Treaty enumerates exclusively the cases in which the existence of pecuniary obligations on undertakings can be established by decisions of the High Authority; in this case, only such pecuniary obligations as are governed by the Treaty itself without recourse to other rules of law are included. In this instance, no such case is involved.

The *defendant* answers that the individual decision imposing an obligation of repayment can be equated with a decision imposing an obligation of payment (e.g. of equalization contributions); the individual decision is the only means which the Treaty puts at the disposal of the High Authority to oblige a recalcitrant undertaking, through proper legal proceedings, to fulfil its pecuniary obligations.

Moreover, the defendant takes the view that the right to claim back payments wrongly made comes under public law. The terms of Article 92 therefore oblige it to order repayment by means of an enforceable decision.

Its competence to demand repayment of overpayments in respect of equalization by means of an enforceable decision is not affected by the fact that the implementation of the equalization scheme has been entrusted to a special agency, all the more so since it can at any time withdraw the powers which it has delegated to that agency and perform them itself.

2. The *applicants* are likewise of the opinion

that the High Authority can also not base its purported right to take a decision establishing the existence of pecuniary obligations upon Article 53 of the ECSC Treaty.

The High Authority cannot purport to derive the general right to enact administrative orders which constitute pecuniary obligations from its right to make a financial arrangement; on the contrary, in the decisions by which it made the financial arrangement and which were unanimously approved by the Council of Ministers, it should have stated clearly the cases in which it reserves the right to take enforceable decisions which constitute pecuniary obligations.

This is not the case for decisions imposing repayment.

Such decisions, therefore, find no legal basis either in the substantive law of the ECSC Treaty, or in the decisions taken under Article 53; and to read implied extensions into the provisions of the Treaty would be prejudicial to its strictly normative nature.

The *defendant* replies that, within the framework of the equalization scheme, which it established, Article 53 (b) of the Treaty expressly obliges it to take any measures necessary for the proper working of that scheme.

The High Authority also disputes that a decison claiming back overpayments in respect of equalization is such as to be outside its competence. The right to take such measures goes without saying and the agreement of the Council of Ministers was not necessary to confer it upon the High Authority.

3. The *applicants* also advance the argument that, in many cases, any repayment of overpayments in respect of equalization would have to be demanded from a scrap dealer who is not among the undertakings referred to in Article 80 of the Treaty and who therefore cannot be the subject of an administrative decision.

The effect of accepting that the procedure of making an order to pay by means of an administrative decision is lawful in regard to them would be that the protection before the courts enjoyed by Community undertakings, in respect of pecuniary obligations in relation to the High Authority, would be less than that granted to undertakings outside the Community.

The *defendant* answers that the Court of Justice affords the applicants full and complete legal protection against its decisions; the (procedural) prejudice advanced by the applicants and allegedly resulting from the procedure for repayment does not affect the legality of the contested decisions.

4. Under the submissions of the High Authority's lack of competence, the *applicants* further assert that the decisions under Article 92 should at all events establish:

that the equalization amounts were paid *to the applicants*;

that they were wrongly paid, since the High Authority would have been competent to take a decision only in that case.

In this connexion the applicants maintain that the payments in respect of equalization were not made to them, but to the DSVG, and transferred by the DSVG, without the authority of the scrap-consuming undertakings, to the seller of the scrap.

This payment to a third party could also not constitute a payment *on behalf of* the applicants, since the applicants had no obligations in regard to the recipient of the payment.

If the applicants did buy the scrap concerned, they could only have done so subject to the conditions of a contract concluded by the Joint Bureau of Ferrous Scrap Consumers which, in the absence of a valid power of representation, was not legally binding on them.

Moreover, that contract required that the delivery should be of scrap qualifying for equalization, and expressly stipulated the

seller's obligation to produce documents establishing beyond any possible dispute qualification for equalization. If, in fact, the scrap delivered did not qualify for equalization, the seller could not demand payment of the price, at least for the part which was to be payable and paid only on the basis of the right to equalization agreed in the contract of sale.

Thus, either the scrap delivered did qualify for equalization, and for that reason the High Authority has no right to repayment, or it did not so qualify, and in that case the payment of which the High Authority is seeking repayment was not made in performance of an obligation on the applicants, and therefore was not made to the applicants or on their behalf. Therefore the contested decisions cannot rely on a right which, by its nature, was capable of being established by a decision of the High Authority against the applicants.

The *defendant* answers these arguments of the applicants in detail under the heading of infringement of the Treaty (see under D *infra*).

5. Inasmuch as the High Authority bases its competence on unjustified enrichment of the applicants, the *applicants* maintain that they could not be enriched by the payment made by the DSVG to Hansa; indeed, for scrap of whatever provenance, they have only to pay the internal price.

The *defendant,* however, takes the view that there is an enrichment of the applicants, in view of the fact that they received an equalization payment to which they were not entitled; moreover, an action for damages against their seller is available to them.

6. As regards the content of the contested decisions, the applicants criticize the fact that the High Authority decided that a contract existed between themselves and Hansa. It was not, however, competent to do so; by its decisions, it can only regulate the applicants' public law relations with the Community, but cannot make findings in the field of private law concerning a purported contract between Hansa and the applicants in order to justify its claims.

