In Case 9/55

SOCIÉTÉ DES CHARBONNAGES DE BEERINGEN,
SOCIÉTÉ DES CHARBONNAGES DE HOUTHALEN,
SOCIÉTÉ DES CHARBONNAGES DE HELCHTEREN ET ZOLDER,

represented by Roger Jaumet, Paul Renders, Edouard Leblanc, Ivan Orban and Paul Culot, assisted by Henri Rolin, Professor at the University of Brussels and Advocate at the Cour d'Appel, Brussels, and J. Mertens de Wilmars, Advocate at Antwerp, with an address for service in Luxembourg at 6, Rue Henri Heine,

applicants,

v

HIGH AUTHORITY OF THE EUROPEAN COAL AND STEEL COMMUNITY, represented by its Legal Adviser, Walter Much, acting as Agent, assisted by G. van Hecke, Advocate at the Cour d'Appel, Brussels, Professor at the University of Louvain, with an address for service at its offices, 2, Place de Metz,

defendant,

Application for the annulment of certain decisions of the High Authority resulting from its letter of 28 May 1955 to the Government of the Kingdom of Belgium concerning the adjustment of the equalization system and of Decision No 22/55 of the High Authority of 28 May 1955 (*Journal Officiel* of 31 May 1955, pp. 753-758),

THE COURT

composed of: M. Pilotti, President, J. Rueff and O. Riese (Presidents of Chambers), P. J. S. Serrarens, L. Delvaux, Ch. L. Hammes and A. van Kleffens, Judges,

Advocate General: M. Lagrange
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts

1. Procedure

The application lodged by the 'Société des Charbonnages de Beeringen', a limited company whose registered office is in Brussels, the 'Société des Charbonnages de Houthalen', a limited company whose registered office is in Brussels and the 'Société des Charbonnages de Helchteren et Zolder', a limited company whose registered office is at Mariemont-sous-Morlanwelz, is dated 27 June 1955 and was registered at the Court on 27 June 1955 under No 658. It was lodged within the period prescribed by the third paragraph of Article 33 of the Treaty in conjunction with Articles 84 and 85 of the Rules of Procedure of the Court.

The powers of the applicants' representatives are in order and their signatures have been verified as genuine.

The applicants' lawyers and the Agent and lawyer of the defendant have been properly appointed.

The procedural requirements have been complied with and the statement of defence, the reply and the rejoinder were lodged within the prescribed periods.

By order of the President of the Court the application was assigned to the First Chamber for the purposes of any preparatory inquiry. The President of the Court designated Mr van Kleffens to act as Judge-Rapporteur and, in accordance with the final paragraph of Article 9 of the Rules of Procedure of the Court, designated Mr Lagrange to be Advocate General.

After hearing the views of the Advocate General, the Court decided, at the end of the written procedure, in accordance with the preliminary Report presented by the Judge-Rapporteur under Article 34 of the Rules of Procedure of the Court, to open the oral procedure without holding any preparatory inquiry.

At the request of the parties the Court decided at the beginning of the oral procedure to deal with the present case together with Case 8/55, *Fédération Charbonnière de Belgique* v *High Authority.*

The parties presented oral argument at the hearings held in open court on 2, 4, 5, 7 and 11 May 1956.

At the hearing on 12 June 1956 the parties replied to certain questions raised by the Judge-Rapporteur concerning the level of estimated production costs in several hypothetical situations.

On the same date the Advocate General delivered his opinion, to the effect that the application should be dismissed and that the costs should be borne by the applicant.

In its Order of 17 July 1956, the Court decided that the oral procedure would be reopened on 20 September 1956 and that it would be exclusively concerned with the level of estimated production costs for each type and category of Belgian coal at the end of the transitional period and their significance in relation to the prices fixed by Decision No 22/55.

By Order of 30 July 1956 the President of the Court postponed that date at the request of the parties until 25 October 1956.

On 15 October 1956 the parties lodged additional information and details concerning the level of production costs for each type and category of coal estimated in the light of the facts and circumstances known when the assessment is made.

During the hearing on 25 October 1956 the parties submitted oral argument on the points set out above and the Advocate General reiterated his earlier opinion.

