3. It is evident from the wording of the first paragraph of Article 37 that the right to raise the matter with the High Authority is held exclusively by the State in which the disturbed situation has appeared or has threatened to appear. [1]
4. Only the Member State concerned may institute proceedings against the express or implied refusal of the High Authority to accede to its request or against a decision adopting measures which it regards as being insufficient.
   The other Member States also have the capacity to institute proceedings under the third paragraph of Article 37 to contest the existence of disturbances or the necessity and appropriateness of measures adopted by the High Authority.
5. On the other hand, undertakings do not have the right to rely on the third paragraph of Article 37 since proceedings under this provision put in question the political responsibility of the Member States and of the High Authority, particularly in respect of reconciliation of the general interest of a Member State with the general interest of the Community.
   Undertakings and associations of undertakings also have no right, by virtue of Article 33 on its own or in conjunction with Article 37, to contest a decision taken by the High Authority under the second paragraph of Article 37 since any judgment of the High Authority's use of the special power assigned to it by Article 37 should in any event be based not on the provisions of Article 33 but on those of Article 37.

In Joined Cases

NIEDERRHEINISCHE BERGWERKS-AKTIENGESELLSCHAFT, 29 Jägerhofstrasse, Düsseldorf,

(Case 2/60),

UNTERNEHMENSVERBAND DES AACHENER STEINKOHLENBERGBAUES, e. V., 5, Goethestrasse, Aachen,

(Case 3/60),

applicants,

represented by Professor Konrad Zweigert, 187 Mittelweg, Hamburg 13, with an address for service in Luxembourg at the Chambers of Philippe Bennecke, 2 rue du Fort-Élisabeth,

HIGH AUTHORITY OF THE EUROPEAN COAL AND STEEL COMMUNITY,

defendant,

represented by its Legal Adviser, Walter Much, acting as Agent, assisted by Professor Adolf Schüle, 17 Bei der Ochsenweide, Tübingen, with an address for service in Luxembourg at its offices, 2 place de Metz,

Application for the annulment of Articles 1, 3 and 5 of Decision No 46/59 of the High Authority of 23 December 1959, amended by Decision No 1/60 of 18 January 1960,

THE COURT

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

Advocate-General: M. Lagrange

Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Summary of the facts

The facts giving rise to the present case may be summarized as follows:

Following a formal request submitted by the Government of the Kingdom of Belgium under Article 37 of the Treaty, the High Authority, taking into account the difficulties of the Belgian coal industry, on 23 December 1959 adopted Decision No 46/59 (published in the JO of 31.12.1959) which was subsequently amended slightly by Decision No 1/60 (published in the JO of 28.1.1960). Article 3 of the decision, which seeks to rationalize the Belgian coal industry, fixes for the Belgian Government a maximum amount of 2 950 000 metric tons for deliveries of solid fuels from the other countries of the Community, to be allocated as follows:

- —1 900 000 metric tons from the Federal Republic of Germany,
- —250 000 metric tons from France,
- —800 000 metric tons from the Netherlands.

Article 5 of the same decision provides that, in so far as it is necessary to allocate the amounts set out above, this shall be carried out in liaison with the Governments concerned on an equitable basis approved by the High Authority.

On 22 February 1960 the applicants initiated proceedings against this decision, as amended by Decision No 1/60. In a document lodged on 22 April 1960 the defendant made an application for a decision on a preliminary objection under Article 91 of the Rules of Procedure.

By an order of 15 July 1960 the Court decided to reserve its decision on the

preliminary objection of inadmissibility for the final judgment.

After the institution of proceedings, Article 3 of Decision No 46/59 was amended by Decision No 24/60 of 7 December 1960 (JO of 16.12.1960, p. 1534). The delivery quota from the Federal Republic of Germany for 1960 was raised by 100 000 metric tons; at the same time, the Federal Republic of Germany was obliged to purchase an additional 50 000 metric tons of Belgian coal. On 20 December 1960 the High Authority adopted Decision No 25/60 on the extension of the application of Article 37 of the Treaty for the Kingdom of Belgium (published in the JO of 23.12.1960, p. 1915 *et seq.*). In this decision the quotas applicable in 1961 to trade in coal between Belgium and the other countries of the Community were fixed together with those relating to Belgian imports of coal from third countries. Restrictions applied to deliveries and imports were relaxed by increasing the quotas by 3·3% as compared to 1960.

The applicants did not contest these decisions.