The *defendant* replies that indeed it cannot recover a private law debt by means of an administrative decision, but that it is fully competent to note such a debt when it is establishing a public law debt.

Thus, in the present case, the High Authority was competent to decide on questions in the field of private law, since it has a general duty to judge whether the conditions for a debt coming under public law are fulfilled.

B — Misuse of powers

1. The *applicants* maintain that the High Authority misused its powers through a misuse of procedure in purporting, in the absence of any already existing pecuniary obligation directly resulting from the functioning of the financial arrangement, to create such an obligation by the contested decisions themselves, and in employing to that end the summary procedure which is open to it only for ascertaining and putting into effect obligations the legal foundation of which is clearly derived from the Treaty.

In this way the High Authority is employing the administrative procedure of making an order to pay in order to pass on the consequences of its own wrongful conduct to certain undertakings.

The *defendant* answers that a pecuniary obligation on the part of the applicants does exist as the equalization in question 'benefited' them. The High Authority employed the only means at its disposal to obtain repayment thereof.

2. The *applicants* also consider as constituting a misuse of procedure the fact that the High Authority used the medium of an administrative decision to give the impression that the complex involving both public law and private law justifies its claims, by asserting as facts in the contested decisions matters involving private law, such as 'the applicants received payments' or 'the equalization benefited them'. This cannot result in a final settlement of the complex in dis-

pute. The contested decisions are essentially based on the assessment of a civil law relationship. The High Authority seeks, however, to deny the applicants any objections relating to the civil law relationship, with the argument that its debt comes under public law alone.

The *defendant* answers that the equalization scheme as a whole comes under public law, and that the rights and duties of the undertakings arising from this scheme are in the domain of public law.

The concept of a 'complex' is mistaken; payment of the equalization amounts is of a public law nature, and consequently claiming back equalization amounts wrongly paid is of the same nature.

C — Infringement of an essential procedural requirement

The applicants consider that the assertions contained in the contested decisions fail utterly to fulfil the conditions laid down in Article 15 of the Treaty for statements of the reasons on which decisions of the High Authority must be based; indeed, neither the findings of fact nor the considerations of law supporting the pecuniary obligation, the existence of which is asserted in an enforceable instrument, can be discerned from the decision.

In particular, if the statements of the reasons on which the decisions are based are to be sufficient, they should show clearly why payments made to a third party must be treated as provisional payments made on behalf of the undertakings (the applicants).

The legal foundation of these payments, which were in reality made to a third party and from which the applicant's obligation to repay should derive, is not indicated in the contested decisions.

The statement of reasons supplied *a posteriori* in the statement in defence is not capable of alleviating the effects of the infringement of an essential procedural requirement consisting of a lack of a statement of the reasons on which the contested decisions were based.

Moreover, the contested decisions fail to state the reasons on which they are based in that they do not indicate the facts from which it follows:

that a part of the scrap delivered to the applicants did not qualify for equalization and that the sums the repayment of which is being sought were wrongly paid; the bare assertion that it was neither imported scrap nor shipyard scrap is irrelevant, in view of the fact that Community scrap could be delivered which qualified for equalization by virtue of the conferring of rights to export;

that the scrap received by the applicants did come from that part of the delivery and not from another, almost all of which qualified for equalization.

The applicants maintain that, inasmuch as it is asserted in the preamble that the scrap received by the applicants was incorrectly described as being shipyard scrap, the contested decisions rely on a mistaken situation of fact, since neither the contracts concluded by the Joint Bureau, nor the DSVG's allocation orders, speak of shipyard scrap; moreover, they make no mention of the fact that the scrap received by the applicants might have been so-called substitute scrap.

The *defendant* replies that the contested decisions contain everything that is essential to a statement of the reasons for the High Authority's demands.

They set out in a logical order how the High Authority establishes its debt against the applicants and they demonstrate both the basis of and the necessity for the measures taken. The decisons are not compulsorily required to contain details of the DSVG's methods of payment, which are, moreover, well known to the applicants.

Furthermore, the contested decisions were taken a year after the discovery of the corruption affair; in the meantime, the applicants became aware of all the details on the amounts that were improperly paid to them in respect of equalization upon examination of the false certificates.

The applicant's rights of appeal against the decisons have not been prejudiced by the alleged lack of a statement of reasons for the decision. Thus the High Authority was not under any obligation to include a large number of details in the decisions; in particular, it was not necessary to state the reasons whereby a payment made to a third party (Hansa) was received by the applicants, or to go into detailed explanations, in certain of the decisions, as to the concept of subsitute scrap, since the only matter of importance is whether or not the scrap delivered to the applicants qualified for equalization.

D — Infringement of the Treaty

According to the *applicants,* the contested decisons infringe the Treaty or a rule of law relating to its application in that:

they create an enforceable right in respect of a debt the basis of which in fact and in law is not clearly shown therein;

inasmuch as they hold a pecuniary obligation to exist, or inasmuch as they purport to establish it themselves, they rely on allegations of fact which are untrue or which cannot be proved.