2. Conclusions of the parties

In their application the *applicants* claim that the Court should:

1. Annul the decision of the High Authority contained in the letter of 28 May 1955 from the President of the High Authority to the Belgian Minister for Economic Affairs and in the annex to that letter entitled 'Table of equalization rates applying to the various types of Belgian coal', at least in so far as the decision abolishes all

equalization for a range of coals known as fat coal B or provides for it to be paid at reduced rates where the coal is produced by the applicant undertakings, and in so far as it decides that in the future equalization payments will be or may be withdrawn from certain undertakings on the ground that they are not making the effort to re-equip considered possible and necessary or are refusing to carry out the transfers or exchanges of deposits which are regarded as indispensable for a better development of the mining areas;

2. Annul Decision No 22/55 of the High Authority of the European Coal and Steel Community of 28 May 1955 and the price list annexed thereto, not only in so far as it corresponds to the aforementioned decision but also in that it is itself unlawful and involves a misuse of powers, in that if fixes on its own authority a list of reduced prices for certain types of coal and obliges the applicant companies to abide by it, even as regards those types for which equalization is not paid to them although it is paid to other producers.

The *defendant* contends that the Court should dismiss the application lodged by the three applicant undertakings on 27 June 1955, with all the consequences which that entails in law, in particular as regards the payment of all fees, costs and other expenses.

3. Summary of the facts

The High Authority published its first decision relating to the establishment of the equalization scheme (Decision No 1/53 of 7 February 1953) in the *Journal Officiel de la Communauté*, No 1, of 10 February 1953. That decision fixed the mode of assessment and collection of the levy by means of which the necessary funds were to be obtained in order to ensure the financing of the aid provided for to that end in the Convention on the Transitional Provisions.

Since the raising of the funds necessary to cover the equalization payments has not been discussed in the course of the present case there is no need to consider the subsequent modifications made to the rules governing it which were laid down by Decision No 1/53.

As regards the calculation of the sums to be paid to the Belgian undertakings, the High Authority adopted its first decision on 8 March 1953 (Decision No 24/53, *Journal Officiel*, No 4, of 13 March 1953). That decision fixed maximum prices for the sale of certain types of Belgian coal listed in an annex to the decision.

On the same date the High Authority addressed a letter to the Belgian Government (published in the *Journal Officiel*, No 4, of 13 March 1953) in which it gave details of the aid which it proposed to grant to the Belgian collieries. It stated that as a result of preparatory work which had taken place it had been possible to fix the price list provided for in Article 26 of the Convention and to determine the aids necessary as a result of the application of that price list, that is, 29 francs per metric ton extracted, in addition to the so-called conventional subsidies already granted to certain collieries by the Belgian Government.

That result had been obtained by calculating the difference between the prices in a 'price list for accounting purposes', based upon the receipts of the undertakings, and those of a 'list of selling prices' at which the collieries dispose of their products. The two lists were annexed to the letter. It should be noted that the prices set out in the so-called list of 'selling prices' are identical to the 'maximum prices' listed in the annex to Decision No 24/53.

In order to make the price adjustment which the High Authority had considered necessary the table of selling prices annexed to Decision No 24/53 was modified by Decision No 40/53 of 20 October 1953; the new table gave rise to a further letter addressed to the Belgian Government on 22 October 1953 informing it of the new table of selling prices and the new price list for accounting purposes (decision and letter published in the *Journal Officiel*, No 12, of 27 October 1953).

Decision No 41/53 and a letter to the Belgian Government dated 10 December 1953 modified the aforementioned tables (decision and letter published in the *Journal Officiel*, No 13, of 15 December 1953).