II — Conclusions of the parties

The *applicant* in Case 2/60 claims that the Court should:

1. Annul Articles 1, 3 and 5 of Decision No 46/59 of the High Authority of 23 December 1959, published in the Journal Officiel, p. 1327/59 *et seq.*, and Article 3, as amended by Decision No 1/60 of 18 January 1960, published in the Journal Officiel, p. 103/60;
2. Declare that the provisions at issue are vitiated by an error giving rise to liability on the part of the Community;
3. Order the High Authority to pay the costs.

The *applicant* in *Case 3/60* claims that the Court should:

1. Annul Articles 1, 3 and 5 of Decision No 46/59 of 23 December 1959 of the High Authority, as amended by Decision No 1/60 of 18 January 1960;
2. Declare that the decision at issue is vitiated by an error giving rise to liability on the part of the Community;
3. Order the High Authority to pay the costs.

The *defendant* contends in its statement of defence that the Court should:

1. Reject the applications in Joined Cases 2/60 and 3/60 as inadmissible or, in the alternative, as being without foundation;
2. Order the applicants to pay the costs.

In its document of 22 April 1960, the defendant contends that the Court should in a decision on a preliminary objection:

1. Rule that Applications 2/60 and 3/60 are altogether inadmissible as the applicants have no right of action;
2. Order the applicants to bear the costs.

In their submissions of 15 June 1960 concerning the preliminary objection the *applicants* contend that the Court should:

1. Reject the High Authority's request for a decision of the preliminary objection and reserve its decision for the final judgment;
2. In the alternative, reject the High Authority's request for a decision on the preliminary objection and rule that the application is admissible.

III — Submissions and arguments of the parties

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

1. Admissibility

A — *The principal conclusions*

In its application the *applicant* in *Case 3/60* maintains that 'the right to bring the present action is derived from the provisions of Article 33 of the Treaty in conjunction with the third paragraph of Article 37'. In addition, *both applicants* rely on similar arguments and refer to the judgments of the Court in Joined Cases 7 and 9/54 and in Case 18/57 in maintaining that the measure at issue is an individual decision concerning them and that therefore they may use against it the four methods of recourse set out in Article 33. The individual nature arises from the fact that the contested decision imposes obligations on the Belgian Government and grants it special powers

and therefore governs the activities of a public body expressly designated. In addition this decision directly concerns the applicants since its application has direct effects on their position.

The *applicant* in *Case 2/60* (a mining company producing special anthracite) states that it exports approximately 75% of its total production to Belgium. In 1959 Belgium purchased from the applicant 124 825 metric tons of special anthracite while it received approximately 5 000 metric tons from the other countries of the Community. It was particularly because of the opening of access to the Belgian market that the applicants incurred heavy experimentation costs and expenditure for the development and improvement of its production of special anthracite for generators. The applicant states that consequently any reduction of its exports to Belgium would cause it considerable economic loss.

The *applicant* in *Case 3/60* (an association of mining undertakings in the Aachen basin) submits statistics showing that the continuous increase in the quantities delivered to Belgium by the coal undertakings affiliated to it was the result of a deliberate commercial policy. If the affiliated undertakings could have suspected that quota restrictions between Member States had not been abolished once and for all by Article 4(a) of the Treaty, they would have adopted a different commercial policy in respect of the Belgian market.

The applicants allege that they have four methods of recourse for the annulment of the contested decision. In particular they deny the existence of a situation justifying the intervention of the High Authority under the terms of the first and second paragraphs of Article 37 and they also deny that the High Authority has the power to impose quantitative restrictions.

(a) *Admissibility under the third paragraph of Article 37*

The defendant argues that the proceedings referred to in Article 37 are merely a particular example of the general proceedings

tains that undertakings and their associations have no right to institute proceedings under Article 37. After emphasizing that Article 37 is 'a *safeguard clause* in favour of a Member State *against* the Community' the defendant further argues that in the case of an action against a decision concerning protective measures adopted by the High Authority under Article 37 'only that party which brings before the High Authority an extraordinary situation under the first paragraph and asks it to adopt protective measures may institute proceedings'; otherwise, the further provision in the third paragraph which refers to 'proceedings . . . instituted . . . under this Article' would be superfluous.

The *applicants* reply that in respect of the right to institute proceedings Article 37 in no way refers to the Member State directly concerned by application of the article but provides in a strictly neutral manner 'when proceedings are instituted in the Court . . .'. Their applications are therefore admissible as based on Article 37 without there being any need to determine the general or individual nature of the contested decision. The applicants have the right to use all methods of recourse as Article 37 contains no limitations on Article 33 and itself gives the Court the power to assess the general economic situation.