The first argument is covered by the discussion under the submission of infringement of an essential procedural requirement (see under C *supra*).

As to the second argument, the applicants maintain that the existence of a pecuniary obligation depends on proof that:

1. Payments were made to them;

2. Those payments were wrongly made;

3. Repayment may therefore be required of *them*;

4. The identity of the scrap delivered to them is definitely established.

1. Did the applicants receive a payment?

(a) The *applicants* point out—and the *defendants* do not deny—that no payment was made directly to them, although the wording of the contested decisions might give the impression of a direct payment.

(b) Likewise the *applicants* maintain that they did not receive any indirect payment; the final result of the payment of the equalization amounts to a third party cannot have been that the applicants received it and that it 'benefited' them, for the following reasons:

(aa) There was no consideration given to the applicants corresponding to the payment;

(bb) The payment did not relieve the applicants of an obligation, as the contract of purchase concluded between the Joint Bureau and Hansa did not directly bind the applicants.

as to (aa)

According to the *applicants,* the High Authority bases its right to recovery of the payments on the argument—in their opinion a mistaken one—that the direct or indirect payment of equalization amounts benefits the undertakings to whom it is made, to the detriment of the Community. In the reality, equalization does not benefit the undertaking which happens to consume imported scrap, but rather scrap consumers as a whole; its purpose is to guarantee that imported scrap should be available in sufficient quantities and that the price thereof should be adjusted to that of Community scrap. The consumer of such scrap does not benefit from it any more than any other scrap consumer (except users of own arisings). The applicants conclude from this that, for their part, they have not received any payments in respect of equalization.

The *defendant* replies that the applicants' argument confuses the objectives of the economic policy of the financial arrangement with the technical and legal organization thereof. What matters in the present action is solely who, in law, is the creditor of the equalization and whether that creditor did in fact receive valuable consideration in respect of equalization. It emerges clearly

from the decisions setting up the financial arrangement that the undertaking to which the scrap is delivered is the creditor of the equalization payments. The applicants do not dispute that payments in respect of equalization were made; the applicants alone could claim the right to receive those payments, and the DSVG did in fact give the undertakings valuable consideration by paying off a part of the purchase price which they owed, when it transferred the equalization amounts to the sellers of the scrap.

This situation is not altered if the existence of an agency between the applicants and the Joint Bureau is a accepted.

as to (bb)

(i) The *applicants* state that they can only have acquired the scrap in dispute on the basis of a contract concluded between the Joint Bureau and the scrap sellers; the applicants did not themselves buy the goods.

That contract did not bind them directly, since, if the Joint Bureau was acting by their order and for their account, it could not have been acting in their name.

Decisions No 14/55 (Article 5) and No 2/57 (Article 11) contain the rule that, 'after obtaining the agreement of the Fund on its proposals, the Joint Bureau shall be competent to negotiate purchases for the joint account, the contracts of purchase, however, being concluded directly between the sellers and the consumers concerned'; but the Joint Bureau can, 'to the extent necessary for ensuring an orderly supply to the common market, also directly conclude contracts of purchase (and of affreightment) for the account of consumers to be named subsequently'.

The applicants maintain that, by regularly employing the second possibility, the Joint Bureau therefore continuously acquired shipbreaking scrap as purchaser; this is also the case in the present action.

For its part, the *defendant* maintains that under Article 4 of the general conditions of the OCCF contract the DSVG's nomination of the undertaking as the buyer makes the contract legally binding on that undertaking. The defendant asks on what legal basis the applicants could have acquired and paid for the scrap other than on that of a purchase at common law.

The Joint Bureau did not itself purchase, it did not receive any delivery of scrap, it did not by itself carry out any payment for scrap or resell any scrap to the applicants. Thus all the factors capable of supporting the construction defended by the applicants are lacking.

The basic decisions Nos 14/55 and 2/57 clearly bring out the principle that the Joint Bureau must only exceptionally be the buyer itself and that it must never acquire title to scrap which is inside the Community.

This fundamental principle of the decisions alone contradicts the applicants' idea that the Joint Bureau acquired the scrap itself and then resold it to them.

The defendant also points out that pursuant to the 'general agreements' and to the general contractual provisions supplementing them the purchases of scrap were concluded 'always by the order of and for the account of undertakings to be named subsequently'.

This High Authority further points out other general provisions of the contracts, tending to show that the undertakings are indeed the buyers of the scrap.

(ii) The *applicants* also maintain that a purchasing order, which governs the internal relations between the Joint Bureau and the applicants, could not amount to a power of agency or make the applicants, through the medium of the Joint Bureau, the direct contracting partners of Hansa. Therefore, the Joint Bureau did not purchase in the name of the applicants and never received any such power of agency in relation to Hansa.

According to the *defendant,* there is no doubt that in practice the agent needs a power of agency in order to carry out his task.

The fact that in the present case, for several years, the undertakings, the applicants among them, continuously and regularly entrusted their purchases of scrap to the DSVG through the Joint Bureau not only created internal relations but also necessarily involved the existence of a power of agency in relation to third parties.

This conclusion is confirmed by the fact that the applicants and the DSVG are linked by close corporate relations.