On 19 March 1954 the High Authority adopted Decision No 15/54 (*Journal Officiel,* No 3, of 24 March 1954) which did not refer in its preamble either to the provisions of the Treaty relating to maximum prices or to either of the earlier decisions, but ordered the undertakings situated in the Belgian coalfields to 'comply' with the price list annexed to that decision, despite the fact that it was identical to the list already in force.
That decision was followed by a letter to the Belgian Government dated 20 March 1954 (*Journal Officiel,* No 3, of 24 March 1954) in which the High Authority informed it of its decision to prolong the application of the existing price list.
After adding certain Belgian mines to those already listed in the annex to Decision No 15/54 as being entitled to make a quality surcharge (Decision No 27/54 of 12 May 1954, *Journal Officiel,* No 10, of 20 May 1954), the High Authority declared in Decision No 15/55 of 28 April 1955 (*Journal Officiel,* No 10, of 30 April 1955) that Decisions Nos 15/54 and 27/54 would remain applicable 'until the entry into force of a new decision concerning the establishment of price lists for the Belgian undertakings'.
However, the list of 'selling' prices was modified shortly afterwards by Decision No 22/55 of 28 May 1955, whilst a letter to the Belgian Government of the same date replaced the price list 'for accounting purposes' by a table annexed to that letter which was headed 'Table of equalization rates applying to the various types of Belgian coal'. That table came into force on 16 June 1955.
The aforementioned decision and letter (published in *Journal Officiel,* No 12, of 31 May 1955) form the subject-matter of the present application.

4. Summary of the submissions and arguments of the parties

A — *The admissibility of the application*

1. The *defendant* leaves the question of the admissibility of the fourth and fifth complaints to the wisdom of the Court. In fact, it considers it doubtful that those two complaints are admissible since the applicants have merely referred to the application brought by a third party in another case (Case 8/55), or invoked 'the unlawful nature' of Decision No 22/55, without indicating which grounds for annulment are involved.
In answer to that criticism the *applicants* maintain that:

(a) The reference to the application brought by Fédéchar is justified since the two cases are linked and the reference has helped to provide the opposite party with full information, and that

(b) The operative part of the application indicates the grounds for annulment put forward, that is, the unlawful acts and misuse of powers which vitiate Decision No 22/55.

2. The *defendant* accepts that in so far as the letter of 28 May 1955 reduces the equalization payments made to three collieries it is individual in nature. There is no dispute as to the admissibility of the application on that point and the decision in question may be contested on all the grounds for annulment.
On the other hand Decision No 22/55 is general in nature and may be contested only on the ground of misuse of powers affecting the applicants.
The foregoing also applies to the letter of 28 May 1955 in so far as it makes the payment of equalization conditional upon an action, the main purpose of which is to withdraw that payment from undertakings which do not make the effort to re-equip regarded as possible and necessary, were the Court to consider that that section of the letter may form the subject-matter of an application for annulment, which the defendant considers very doubtful.
As regards the question whether the decisions are general in nature, the defendant maintains that a decision is general by reason of its nature as a regulation and of the extent of its area of application; it does not become individual as a result of the fact that its effects are not identical for all those to whom it applies. As regards the allegation of misuse of powers, the defendant ac-

cepts that reasons were given for that submission. Furthermore, it states that:

(a) The words 'affecting them' must be interpreted as referring to a camouflaged decision, that is, a decision which, although appearing to be general in nature, refers in fact only to one or a small number of undertakings;

(b) If the Court does not share that opinion and considers that there is a misuse of powers 'affecting' an undertaking where the action taken constitutes a direct prejudice to its interests, it is still necessary to specify wherein the misuse of powers lies. The defendant maintains that there is a misuse of powers where an administrative measure is objectively in accordance with the legal rule but is vitiated from a subjective point of view as a result of the aim pursued by the administrative authority. It results from that definition that misuse of powers is a specific ground for annulment which is distinct from the three other grounds.

It must therefore be made clear which of the grounds of complaint put forward in the application fall outside the submission of misuse of powers, which is the sole submission which the applicants are entitled to put forward.

The *applicants* consider that in so far as Decision No 22/55 is applicable to them, it is general in nature only as regards its form. It is in fact nothing more than a camouflaged individual decision, since those of its elements which concern them are actually applicable to the applicant undertakings alone. According to the argument first put forward by the High Authority those undertakings are, therefore, entitled to plead all the submissions listed in Article 33 of the Treaty.

The applicants further maintain that the price list, which forms part of Decision No 22/55 and the rate of equalization, which forms part of the letter of 28 May 1955, are indissolubly linked. In fact, the decisive legal basis for the obligations on the undertakings to draw up a price list in conjunction with the equalization arrangements, to have that list accepted by the High Authority and, finally, not to change it without the agreement of that body, is the grant of equalization.