The *defendant* objects that, where the Treaty is silent, the question of the persons entitled to institute proceedings under the third paragraph of Article 37 should be resolved in principle according to the nature of the contested decision taking account above all of the substantive content and the final objective, within the framework of the Treaty, of any decision adopted by the High Authority under the provisions of the second paragraph of Article 37. It maintains that Article 37 is only limited to the strict interests of the Community.

(b) *Admissibility of the proceedings under the third paragraph of Article 37 in conjunction with Article 33*

The *defendant* states that the applicants can also be given no right of action under Article 37 by means of the second paragraph of

Article 33, since by its content and purpose Article 37 is clearly distinguished from administrative proceedings as provided by Articles 33 and 35. When proceedings are instituted in the Court under Article 37 the Court performs the function of an arbitrator. The legal rules relating to proceedings in the general context of contested administrative proceedings under Article 33 are therefore not applicable in this case.

The *applicants*, on the other hand, argue in the alternative that the third paragraph of Article 37 is merely complementary to Article 33. Therefore, proceedings against a decision adopted under Article 37 may still be instituted in accordance with the conditions laid down in Article 33.

While maintaining that a general decision taken under the second paragraph of Article 37 may equally well be contested by undertakings relying on four methods of recourse, the applicants argue in the alternative that in any case they are able to prove misuse of powers affecting them. The applicant in Case 3/60 requests the Court to order the defendant, pursuant to Article 24 of the Protocol on the Statute of the Court of Justice, to produce all documents concerning negotiations which took place with the Belgian Government for the purposes of the adoption of the contested decision from which it will be evident that the High Authority followed aims incompatible with the Treaty.

(c) *Admissibility under Article 33*

Further, in the alternative, should the Court decide that the third paragraph of Article 37 merely gives a right of action to the Member State which brought the matter before the High Authority under the first paragraph of Article 37, the *applicants* claim that their proceedings are based on the second paragraph of Article 33, without this necessitating a new interpretation of their applications since they are *ab initio* based both on Article 33 and the third paragraph of Article 37.

The defendant's view, which would exclude any possibility of judicial protection of the parties concerned even under Article 33, would have the absurd result of granting to a State which pursues its individual interests a particularly wide legal protection and would deprive all other citizens of the Community of the protection provided in general terms by Article 33.

On the contrary, the *defendant* argues that, even if it is possible to regard the action as proceedings brought under Article 33, in view of the special nature of the legal protection granted by Article 37, the possibility should be excluded of contesting one and the same decision by two methods of recourse which are fundamentally different: by the Member State concerned under Article 37 and by the undertakings under Article 33.

(aa) The conclusion concerning the first article of the contested decision

Should the Court believe it possible in principle for the proceedings to be brought under Article 33, the *defendant* contests the admissibility of the methods of recourse contained in the applications. The finding by the High Authority of the danger of fundamental and persistent troubles threatening the Belgian economy, contained in Article 1 of Decision No 46/59, is of a general scope. Therefore the applicants can only challenge this article by alleging a misuse of powers 'affecting them'. This they have done, but in a form which fails to comply with the necessary procedure as they failed to advance any pertinent argument in support of this allegation.

The *applicants* deny that the decision in question is of a general nature as it is not only addressed to a particular party but from its contents is also the regulation of a particular well-determined situation.

The interests of the applicants are affected by the finding of the High Authority of the alleged existence of the situation referred to in the first paragraph of Article 37 in so far as this finding is a necessary pre-condition for the adoption of the rules contained in Article 3.

The *defendant* argues that an undertaking or an association of undertakings is not capable of demanding review by the Court of

the question whether the High Authority's finding that the economy of a Member State showed signs of risks of fundamental and persistent disturbances was properly made.

(bb) The conclusions concerning Articles 3 and 5 of the contested decision

The *defendant* maintains that neither Article 3 nor Article 5 relating to the manner of allocating the supply quotas constitute individual measures as, even if it is possible to see the obligation set out in the first paragraph of Article 3 as an individual recommendation to the Belgian Government, the second paragraph of Article 3 and Article 5, by fixing quotas for imports, affect the rights of all countries of the Communities and undertakings in those countries. Therefore Articles 3 and 5 may only be contested from the point of view of misuse of powers. Even if it is accepted that they are individual decisions or recommendations, the defendant considers that there must at least be some doubt whether the applicants are sufficiently affected by these measures to be entitled to institute proceedings.

The *applicants* raise the objection that not only the first paragraph of Article 3 but also the second paragraph of that article and Article 5 have no effect *erga omnes*. In addition, the applicants' interests are directly affected by these provisions since their implementation is not a mere possibility but a certainty.

Therefore all the conditions of admissibility set out in the second paragraph of Article 33 are fulfilled.