(iii) In support of their statement that they did not buy the scrap in dispute, the *applicants* further assert that they were not aware of and were never informed of the details of the contract, in particular of the total quantities bought, of the agreed import price or of the fact that the delivery of substitute scrap was allowed.

With regard to the purchases concluded by the Joint Bureau, the *defendant* replies that there was no need for the applicants to be informed of the details of the various purchases; the DSVG, which was responsible for them, has the closest corporate relations with the German scrap-consuming undertakings; the purchasing system has been functioning for a long time and scrap is a material which lends itself to such a method of operation. It is impossible to infer from the fact that, for many details of the performance of the contracts, the DSVG employs a well-tried procedure and that the buyers themselves appear only to a limited extent, that the undertakings remain more or less third parties to whom scrap is occasionally allocated.

(iv) Finally, the *applicants* take the view that they cannot have been liable for the purchase price in the event of the scrap's not qualifying for equalization, and that they cannot have been relieved of an obligation by the wrongly-made payment of that price.

The *defendant* replies that the fact that the material delivered might not have corresponded in every particular to the conditions of the contract is a matter between the contracting parties (thus, in the defendant's opinion, between the undertakings and Hansa), which does not concern the Fund.

2. Were the applicants entitled to equalization payments?

The *applicants* take the view that the payment of the part of the purchase price corresponding to the amount of equalization was rightly made. They advance this argument only in the alternative, since, in their view, the contested decisions could be valid only if the payment to the recipient had been incorrectly made and, at the same time, in performance of an obligation of the part of the applicants, which is not the case.

(a) The *applicants* indicate that equalization was available *inter alia* to scrap stored within the Community which the competent government frees for export in the event of the Community's deciding not to exercise its option to purchase. In the present action, the sellers produced a certificate from the Netherlands Government under which that scrap would be authorized to be exported if the Joint Bureau did not claim. it. The scrap thus became capable of constituting the subject-matter of equalization, and any examination as to whether the certificate from the Netherlands Government was delivered rightly or wrongly is immaterial for that purpose.

The *defendant,* on the other hand, considers that a false document can give the appearance of a right and mislead third parties, as long as the falsification is not discovered, but that it can never be the basis of an autonomous right to export. It is not here a question of good or bad faith, but of the taking, together with certain objective factors, of evidence of the right to receive an equalization payment.

(b) The *applicants* maintain that the equalization scheme, that is, the Brussels organization, the Fund, the Joint Bureau and the regional offices, constitute one unit and that all the quantities bought by the Joint Bureau therefore qualify for equalization.

For the period to which this action relates—a change only occurred later, with

Decision No 16/58—equalization as such was linked to the bringing in of the material by the Joint Bureau; no special evidence was demanded before the conclusion of the purchase. The import certificates referred to in the conditions of the Joint Bureau's contract are only a constituent element and a condition of the contract of purchase.

The *defendant* replies in this connexion that the purchase or importation of the scrap is not decisive; the right to equalization is governed by the basic decisions. The applicants forget that the export certificates do not represent the quantities of scrap to which they relate, but are of value only as documentary evidence. If such documents are false as to their subject-matter, they cannot give rise to true rights.

(c) The *applicants* point out that in two of the six general agreements in question the scrap was expressly described as being substitute scrap; they take the view that the other agreements also concerned substitute scrap. This is Community scrap which, on the footing of a substitution in advance for shipyard scrap to be recovered subsequently, is privileged by the grant of export rights upon examination of the certificates drawn up by the national governments, and which may therefore be sold at the higher price of imported scrap. The High Authority seems to be unaware that, by virtue of the government certificates, substitute scrap, which is in itself community scrap, becomes 'highly-priced scrap' treated as scrap coming from third countries and therefore qualifies for equalization.

Hansa was entitled to deliver Community scrap as qualifying for equalization, if it produced the certificates of the competent government department relating to that scrap and if those certificates were accepted by the Joint Bureau; both conditions were fulfilled in this instance.

The *defendant* points out in this connexion that the expression 'substitute scrap', which appears in two of the agreements in dispute, relates to the possible replacement of the imported scrap which is referred to therein; moreover, substitute scrap, as opposed to shipyard scrap, was never expressly recognized as being capable of qualifying for equalization. However, that is not important; even if one shared the applicants' view that substitute scrap, as 'other highly-priced scrap', can qualify for equalization, the High Authority maintains that in this instance the indispensable prerequisite, namely the existence of an equal quantity of ship-breaking scrap qualifying for equalization, is unfulfilled.

3. Does the High Authority possess a right as against the applicants to reclaim overpayments?

The *applicants* take the view that the High Authority cannot demand from them the repayment of equalization amounts improperly paid.

(a) The organs of the High Authority concluded the contract for the delivery of scrap and agreed on the conditions under which the seller was to be entitled to the part of the purchase price represented by the equalization. It was the task of the Fund in particular to verify the certificates documenting the right to equalization.