Where, as in this instance, for certain undertakings only, the price list no longer incorporates equalization or where it incorporates a rate of equalization which is different from that applied to the other undertakings, the effects of that list are also different and are thereby individual in nature. From that point of view Decision No 22/55 and the letter of 28 May 1955 are individual in nature and may be contested on all the grounds referred to in Article 33.

Even if the individual nature of the decision is not accepted by the Court the application is still admissible in all its parts, first, because, as the applicants propose to show, the decision is vitiated by misuse of powers and, secondly, because although the secondary role assigned to misuse of powers may be justifiable in the national system of administrative law it is not so within a system such as that set up by the Treaty, in which the submission of misuse of powers is the only one available to a person wishing to bring proceedings. For that reason the applicants consider than an administrative measure may, at the same time, be vitiated by misuse of powers and by the other grounds listed under Article 33, despite the fact that, in order for the application to be admissible, the applicants must put forward a reasoned submission of misuse of powers.

By putting forward submissions based on misuse of powers, lack of competence and infringement of the Treaty, the applicants propose to show that the contested measures are entirely vitiated by misuse of powers and that most of them are vitiated by lack of competence or infringement of the Treaty.

The applicants consider that if the Court regards the decisions in question as being general in nature it must annul them on grounds of misuse of powers, since evidence of the other vitiating factors supports the evidence of misuse of powers.

B — *Substance*

The first complaint—Reduction or withdrawal of equalization from certain undertakings

Thr *applicants* maintain that the measures adopted in relation to them in the letter of 28 May 1955 and the selling prices imposed by Decision No 22/55 for fat coal B constitute a system whose application is limited to the applicant undertakings considered individually.

The introduction of such a system constitutes either a case of misuse of powers or an infringement of the Treaty, since all the measures authorized or envisaged by the Convention must, in the absence of any express exception, be applicable to all the undertakings concerned in the Member States.

That the equalization scheme applies generally to all consumers is shown by the very wording of Article 26(2). Since it uses the term 'Belgian coal' rather than 'Belgian collieries' that provision must also be interpreted as applying to all producers. That interpretation is further corroborated by the general nature of the levy referred to in Article 25, instituted for the purpose of obtaining funds. The equalization referred to under subparagraph (a) differs in no way from that referred to under subparagraphs (b) and (c), the general nature of which cannot be disputed.

Prior to the adoption of Decision No 22/55 uniformity reigned, since the equalization arrangements differed only according to the particular type of coal and were the same for all coals of the same type in the same category. Since the criterion was the same for all collieries the principle of the selection of undertakings did not exist.

The fact that the new system is discriminatory as regards the applicant undertakings means that Article 4 of the Treaty has been infringed, in particular subparagraph (b) thereof. Furthermore, subparagraph (c) of that same article lays down a general rule from which the Convention derogates. Any derogation must, however, be interpreted strictly. As regards undertakings operating within a single national market the only exception expressly provided for in the Convention is that which appears in relation to subsidies in the last subparagraph of Article 26.

The reason which the High Authority put forward in its letter to justify the discrimination with regard to the mines in the Campine, that is, that their location is particularly favourable, can never be put forward in relation to the application of the equalization system, since the needs of the individual undertakings and their particular difficulties are governed by other provisions, such as the fourth paragraph of Article 5 of the Treaty and Article 26(4) of the Convention. In their reply the applicants refer chiefly to Article 24, which emphasizes at subparagraph (b) the distinction existing between equalization arrangements (*mécanismes de compensation*) and equalization (*péréquation*).

The applicants consider that the aim of the equalization scheme is to maintain the level of receipts and that it applies to all Belgian mines. The system established by the contested decision introduces an arbitrary distribution of equalizationpayments, since it does not take into account the maintenance of the level of receipts of certain collieries. On those grounds the decision is contrary to Article 24.

The *defendant* dismisses the applicants' argument that the new method constitutes discrimination which is prohibited by the Treaty. In order to bring about a more effective distribution, undertakings were already subjected to a process of selection, although in a much less highly developed form, by the system established in 1953. The objective of the equalization scheme is to enable production to be adapted to the conditions of the common market and to bring prices into line, not to provide compensation in respect of the inevitable fall in prices. That implies that equalization payments must be distributed in proportion to the individual needs of the recipients, as is moreover indicated by the term 'enable'. The criterion applied by the High Authority to measure those needs is in no way arbitrary. It was sought in the profitability of the mine in the true sense, that is, in the concentration of all mining operations on one level and in one pit.