B — *The conclusions relating to compensation*

With regard to the conclusions whereby the applicants request the Court to hold that the contested decision involves a fault of such a nature as to render the Community liable, the defendant alleges that pursuant to the first paragraph of Article 34 the Court may only make such a finding if the decision at issue had been previously, or was simultaneously, declared void. The inadmissibility of the application for annulment therefore entails the inadmissibility of the alternative demand.

2. The substance of the case

A — *The principal conclusions*

(a) *Infringement of the Treaty*

The *applicants* allege that the defendant infringed the first and second paragraphs of Article 37, the first paragraph of Article 2, Article 3(b), (d) and (g), Article 4(a), (b) and (d), Article 5 and Article 8 of the Treaty.

They first deny the existence in the Belgian economy of disturbance showing the degree of intensity required by the first paragraph of Article 37 of the Treaty and they maintain that there are no grounds for supposing that a certain subsequent reduction in the sale of Belgian coal, as is evident in all the other countries of the Community which produce coal, would give rise to troubles of this nature.

The applicants also deny the existence of the other condition required by the first paragraph of Article 37 which was postulated by the High Authority in Article 1 of the contested decision: failure to act on its part provoking the abovementioned disturbance; in fact, failure by the High Authority to intervene could only provoke the disturbances referred to in Article 37 of the Treaty if these had been caused by the omission of a measure by the High Authority which was admissible by the terms of *provisions other than* the second paragraph of Article 37 of the Treaty.

Moreover, the wording used in the second paragraph of Article 37 ('decide on the measures to be taken . . . *in accordance with the provisions of this Treaty*') clearly shows that the High Authority must take decisions pursuant to the second paragraph of Article 37 only in so far as other provisions of the Treaty authorize it to do so.

In reply to this argument, the *defendant* emphasizes first that the authors of the Treaty themselves recognized that there is a close correlation between the activities of the mining industry and the whole of the Belgian economy: this is clear from Article

26(1) and (4) of the Convention on the Transitional Provisions. The defendant infers from these provisions that, in the opinion of the authors of the Treaty, Belgian coal production should not have had to bear a reduction of coal exceeding 900 000 metric tons per year and that any greater reduction would probably be gravely detrimental to the whole of the Belgian economy. However, Belgian coal production has been reduced by 7 million metric tons over three years. The defendant denies that Belgium had full employment in 1959.

Contrary to the interpretation given by the applicants to Article 37, the defendant states that, if it were true that only measures which the High Authority is already empowered to adopt under other provisions of the Treaty may be taken into account for failure to act within the meaning of this provision, this article would be without meaning since the Member State concerned could, in the absence of Article 37, institute proceedings for failure to act under the general provision of Article 35. Moreover, in the present case, the defendant cannot see what, apart from Article 37, are the measures provided by any provision of the Treaty in favour of the Belgian coal industry after the refusal of the Council to apply the provisions of Articles 58 and 74.

Further, the defendant states that there is no relation between the terms 'action' or 'failure to act' in the first paragraph of Article 37 and any criticism of the High Authority which must be challenged by the normal method of application for annulment (Article 33) or action for failure to act (Article 35). On the other hand, the action set out in Article 37 is the *ultima ratio* where the normal and correct application of the Treaty results in a situation which may provoke fundamental and persistent disturbances in the economy of one of the Member States. Indeed, if the powers of the High Authority, acting on the basis of Article 37, were restricted to those defined by the other articles of the Treaty, it would be incomprehensible why the authors of the Treaty took pains to specify that the High Authority must act 'while at the same time safeguarding the essential interests of the Community'. Article 37 'has the particular object of temporarily placing stress on the need to avoid fundamental and persistent disturbances in the economy of a Member State'; it 'must therefore essentially enable the High Authority to adopt measures which, after exhausting the normal methods made available by the Treaty, are necessary to avoid situations of disturbances and thus to re-establish the normal functioning of the Treaty'. The exceptional power of review attributed to the Court by the third paragraph of Article 37 can only be justified when regarded as a counterweight to the exceptional powers granted to the High Authority by the second paragraph of that article. In exercising its powers the High Authority must clearly comply with the general legal criteria contained in the same provision, which limits it may never exceed. The defendant states that in this case it confined itself to what was strictly necessary to achieve the necessary objective, both from a substantive point of view as well as a geographical and chronological point of view.