There can be no question of a refund of payments which the Joint Bureau might have made wrongly for the account of the applicants; the applicants are not guilty of any wrongful act or omission, whereas the same is not true of the defendant. As the conditions of a legally valid payment, the High Authority cannot impose on the applicants claims greater than those fixed by contract regarding the recipient of the payment and considered by them as adequate in the performance of the contract. Moreover the payment in dispute was made before the defendant and the Fund had seen the certificate.

The *defendant* disputes that the Joint Bureau ever concluded any general agreements by delegation of the sovereign powers of the High Authority or of the Fund; and the organs of the High Authority also did not draw up the conditions according to which the sellers could have laid claim to that part of the purchase price correspond-

ing to the equalization amount in view of the fact that the sellers do not possess any right to equalization, such right belonging only to the scrap-consuming undertakings.

Apart from that, there is no reason at all to examine the question of wrongful conduct when it emerges afterwards that the documents purporting to be the basis of the equalization payment are false. Repayment is indispensable, since the legal conditions laid down for the payment of equalization amounts have never been fulfilled.

(b) The *applicants* maintain that there can be no question of a repayment based on unjustified enrichment, since there is no enrichment; the price for scrap, whatever its provenance, is always the internal price.

The *defendant* takes the view that the statement that the applicants did not receive any enrichment is incorrect. They received an equalization to which they were not entitled and an action for damages against their seller is available to them.

The applicants are wrong in maintaining that they always pay only the internal price for their purchases of scrap. In reality, their pecuniary obligation with regard to the seller is legally constituted by the world market price, and not by the price of Community scrap; as far as scrap from third countries is concerned, they are relieved of the burden of the higher price by the benefit of equalization.

Moreover, the obligation in the law of the Coal and Steel Community to repay sums improperly paid is not seriously open to dispute. It concerns basic legal principles, common to all the States of the Community, which must therefore be incorporated into Community law. These principles apply in particular in the field of public law, the decisive field in this instance, since the equalization of scrap is of a sovereign nature. The provisions of German law on enrichment are not applicable.

(c) Basing their argument on the idea that the equalization of scrap does not benefit the undertakings individually, but scrap consumers as a whole, the *applicants* take the view that any harmful consequences which may arise from the scheme must not be borne by such undertakings as happen to receive the scrap in dispute, but by all the consumers taking part in the equalization scheme, that is by the Fund itself; the loss must therefore be borne by the Fund.

The *defendant* replies that it is the undertakings which, legally, have rights and duties; the Fund and the regional offices are only part of the machinery for the organization and implementation of the equalization scheme. The applicants were parties to the contracts of purchase, and for that reason it is for them to bear the loss arising from any defective delivery on the part of the seller. It is usual for each person to confine himself legally to his predecessor in title, who is the only one to whom he is linked by legal relations; accordingly, the Fund should confine itself to the applicants, and the applicants in their turn can obtain indemnification from their predecessor in title, Hansa. The applicants are incorrect in thinking that, having unfortunately sustained a loss, they can make the Community bear it; on the contrary, they must themselves bear the consequences of their legal position.

4. What scrap was delivered to the applicants?

(a) Finally, the *applicants* point out that the condition precedent to any recovery sought from them is that the scrap which was in fact delivered to them should be identical with that which, according to the High Authority, did not qualify for equalization. Such identity is not established; the information sent to the Fund by the DSVG is incorrect. The DSVG was not able to establish on the basis of its own papers what quantities of scrap allegedly not qualifying for equalization were delivered in performance of each of the contracts, or which recipient of material from Hansa received a specified part of that scrap.

The figures submitted by the DSVG are based on a quantitative distribution carried out jointly by the DSVG and Hansa, essen-

tially on the basis of estimates; they cannot therefore be used as a means of proof by the defendant. According to the documents sent to them by the DSVG, the applicants ostensibly received only scrap from third countries. The applicants cite certain examples tending to show that the identity of the scrap delivered is not proved beyond all doubt; moreover, they declare that they are prepared to submit to the Court their allocation orders and the waybills, although they do not wish this to be taken as admitting that the burden of proof rests upon them.

The *defendant* disputes that the particulars given by the DSVG are no more than mere estimates; on the contrary, by working out the quantities exactly to the kilogramme the DSVG has shown that in its report it based its calculations on detailed particulars. The applicants are merely insinuating that different kinds of scrap were mixed and do not produce any positive argument in that connexion.

The defendant maintains that, for two of the general agreements in dispute (62/VAR/130 and 70/VAR/1456), the dispute over identity is immaterial, since the scrap delivered in performance of these two general agreements was solely scrap not qualifying for equalization ('black' scrap), even though it was described as being shipyard scrap. Under the four other general agreements, 'white' scrap was also delivered, but it was not mixed with 'black' scrap.

The defendant also points out that in October 1958, when the Fund declared itself willing to bring an action in Germany against Hansa for the recovery of overpayments, acting as the assignee of the undertakings to which scrap had been delivered which did not qualify for equalization, the applicants did not question the accuracy of the figures put forward by the Fund concerning the quantities of black scrap, although it would have been in their interest to do so.

The High Authority analyses in detail the examples quoted by the applicants and concludes that the probative value of the DSVG's documents cannot be seriously disputed. Moreover, the applicants' objections concerning the identity of the scrap in dispute are not relevant; having regard to the mixing of different sorts of scrap, identity cannot be decisive in law.