According to the High Authority, Article 26(2) does not lay down a uniform method with regard to the equalization payments to be made under subparagraphs (a), (b) and (c). The equalization arrangements provided for under subparagraph (a) are general in scope and are dependent for

their application only on the needs of producers, while the other two subparagraphs cover special cases which do not relate directly to integration into the common market but compensate for additional price reductions for certain sales.
The High Authority contests the allegation that the principle of selection is contrary to Article 24. Instead of guaranteeing that receipts will be maintained at a specific level, that article is in fact intended to limit the closure of certain collieries. The Treaty in no way guarantees the maintenance of a certain level of receipts and it would in fact be impossible to do so, since the aggregate amount of the equalization payments must be gradually reduced.

The second complaint—Fixing of the new rates of equalization at a flat rate

The *applicants* consider that the fixing of the equalization payments at a flat rate without any indication of the prices 'for accounting purposes' is arbitrary and based on reasons which are extraneous to Article 26 of the Convention. They refer, first, to a passage in the letter of 28 May 1955, according to which the High Authority intended to bring the price list down to a level at which it would be more in line with prices in the common market. The applicants question the relevance of the considerations referred to in that letter. They find that average Belgian prices have increased, that the difference in price as regards fat coal B, the selling price of which has been reduced, was less than the difference for those types of coal whose selling price has been increased by 3 francs and, finally, that there was a shortage of coal, which precluded the alleged marketing difficulties.
The applicants refer to another passage in the same letter which states that certain collieries may henceforth meet competition in the common market with reduced equalization aid and that, in those cases, the equalization payments will be calculated on the basis of the difference between the current list of selling prices and the price list in force when delivery is made.
The applicants maintain that this selective method of calculation could be based only on the financial results of the undertakings, a process which is entirely foreign to the equalization scheme, the purpose of which is to ensure that the receipts of the Belgian undertakings remain at approximately their previous level. The aid granted to those undertakings will be gradually decreased so that the progress achieved in terms of productivity will enable them to meet foreign competition unaided at the end of the transitional period.
The *defendant* maintains that it wished Belgian prices to be brought into line with the double limit referred to in Article 26, that is, with the ruling common market prices—which are principally determined by prices in the Ruhr—and with estimated production costs at the end of the transitional period.
The complex nature of the market, which includes numerous categories and types of coal with widely differing characteristics and marketing possibilities, precludes any comparison based on average prices which are, moreover, only a mathematical fiction. As regards coking smalls and the classified coals, the spread of prices shows clearly that Belgian prices are coming into line with those of the Ruhr.
As regards the criticism that the selective calculation made by the High Authority can be based only on the financial results of the undertakings, the defendant observes in its refutation of the first complaint that it sought its criterion in the profitability of the mine as such, that is, in the costs and conditions of production.

The third complaint—Threat to withdraw the equalization payments

The *applicants* consider that the decision contained in the letter of 28 May 1955 is vitiated by a misuse of powers in so far as it enables the Belgian Government, with the agreement of the High Authority, to withdraw the benefit of equalization from those undertakings which do not make the effort to re-equip regarded as necessary and possible. The aim of the equalization scheme is none other than to ensure that the level of receipts is maintained.
The *defendant* emphasizes that there can be no question of any misuse of powers in this instance. The authority which makes

the equalization payments is entitled to demand that the aim of the equalization scheme, that is, the rationalization of the Belgian collieries, is effectively pursued. To that end it is particularly effective to threaten to withdraw equalization from those undertakings which do not make the necessary effort. The aim of that threat is to ensure that the equalization scheme performs the function assigned to it by the Convention.