With regard to the measures which the High Authority could adopt under Article 37, the *applicants* observe that, if the view put forward by the defendant were correct, the system of powers set out in the Treaty, and in particular the proceedings provided for by Articles 37, 58 and 95, would have no purpose. The Treaty would not permit the High Authority to regulate by means of Article 37 a situation which should be regulated by means of Article 58, since these provisions concern situations involving different *disturbances*. Moreover, the fact that application of Article 58 requires the *assent* of the Council, whereas Article 37 requires mere consultation, shows that the authors of the Treaty considered that Article 37 governs situations in a more restricted context than that of Article 58. This is confirmed by another essential difference between the two provisions, mamely the possibility under Article 37 for the interested party to cause the High Authority to act by means of proceedings under the third paragraph of that Article, while in the case

of the second paragraph of Article 58, in order to constrain the High Authority to apply the 'crisis' provisions the Member States concerned may only bring the matter before the Council which may, *acting unanimously*, require the High Authority to establish a system of quotas.

The applicants allege that this structural difference between the two situations rules out the possibility of considering one of the two exceptional provisions as a condition for the application of the other. If the High Authority could resort to the more simple methods of recourse of Article 37, having failed in the procedure under Article 58, it could thus deny the Council any efficacity and so upset the balance of powers in the Community. It must therefore be concluded that the 'omission referred to in Article 37 merely concerns the failure to use ordinary powers under the Treaty and not failure to make use of an extraordinary power'.

The *defendant* raises the objection that this view would have the effect of rendering Article 37 meaningless since the applicants' argument in respect of Article 58 should also apply *mutatis mutandis* to a whole series of intervention powers of the High Authority which are all more or less intended to govern 'abnormal' situations on the market. The defendant cites as examples the powers set out in Articles 53, 57, 58, 59, 61, 72 and 74 of the Treaty which would all be outside the 'normal sphere' of powers of the High Authority.

With regard to the admissibility of the measures adopted in the present case under Article 37 of the Treaty, the *applicants* observe that these protective measures are compatible with neither Article 3(b) nor Article 4(a) and (b) of the Treaty and they argue that in no way can it be accepted that the High Authority has the power by virtue of that article to eliminate by means of a simple administrative measure something that even revision of the Treaty under Article 95 would have to leave untouched.

The prohibition of measures for which the Treaty has not assigned any powers to the High Authority is also evident from the comparison with Article 226 of the EEC Treaty, which expressly provides the possibility for the Commission to authorize, during the transitional period, the application of protective measures by a Member State whose economic position is seriously affected. The applicants emphasize that Article 226 of the EEC Treaty is regarded as only providing protection during the transitional period whereas Article 37 contains a permanent rule and that this accounts for the difference between the two provisions. Moreover, in the case of total economic integration the risk of possible disturbances is not restricted to a single economic sector and is therefore far greater than in the system of partial integration under the ECSC Treaty.

Above all Article 37 gives to a Member State whose economy is subject to disturbances a right to raise the matter with the High Authority and to institute proceedings in the Court. This goes beyond the provisions of Article 35 as, if the conditions required by Article 37 are fulfilled, the Member State concerned may, having once raised the matter with the High Authority and if necessary by means of proceedings in the Court, oblige the High Authority to eliminate the disturbances by taking measures which it is not normally obliged to take, although they are within its powers, and the Member State concerned is not obliged to show that the omission of the measure sought is a misuse of powers.

The *defendant* finds a contradiction in the lastmentioned view of the applicants. Indeed, by accepting a strengthening of the optional powers of the High Authority creating obligatory powers, the applicants are also accepting modification of power which is in contradiction with their view that Article 37 gives to the High Authority no power which is not already provided by other provisions of the Treaty.

The *applicants* finally argue that the contested decision was not taken 'in accordance with the provisions of' the Treaty but further infringes the essential interests of the Community 'as the supranational economic conception of the Treaty (that is the common market in coal and steel

defined in Article 4) may not by virtue of any Treaty provision be sacrificed to the national economic interests of a Member State'.

In this connexion the *defendant* observes that the safeguarding of the essential interests of the Community in the case of Article 37 is not the aim of the action of the High Authority but merely its limit.

The further restriction set out in this provision ('in accordance with the provisions of this Treaty') simply means that 'measures taken under Article 37 must in the main correspond to the types of intervention which the authors of the Treaty made available to the High Authority in a general way under the Treaty, whether or not they were applicable *apart from Article 37* to the case in question'. In support of this view the defendant refers to the German translation of Article 37.

The defendant argues that the applicants' view whereby derogation from the principles of the market set out in Article 4 of the Treaty is unacceptable is irrelevant, as even minor revision of the Treaty under Article 95 must comply with Articles 2 to 4 which are therefore 'constitutionally unalterable'. The defendant further maintains that temporary derogation within the context of Article 37 from the principles of the market set out in Article 4 is in no way a revision of the text of the Treaty and it observes that national law also accepts that fundamental rights recognized by the constitution as intangible may for a certain period fail to be observed where particular exceptions require breach of the fundamental law within certain permitted limits.