As regards the burden of proof, the High Authority points out, in consideration of the close links existing between the DSVG and the community of scrap consumers established by a contact between the undertakings, that the particulars supplied by the DSVG emanate ultimately from the applicants themselves.

(b) The *applicants* maintain that the amounts demanded are not accurate. They point to certain discrepancies; in the absence of an opportunity to check the figures, they consider that they must dispute the accurary of the amounts claimed and demand proof from the defendant that they are justified.

The *defendant* answers that the payments made by the Fund in respect of equalization were only of a provisional nature; consequently the fact that there are differences (which are minimal in any event) from the amounts claimed by the High Authority goes without saying.

Moreover the applicants are able to verify the accuracy of the figures referred to by the High Authority; there is not the least ground for submitting to athe Court the figures for the Fund's transactions in their entirety. The action turns solely on the question whether the scrap for which equalization payments were made qualified for equalization and, if it did not so qualify, whether the repayment of the amounts paid can be claimed from the undertakings which benefited therefrom. Even if the Fund had been negligent and if, for one purchase or the other, it had paid excessive equalization amounts, the High Authority would be entitled to claim back the amounts overpaid; but that is immaterial in the present case.

(c) The *applicants* criticize the fact that their own share through the payment of

contributions in the equalization amounts in dispute was not taken into account in any of the decisions on repayment.

The *defendant* replies that no set-off with regard to the amounts of equalization improperly received is practicable before the accounts have been finally audited and verified. Moreover, the right to a set-off belongs to all the scrap-consuming undertakings in the Community which provided the contributions necessary for the equalization of the scrap in dispute, and not only to the applicants; the right has not yet taken on concrete form, since further very extensive calculations are necessary.

E — Infringement of the principle of good faith

The *applicants* point out that final accounts for the equalization scheme have not yet been produced; therefore the applicants cannot set off the contributions which they overpaid against the High Authority's claims for the recovery of the equalization amounts.

Moreover, the equalization scheme is in liquidation; therefore, should the Court not annul the decisions of the High Authority, the applicants run the risk of having in fact to pay the amounts demanded to the Fund without being able later to obtain from the Fund an indemnity in the form of the payment of their own debts.

Thus, if the applicants were forced to pay at this moment, the principle of good faith would be infringed. Therefore, in the alternative, they suggest that the case be adjourned until the organs of the financial arrangement submit their final accounts and that, if necessary, a time be prescribed for them to be presented.

The *defendant* answers that the principle of good faith is in no way infringed by the fact that at a time when final accounts have not yet been presented it is taking steps relating to the equalization scheme's past with a view to settling a contentious matter which it investigated and in which it determined the amounts of equalization from which certain undertakings benefited improperly.

The liquidation of the Fund concerns financially only its own assets; it has no effect on an action against the applicants for recovery of overpayments and, consequently, on the question whether the High Authority's action infringes the principle of good faith.

It is in the interest of all the undertakings in the Community which have contributed to equalization for the High Authority to take without delay the steps necessary for drawing up final accounts. Therefore there is no reason justifying an adjournment of the present action.

F — Set-off

In letters previous to this action, the *applicants* Ruhrstahl AG (Case 5/59), Bochumer Verein (Case 9/59) and Hüttenwerk Oberhausen (Case 12/59) claimed the right to a set-off based on an action for damages. In their applications originating proceedings, the other seven applicants, for their part, reserved the right to seek damages and to set off any amounts due in respect thereof. In the alternative and if and in so far as appropriate, all the applicants claim damages, in their replies, to the extent of the amounts demanded from them by the contested decisions.

The grounds for the set-off are the wrongful conduct of the High Authority's organs, which infringed many provisions and carried out only very inadequate inspections. The claim for damages, which justifies the set-off, is for the same amount as that of which the High Authority claims repayment, since the price of the scrap in dispute was increased, for the applicants, by that extra amount through the wrongful conduct of the organs of the financial arrangement. The debts due to the applicants are capable of being set off against those claimed by the defendant, since the Fund and the Joint Bureau, as well as the regional offices, constitute a single unit. Moreover, those debts can be claimed in their own right. Even if the right to reclaim overpayments was governed by public law, the setting-off of debts governed by private law could none the less be sought.

The *defendant* does not press the issue of the formal admissibility of such a notice of set-off in an action for annulment, but considers that the grounds stated for the claim are insufficient.

The applicants are oversimplifying when they treat the Fund, the Joint Bureau and the regional offices as a single entity for the purpose of establishing a connexity which is not there.

In reality, those three organs are different legal entities and, in order to bring an action for damages, the applicants ought to have set out in greater detail which organs conducted themselves wrongfully, what precisely constituted the wrong, whether their claims have their origin in civil law or in a wrongful act or omission under administrative law and, above all, what can justify claims based on a wrongful act or omission on the part of the administration.

There exists no legal basis to any liability on the part of the Joint Bureau or the fund, still less on the part of the High Authority, for a wrongful act or omission by the DSVG.