The fourth complaint—Power of the High Authority to fix prices at a reduced level

(a) In the opinion of the *applicants,* the High Authority could not unilaterally draw up and impose a price list either for all types of coal or for certain of them. It is clear from the Treaty that it is not for the High Authority but, under the terms of Article 26 of the Convention, for the producers themselves to draw up that list.
First, since the equalization arrangements are designed 'to enable' prices charged for Belgian coal to be brought into line with the ruling common market prices, it follows that the initiative for doing so is left to the producers.
Secondly, by referring to the price list 'so fixed' the Convention shows clearly that the fixing of a price must be the result of a joint consideration with which the High Authority is in agreement.
Finally, the list shall not be changed 'without the agreement of the High Authority', which means that the High Authority is not empowered to fix it.
By acting on its own authority to impose a price list the High Athority exceeded the limits of its powers and acted contrary to the terms of the Treaty, in that it used Article 26(2) of the Convention for purposes for which it was not intended, that is, in order to bring about changes in the structure of the Belgian coal mining industry.
The applicants agree with the defendant that, in accordance with Articles 25 et seq., the normal powers of the High Authority have been considerably extended. It does not follow, however, that its sovereign power to intervene is thereby also extended, since the purpose of Articles 25 et seq. is to place the Belgian industry in a more favourable situation than that which results from the Treaty, in particular from Article 61.
The High Authority claims that the objective of Article 26 cannot be achieved by the free interplay of economic forces without any action on its part. That is, however, an unproved argument for which there is no basis in the Treaty—the necessary harmonization may be brought about just as well by raising the price of coal which is not produced in Belgium as by lowering the prices of Belgian coal.
The *defendant* maintains, first, that the applicants only put forward submissions which, if they were justified, would show that the High Authority had taken action which was contrary to the terms of the Treaty or exceeded the limits of its powers. This fact alone deprives them of the possibility of showing a misuse of the powers of the High Authority affecting them.
That submission is, therefore, inadmissible.
Subject to that reservation, the High Authority maintains that the present complaint deals only with the question who is entitled to fix prices to the extent necessary to attain the objectives of Article 26(2) (a). The High Authority does not claim that it is entitled to fix the list of selling prices of the undertakings themselves.
The High Authority maintains that, as a public authority, it is responsible for the attainment of the objectives of the arrangements referred to in Articles 26(2) (a) and that, as such, it cannot share that responsibility with private undertakings. Consequently, the High Authority is obliged to establish a working basis for the equalization system and must itself decide on the measures which are necessary for that purpose. It is on that ground that it considered the fixing of prices to be necessary and indispensable to the operation of the equalization system. In fact, in the absence of such a measure, the producers would not be stimulated to take action on their own initiative to lower prices to the extent considered necessary. Such a right of veto cannot be justified from the point of view of consumers, whose interests were the main reason for the creation of the equalization

system. The producers cannot therefore be left to fix the prices.

If the fixing of prices is regarded solely as a measure adopted within the context of the equalization system, it is necessary to reject the argument put forward by the applicants that that measure can be adopted only under stricter conditions than those laid down by Article 61 of the Treaty for the fixing of maximum prices.

(b) The applicants maintain that, having regard to the aims of Article 26(2), the High Authority infringed that article and misused its powers by adopting, in the present state of the market, Decision No 22/55, which imposes reduced prices for certain types of coal. The recitals to that decision and the grounds set out in the letter of 28 May 1955 show that the decision pursues objectives which are structural in nature, for which there is no legal basis in Article 26(2); structural reform is the aim of a whole series of measures to reorganize production plant in order to make it possible to reduce cost prices.

In the letter of 28 may 1955 the High Authority justifies the reduction in prices by the argument that they are too high, which is shown by sales difficulties and by the fact that recourse is had to the equalization arrangements under subparagraph (c). In fact, there are no such sales difficulties and the Belgian producers have not resorted to the equalization arrangements under subparagraph (c) since April 1955, with the result that the decision cannot be based upon those grounds, since they are factually incorrect.

The applicants disagree that the ruling common market prices may be equated with those of the Ruhr. Until 1 April 1956 prices in the Ruhr were maintained at an artificially low level by a decision of the High Authority and since their liberalization on that date their rise has been limited by action taken by the German Government. The price prevailing in the Ruhr is only one of the prices for industrial coal on the market and the prices ruling in the Nord, Pas-de-Calais and Aix-la-Chapelle coal-fields are close to Belgian prices and apply to the same volume of production. Furthermore, the applicants consider that prices will have to be brought into line by means of a gradual rise in those prevailing in the Ruhr. Finally, the reduction in Belgian prices can only make re-equipment more difficult, since the receipts of the undertakings will decrease as a result, despite the effect of equalization, since the latter is on a sliding scale.