Article 37 is an implementing provision enabling the objective laid down for the Community in the second paragraph of Article 2 to be attained, that is, enabling provocation of fundamental and persistent disturbances in the economy of the Member States, while achieving the Common Market, to be avoided. To this end it is not confined to regulating procedure but is also of importance in substantive matters in conferring on the High Authority the obligation and the power to eliminate such disturbances by adopting appropriate measures.

While the fact of avoiding disturbances appears in the second paragraph of Article 2 to be merely a limit laid down in the pursuit of the main aim of the Common Market, namely the progressive establishment of conditions which will of themselves ensure the most rational distribution of production, the aim of avoiding disturbances is essential for the application of Article 37. The defendant further contends that it follows that 'in so far as this is *necessary* to avoid disturbances (this condition must of course be fulfilled) it is possible temporarily to derogate from the conditions of the Common Market concerning the most rational distribution of production, as this derogation serves the *long-term objective* of re-establishing, by eliminating disturbances, the integral functioning of the Common Market in conformity with the aims and principles of the Treaty'. This is moreover compatible with the sense of Article 4 whereby the prohibitions which it contains apply only 'as provided in this Treaty'. Furthermore, the essential interests of the Community are safeguarded by the measures at issue since, in spite of the disturbed state of the Belgian coal industry, they ensure for the Member States adequate quotas the levels of which have been accepted by all the Governments.

(b) *Lack of competence*

In support of this submission the *applicants* refer to the arguments advanced in support of the submission of infringement of the Treaty. In addition they state that, since the High Authority bases its measures on Article 37 alone, without having complied with the restrictive provisions of the Treaty with regard to powers, its lack of competence is manifest. The *defendant* objects that this reference is not sufficient to establish the pertinence of the submission based on lack of competence since it is not coextensive with the submission of infringement of the Treaty. The defendant further maintains that this submission is unfounded and observes that the contested provisions of Articles 3 and 5 of Decision No 46/59 are

measures intended to remedy disturbances in the Belgian economy and are therefore measures expressly within the competence of the High Authority under the second paragraph of Article 37 of the Treaty.

(c) *Infringement of an essential procedural requirement*

The applicants contend that insufficient reasons were given for the contested decision since it does not show sufficiently in law that, in spite of the evident full employment and favourable economic situation, the Belgian economy is threatened with fundamental and persistent disturbances. Further, the decision does not reveal how the total quota for the supply of coal from the countries of the Community was fixed at 2.95 million metric tons and it does not set out how the German quota was fixed at 1.9 million metric tons.

The *defendant* replies that the finding made by the High Authority in Article 1 of the contested decision concerning the threat of fundamental and persistent disturbance in the Belgian economy does state sufficient reasons. The fact that the applicants do not agree as to the correctness of these reasons does not necessarily mean that the decision does not state sufficient formal reasons.

With regard to the fixing of the total quota for delivery of coal from the Community to Belgium and the allocation of these quotas between the various supplier countries, the defendant denies that there is any need to supply the detailed calculations carried out in order to fix the quotas, particularly as they are based on statistics known to all and were determined in full agreement with the governments of the Member States concerned.

(d) *Misuse of powers*

The *applicants* contend that, if in adopting Decisions Nos 46/59 and 1/60 the High Authority failed to perceive the discrimination against them resulting from these decisions, it is guilty of a serious lack of foresight or care which is tantamount to a failure to comply with the aims of the Treaty causing the High Authority to pursue aims contrary to the Treaty.

The *defendant* objects that it is evident from various parts of the reasons given and from the body of the decision that the measures adopted by virtue of Article 37 seek to end a disturbed situation in the Belgian economy. Nowhere do the applicants state that this aim was not properly followed by the High Authority. It would be absurd to regard the alleged partial 'derogation' from the limits of the powers of the High Authority as the aim of the measures at issue.

B—*The conclusions concerning compensation*

The applicants base their conclusions concerning conduct giving rise to the liability of the Community on the third sentence of the first paragraph of Article 34 of the Treaty and refer to the arguments concerning nullity set out above, while reserving their final submissions as to any damages suffered by them.

The *defendant* contests that submission of nullity which might be admitted by the Court of Justice can at the same time constitute a fault of such a nature as to render the Community liable under the first paragraph of Article 34. The very delicate problems to be resolved by the decision at issue were in fact very carefully weighed by the High Authority in collaboration with the Council of Ministers.