In order to base a claim on liability for a wrongful act or omission on the part of the administration, the applicants would have had to prove:

the nature and extent of any damage caused them;

the existence of a wrongful act or omission on the part of the administration, that is, a particular instance of improper conduct;

the causal relationship between the wrongful act or omission and the damage.

In this instance, the detriment suffered by the applicants cannot have been caused by the improper conduct of the organs of the equalization scheme; moreover there is no wrongful act or omission.

IV — Procedure

The actions are in due form and were brought within the prescribed time-limit.

The procedure, which involved the joinder of the cases, followed the normal course.

Grounds of judgment

I — Admissibility of the applications

No objection was raised as to the admissibility of the applications.

The court finds no reason to challenge the admissibility of the applications of its own motion.

The right of the company Mannesmann AG, which contests the validity as regards their substance of the decisions taken against the companies Mannesmann-Hüttenwerke AG and Hahnsche Werke AG, to institute proceedings must be recognized, since, as the undisputed assignee of those two undertakings, it wishes to take precautions against a formal amendment of the decision making it enforceable against itself.

Therefore it has a direct interest in the application for annulment.

II — Substance of the applications

1. The submission based on lack of competence

(a) The applicants allege that the High Authority is wrong in inferring from Article 92 of the ECSC Treaty its *formal* competence to take the contested decisions.

In this connexion it must be stated, first, that the contested decisions are based not only on Article 92, but also on Article 53 of the Treaty as well as on decisions Nos 14/55 of 26 March 1955 and 2/57 of 26 January 1957, taken pursuant to Article 53, the legality of which decisions is not disputed.

Article 92 of the Treaty determines solely the legal nature of certain decisions of the High Authority as regards the means available for their enforcement, but it does not specify the cases in which the High Authority is empowered to take enforceable decisions, namely decisions which impose a pecuniary obligation.

It is erroneous to maintain that the Treaty itself enumerated these cases exclusively in its provisions on levies, periodic penalty payments and fines.

Article 53, upon which the contested decisions rely as a legal basis, does in fact empower the High Authority to make financial arrangements. It gives the High Authority the power to impose pecuniary obligations on undertakings and to sanction them by enforceable decisions based on Article 92.

The financial arrangements referred to in Article 53 are used for gathering and distributing pecuniary resources; therefore the decisions which make them can also regulate the means of enforcement of a compulsory contribution to the benefit of such an arrangement.

Decisions Nos 14/55 and 2/57, setting up a financial arrangement intended to ensure an orderly supply of scrap to the Common Market, obliged the scrap-consuming undertakings in the Community to pay contributions and expressly provided that the High Authority can take enforceable decisions for the recovery thereof.

The High Authority maintains that these provisions authorize it not only to collect contributions, but also to enforce rights arising from payments of equalization wrongly made by means of those contributions, even though Decisions Nos 14/55 and 2/57 did not expressly provide for that possibility.

In the absence of an express provision on this point, it must be asked whether or not the reclaiming of equalization payments wrongly received is the necessary corollary of the compulsory contributions and the rights to equalization provided in the decisions on the equalization scheme, and whether or not the powers of en-

forcement conferred on the High Authority in those decisions, by reason of their import and purpose, authorize similarly the reclaiming by means of enforceable decisions of wrongly-made equalization payments.

The equalization scheme, which was compulsorily applied to the many undertakings consuming ferrous scrap in the six countries of the Community, always engenders the possibility of errors in the payment of equalization amounts, and therefore it must be accepted that the legal foundation of an obligation to pay contributions implies the right to recover overpayments, as the equalization scheme set up by Decision Nos 14/55 and 2/57 could not be implemented in a reasonable way in the absence of this power.

Therefore express authorization was not necessary for the exercise of rights to repayment which are of the same legal nature as the right to equalization and the obligation to pay contributions.

Therefore, the formal competence of the High Authority to note the existence of an obligation to repay and to assert its right to repayment through an enforceable decision was well founded.

(b) On *the substance* of the decisions, as regard the competence of the High Authority, the applicants allege that the High Authority used the power to take an enforceable administrative decision provided for in Article 92 of the Treaty in order to create a claim for itself in private law.

According to the applicants, if it must be acknowledged that the payment of the contributions and of equalization within the scrap equalization scheme was of a public law nature, none the less in this instance the right to repayment of the equalization amounts paid results from a private law relationship. Indeed, the Fund, or the DSVG acting on its order, did not make a payment to the applicants corresponding to a public law requirement deriving from the decisions. According to the defendant's own allegations, it made the payment to the suppliers of the scrap, which means that the applicants were relieved of a private law obligation, an obligation, moreover, the existence of which they strongly dispute.

The structure of the equalization scheme for ferrous scrap exhibits, taken as a whole, the characteristics of an institution governed by public law.

It is a system for lowering the price of imported scrap to the benefit of the consumers.

Whether this lowering is effected by way of an individual distribution of subsidies or by general reduction in the price of that scrap, it is still an administrative measure producing subjective rights, the nature of which is not altered by the intervention of a private law element, such as the alleged settlement of the debt.