The *defendant* observes that the applicants must show that the aim of the contested decision is extraneous to the terms of the Treaty. Decision No 22/55 clearly seeks to bring prices into line and that is the aim of Article 26(2), regardless of the method applied. Furthermore, as a subsidiary point the defendant also denies having violated Article 26.

The alignment of Belgian coal prices is a structural aim and one of the important elements in the scheme established by the Convention for the gradual modification of the structure of Belgian coal production. The question is not whether Belgian coal may be sold at a higher price but whether a higher price allows Belgian coal production to be completely integrated into the common market, whatever the economic situation. When they stated that the reasons for the decision are factually inaccurate the applicants were speaking from the point of view of the short-term economic situation, and their opinion is valid only in the short term. The High Authority must respect the spirit of the Convention and consider the question from a structural point of view; the grounds put forward in its letter, including the sales difficulties, must be understood in that way.

As regards the influence of prices in the Ruhr, the High Authority maintains that it has never treated Ruhr prices as being those ruling in the common market. However, as regards industrial coal, it is indeed the Ruhr which determines the market price since, unlike the French market which is traditionally a net importer, the Ruhr has the largest exportable surplus, which can compete with the output of other areas on their own market. It is competition from the Ruhr which is felt the most strongly on the Belgian market and it is with Ruhr prices that the Belgian prices must be brought into line.

The High Authority does not consider that the development of the common market

will lead to a rise in Ruhr prices enabling prices to be brought fully into line. The question whether prices will come into line as a result of the effect of free economic forces or whether they can do so only if authoritative action is taken to lower Belgian prices is a question of economic policy and involves an assessment of an economic situation, on which the Court is not required to pronounce. In any case, the High Authority considered that alignment of prices formed part of its responsibilities and that, therefore, it could not take the risk that prices would be insufficiently aligned by the end of the transitional period.

(c) Before the reopening of the oral procedure prescribed by the Order of the Court of 17 July 1956 the parties provided certain information and details concerning the level of estimated production costs at the end of the transitional period.

The parties agree that it is not possible to establish separate estimated production costs for each type of coal within a category, since all the types within one category are extracted at the same time and under the same conditons. Furthermore, the parties agree that the coal should be grouped into the following four categories: fat coal B; fat coal A and ¾ fat; ½ fat; ¼ fat and anthracite.

The *applicants* consider that in its judgment of 16 July 1956 in Case 8/55 the Court decided that the parties must take the beginning of 1955 as the reference period. They also maintain that 850 kg must be taken as the foreseeable output in 1955, which is the figure accepted by the defendant in the joint reply to the questions raised by the Judge-Rapporteur in June 1956. As regards the grouping of the categories, the applicants maintained during the final hearing that it is necessary either to group together the categories fat coal A, fat coal B, ¾ fat and ½ fat, or all the categories, leaving out those types of coal to which the equalization arrangements no longer apply. However, neither of those groupings appears in the information provided by the applicants.

The applicants maintain that in assessing the estimated production costs the estimates of the subsidies which would be paid by the State to marginal mines in 1958 must not be taken into account, since the grant of the subsidies does not reduce production costs but simply results in making the State responsible for a part of them.

Furthermore, the applicants assess the 'amortization' factor in the production costs at an average of 65 francs per metric ton. That figure is 27 francs higher than that put forward by the High Authority.

The applicants maintain that amortization must be calculated on the basis of the value of the installations and equipment in 1955 at the time of the assessment, in accordance, first, with the general concept of 'facts and circumstances known when the assessment is made' adopted by the Court in its judgment of 16 July 1956 and, secondly, with the 'Directives concerning the Calculation of Amortization' which are valid throughout the Community and were confirmed by the High Authority in a letter of 23 July 1954.

The applicants maintain that a comparison of estimated costs and average selling prices gives the following result:

	Fat coal B	Fat coal A and ¾ fat	½ Fat	Fat coal A and B, ¾ and ½ fat	Anthracite and ¼ fat	All categories
Estimated production costs for the reference period 1955, without deduction of estimated subsidies for 1958, output 850 kg.	637	741	777	721	815	744
Real average selling prices	622	655	691	668	822	707

That table shows that the real average selling price of all categories together is lower than the average estimated cost of production and that the real average selling price of each category is lower than the corresponding average estimated cost of production, except in the case of fat coal B and anthracite and ¼ fat coal.