IV—Procedure

The procedure followed the normal course.

With regard to the controversy as to the existence of disturbances within the meaning of the first paragraph of Article 37 the applicants formally requested the Court 'of its own motion to seek the necessary proof or order the parties to submit the required proof' under the third paragraph of Article 37 of the Treaty.

At the administrative meeting on 20 April 1961 the Court decided to open the oral procedure without any preparatory inquiry.

Grounds of judgment

In order to resolve the questions of admissibility raised in the present case it is first necessary to define the scope of Article 37.

Article 37 is in direct relation to the second paragraph of Article 2.

The latter provision stipulates that the action of 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 . . . taking care not to provoke fundamental and persistent disturbances in the economies of Member States'.

Nevertheless the authors of the Treaty observed that in certain cases 'action or failure to act on the part of the High Authority' could be 'of such a nature as to provoke fundamental and persistent disturbances in' the economy of a Member State (first paragraph of Article 37).

They therefore considered it necessary to assign to the High Authority, subject to review by the Court, an exceptional power enabling it to guard against the consequences which might result from the application of the Treaty provisions which do not specifically refer to the existence or the threat of fundamental and persistent disturbances.

It is evident from the wording of the first paragraph of Article 37 that the right to raise the matter with the High Authority is held exclusively by the State in which the disturbed situation has appeared or has threatened to appear.

In fact only the Member State concerned is capable of appreciating whether the economic situation requires application of Article 37.

The second paragraph of Article 37 gives the High Authority the power to recognize the existence of a disturbed situation and, if this is the case, to take appropriate measures.

The third paragraph of Article 37 provides that both the decision taken by the High Authority under the second paragraph after the matter has been raised with it by the Member State concerned and the express or implied decision refusing to recognize the existence of a disturbed situation may be the subject of proceedings in the Court which has extremely wide powers of review.

The third paragraph of Article 37 does not specify who may bring these proceedings.

As the provision is silent in this respect, it is necessary for assessment of the admissibility of the present proceedings to examine whether any logical arguments require the right of appeal to the Court in this respect to be restricted.

It is clear that only the Member State concerned may institute proceedings against an express or implied decision refusing to recognize a disturbed situation since only the Member State has the right to raise the matter with the High Authority and therefore only the Member State can show an interest justifying proceedings.

For the same reasons the right to institute proceedings against a decision whereby the High Authority has adopted measures which the Member State concerned regards as being insufficient may only be open to that State.

Nevertheless a decision taken by the High Authority under the second paragraph of Article 37 which does not detrimentally affect the Member State concerned may harm the interests of other Member States or of undertakings within the jurisdiction of the Community.

In order to assess whether by their very nature proceedings instituted under the third paragraph of Article 37 by other Member States or by Community undertakings may be regarded as admissible or whether the right to institute such proceedings must be reserved solely to other Member States, the Court must examine in detail the powers assigned to the High Authority by the second paragraph of Article 37, on the one hand, and the powers reserved to the Court by the third and fourth paragraphs of the same article, on the other.

The essential aim of Article 37 is to allow for the reconciliation of the interests of a Member State affected by the existence of fundamental and persistent disturbances or the threat of this (in application of the basic provision set out in the second paragraph of Article 2) and the general interests of the Community.

The second requirement is emphasized by the clause in the second paragraph 'while at the same time safeguarding the essential interests of the Community'.

The exceptional power assigned to the High Authority by Article 37 is not without limits.

These limits may be deduced from the exceptional nature of the powers assigned to the High Authority and are moreover specified in the clause 'while at the same time safeguarding the essential interests of the Community'.

Therefore the measures adopted by the High Authority must be *necessary* and *appropriate* and must therefore, on the one hand, constitute a *proper remedy* to the disturbed situation caused by its action or failure to act and, on the other hand, safeguard the *essential interests* of the Community.

The satisfaction of these conditions is subject to review by the Court which has been given extremely wide powers in this respect.

These factors are sufficient to determine the admissibility of the action although it is not at this stage possible to examine whether or not in the present case the High Authority exceeded the limits in question.

Consequently, where a Member State believes that it is faced with fundamental and persistent disturbances, the power to arbitrate between the particular interests of that State and the general interests of the Community and to seek appropriate remedies is entrusted, subject to the review of the Court, to the High Authority which necessarily entails assignment of exceptional powers.

Proceedings instituted against a decision taken by the High Authority under Article 37 acceding to the request of a Member State which thought that its economy was affected by fundamental and persistant disturbances require an assessment of the economic position of the Member States and in addition necessitates examination of whether, in view of this situation, the measures adopted might be considered to be necessary and appropriate.