2. The merits of the High Authority's claims

As the competence of the High Authority and the procedure which it employed to recover equalization amounts do not give rise to any objections, before proceeding to any other issue, it should be examined whether there are any grounds on which the applicants can be treated as liable for amounts wrongly paid by the Joint Bureau in respect of equalization.

There is no need to inquire into the question of the legal grounds upon which and the extent to which the contracts were to produce legal effects on the part of the applicants. Such effects would be possible only if, as a result of the purchases of scrap, as concluded by the Joint Bureau:

(a) the applicants incurred a liability in respect of the payment of equalization, or if

(b) in in the alternative, they bore the risk of such payment, or else

(c) if they benefited from any unjustified enrichment.

(a) It emerges from the documents produced before the Court, and more particularly from the correspondence between the Joint Bureau and Hansa confirming the general agreements, which documents, moreover, are not challenged by the parties, that it was the Joint Bureau, an organ of the High Authority, which entered into the agreements with Hansa dealing with the purchase and delivery of scrap.

Under the very terms of the letters of confirmation, the subject-matter of the purchases was scrap which by its particular features was expressly eligible for equalization; furthermore, this condition follows from the clear intention of all those concerned.

Article 4, and in particular paragraph (4) thereof, of the general conditions which formed an intergral part of the agreements concluded by the Joint Bureau with the scrap suppliers, provided for the direct supervision by the fund or its representatives of that essential quality of the goods sold, namely their belonging to more or less clearly defined categories of scrap qualifying for equalization.

Thus, no obligation of verification, and hence no liability, could fall upon the applicants, unless it were proved that they knew or could have known that the scrap was fraudulently declared to be scrap entitled to equalization. However, no proof or offer of proof to this effect has been advanced.

(b) As regards the payment of equalization by the Fund, it should be pointed out

that under the aforementioned general conditions, in particular the last paragraph of Article 4, the Fund, on the order of the Joint Bureau, was to make such payment only after carrying out the duties of supervision incumbent upon it, as has just been explained, provided, still under the general conditions, that such payment was to be suspended if the 'least doubt' existed as to the authenticity of the documents establishing the scrap's qualifying for equalization.

Thus no risk in respect of the payment of equalization had been assumed by the applicants, all the more so as no sum intended for that purpose was paid into their hands, but all the payments relating thereto went directly to the suppliers through the DSVG, the regional office for Germany of the Joint Bureau and the Fund.

(c) Moreover, it cannot be argued that any unjustified enrichment on the part of the applicants exists.

Indeed, equalization was designed to make up the difference in price between so-called imported scrap, which was more highly-priced, and scrap recovered within the Common Market.

According to the very principles underlying equalization, that extra cost was to be borne not by the applicants in proportion to the supplies of imported scrap which they received, but by the scrap consumers as a whole through the Fund.

Thus the payment of equalization did not constitute an enrichment for the applicants by virtue of a payment which benefited them directly, but was the result of an operation bringing scrap delivered down to the price of the internal market.

Moreover, an obligation to make restitution on the grounds of an unjustified enrichment also presupposes the absence of any justification whatever in the dealings between the parties.

However, that legal justification exists independently of whether the equalization was paid directly to the scrap sellers, thus constituting the difference between the price on the internal market and the import price, or whether it was paid to the applicants to enable them to buy imported scrap instead of buying scrap coming from the internal Community market.

Therefore in this instance the requirements of unjustified enrichment giving rise to restitution are not fulfilled.

Under these circumstances, the decisions infringe rules of law relating to the application of the Treaty and must be annulled.

Moreover, this conclusion does not prejudice the High Authority's right to

proceed against the perpetrators of the frauds and against those who profited from them.

In view of the foregoing considerations it becomes superfluous to examine the other grounds of complaint put forward by the applicants, and more particularly that of lack of reasons supporting the decisions.

Costs

The defendant, having failed in its submissions, must, under Article 60 of the Rules of Procedure of the Court of Justice of the European Coal and Steel Community, be ordered to pay the costs.

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 15, 33, 53, 80 and 92 of the Treaty establishing the European Coal and Steel Community;
Having regard to the Protocol on the Statute of the Court of Justice of the European Coal and Steel Community;
Having regard to the Rules of Procedure of the Court of Justice of the European Coal and Steel Community,

THE COURT

hereby:

1. **Annuls the decisions of the High Authority of 6 January 1959, 'concerning the repayment of provisional equalization payments made by the Imported Ferrous Scrap Equalization Fund' to the undertakings Mannesmann Hüttenwerke AG, Hahnsche Werke AG, Ruhrstahl AG, Gußstahlwerk Gelsenkirchen AG, Gußstahlwerk Witten AG, Niederrheinische Hütte AG, Bochumer Verein für Gußstahlfabrikation AG, Stahlwerke Bochum AG, August Thyssen-Hütte AG, Hüttenwerk Oberhausen AG and Phoenix-Rheinrohr AG;**

2. **Orders the High Authority to pay the costs.**

Donner Delvaux
Riese Hammes Catalano

Delivered in open court in Luxembourg on 4 April 1960.

A. Van Houtte — A. M. Donner
Registrar — President