These proceedings also put in question the political responsibilities of the Governments of the Member States and of the High Authority, particularly in respect of reconciliation of the general interest of a Member State with the general interest of the Community.

In these circumstances undertakings or associations of undertakings cannot be regarded as having the right to rely on the third paragraph of Article 37.

On the other hand, for the reasons set out above the ability to institute the proceedings referred to in the third paragraph of Article 37 must be granted not only to the Member State which raised the matter with the High Authority but also to the other Member States.

This interpretation is confirmed by the second paragraph of Article 37 which obliges the High Authority, before making a decision on the request submitted by the Member State concerned, merely to consult the Council without being bound by its opinion.

In view of the importance of the interests which may be concerned, this situation is only explicable if it is accepted that any Member State which does not agree with the opinion of the High Authority has the right to bring the matter before the Court and to request it to decide whether the measures in question are well founded and appropriate.

This interpretation is perfectly compatible with the refusal to grant undertakings a right of action, in view of the fact that Member States which are by their very nature in a position to supply all the necessary information for a detailed examination by the Court and which, as they sit on the Council, are equally responsible for the safeguarding of the essential interests of the Community, are able to intervene in order to protect public interests in the same way as those of the applicant State.

This interpretation is confirmed by the debates which took place in the Netherlands Parliament at the time of the ratification of the Treaty (Parliamentary Year 1950/1951, No 2228, p. 86).

Since, for the reasons set out above, proceedings brought by undertakings or associations of undertakings under Article 37 are not admissible, it remains to examine whether the undertakings or associations of undertakings are able, by virtue of Article 33 on its own or in conjunction with Article 37, to contest a decision taken by the High Authority under the second paragraph of Article 37.

The conditions for the application of Article 37 are closely inter-related and cannot therefore be examined separately; thus any judgment is only possible in exercise of the special powers conferred on the Court by Article 37.

Consequently, proceedings instituted under Article 37 in conjunction with Article 37 are not possible since they necessarily entail an assessment both of the existence of the disturbed situation recognized by the High Authority and the necessity and appropriateness of the decision adopted by the High Authority.

Furthermore, proceedings brought under Article 33 in isolation are also not possible.

Such proceedings could not merely maintain that a decision adopted by the High Authority pursuant to the second paragraph of Article 37 is not in conformity with the other provisions of the Treaty since it would also require the Court to examine whether the decision is nevertheless justified by Article 37.

In these circumstances it must be examined whether the measures adopted by the decision are in fact necessary and appropriate to remedy a disturbed situation affecting the economy of one Member State and whether in addition they safeguard the essential interests of the Community.

Consequently the judgment could no longer be based on the provisions of Article 33 but on those of Article 37.

In other words proceedings which could entail a judgment of annulment pursuant to Article 33 cannot have this effect if the decision at issue is taken pursuant to Article 37 since the special power assigned to the High Authority enables it to act beyond the normal scope of its powers.

Therefore the proceedings instituted by the applicants must be declared to be inadmissible, even if they are regarded as being brought under Article 33 in conjunction with Article 37 or under Article 33 alone.

Costs

In view of the complexity of the questions raised and having regard to the first subparagraph of Article 69(3) of the Rules of Procedure the Court sees fit to order the parties to bear their own costs.

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, 33 and 37 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 ECSC;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities,

THE COURT

hereby:

1. **Declares Applications 2/60 and 3/60 for the annulment of Articles 1, 3 and 5 of Decision No 46/59 of the High Authority of 23 January 1959, as amended by Decision No 1/60 of 18 January 1960, to be inadmissible.**

2. **Orders the parties to bear their own costs.**

Donner Hammes Catalano

Riese Delvaux Rueff Rossi

Delivered in open court in Luxembourg on 13 July 1961.

A. Van Houtte
Registrar

A. M. Donner
President

OPINION OF MR ADVOCATE-GENERAL LAGRANGE DELIVERED ON 19 MAY 1961[1]

Summary

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Mr President,
Members of the Court,

This case, the first concerning the application of Article 37, poses some extremely delicate questions concerning both the conditions for the admissibility of proceedings instituted under that provision and the extent of the powers which the provision assigns to the High Authority and in both respects it requires an exhaustive interpretation of the article taking account of its position in the general system established by the Treaty.

In addition both aspects, the admissibility and the substance, are to a certain extent correlated and the fact that the Court joined to the main proceedings the objection of inadmissibility raised by the defendant in the form of an application for a decision on a preliminary objection is to be welcomed.

I – The opposing points of view

The opposing points of view may be summarized as follows:

1 – Translated from the French.