The *defendant* maintains that the Court has not yet ruled on the question which reference period must form the basis of the assessment of the estimated production costs. It adheres to its earlier argument that 1952 must be taken as the base year. During the final hearing the defendant stated that the calculations must be based on the output of 819 kg. assessed in 1952 and claims that it did not accept the figure of 850 kg. for the reference period 1955, since that figure was inadequate. The defendant added that if the Court considers that 1955 must be taken as the basic reference period, the output figure must be raised to at least 900 kg., as it proposes to prove by means of a fresh investigation of the case on that point.

The defendant rejects the applicants' argument that 'amortization' must be calculated on the basis of the value of the installations and equipment at the time of the assessment. It cannot accept either the method used to calculate amortization or the resulting figures.

It considers that 38 francs, that is, the amount of the re-equipment grant fixed by the Belgian Government in 1947, must be regarded as the amortization figure. That figure is the minimum which the Belgian collieries were obliged to apply, by way of amortization, to the financing of investments. The 'Directives concerning the Calculation of Amortization' have only a limited aim, that is, the implementation of Article 2(5) of the Convention in order to simplify and clarify the statistical information gathered by the High Authority. In order to show that the 'Directives' cannot apply in this instance the defendant points out that, for example, they enable the sum of 9 francs, representing depreciation of equipment which has already been entirely written off, to be included in the 'amortization' total.

The defendant considers that a comparison between estimated production costs and average selling prices produces the following result:

	Fat coal B	Fat coal A and ¾ fat	All types of fat coal	½ fat	¼ fat and anthracite	All categories
Estimated production costs, for the reference period 1952, with deduction of estimated subsidies for 1958, output 819 kg.	610	703	661	731	766	704
Notional average selling prices	686	680	683	718	853	734
Real average selling prices	662	655	658	691	822	707

In order to explain the above table the defendant makes certain additional observations. The fact that the prices for, on the one hand, ½ fat coal and, on the other hand, fat coal A and ¾ fat together, are lower than the corresponding production costs is explained as follows: in a list of selling prices the respective positions of the different categories must be established on the basis of the value of the coal in question to the consumer. It is for that reason that the difference between the selling prices of

fat coal A and fat coal B in no way depends on the difference between their respective production costs. Before the opening of the common market there was no difference between those selling prices, and the differences established at the beginning of the transitional period have remained constant since then. Since Article 26(2) (a) does not specify whether the prices fixed by the High Authority must be determined on the basis of the average estimated production costs for 'all categories' or by category, the defendant considers that it must be determined on the basis of the average costs for 'all categories'. During the final hearing the defendant added that since the action concerns the price list fixed in 1955 it appears to be more justified to consider fat coal A and B and ¾ fat as a whole, since the modification of the price list of 1952 concerns those categories alone.

The fifth complaint — Fixing of selling prices without provision for equalization

The *applicants* consider that Decision No 22/55 is unlawful in that it imposes a list of selling prices in respect of certain types of coal for which equalization is withdrawn. Article 26(2) (a) provides for a list of selling prices to be drawn up only in relation to equalization. When it excluded certain types of coal from the equalization scheme the High Authority left the undertakings free to fix the prices for those types, but it refused to allow the applicant undertakings the same freedom as regards certain other types of coal for which they alone receive no further equalization.

In their reply the applicants maintain that equalization is in fact the reason for the price control exercised rightly or wrongly by the High Authority. Thus, without equalization, there is no legal basis for the maintenance of a price list and it is therefore unlawful, despite the possibility of a return to equalization. That is the case as regards the bituminous coals produced by the three collieries of the Campine.

The *defendant* acknowledges that Article 26 does not entitle it to fix prices for those types of coal which it regards as already integrated into the common market, such as certain anthracites and ¼ and ½ fat coals. If equalization is not paid in respect of unclassified bituminous coals, that is only true of the production of the Campine mines. The exclusion of the unclassified bituminous coals from the Campine from the benefit of equalization in no way implies that those types are already sufficiently integrated into the common market to be removed from the equalization system. It is possible that if a new reduction were to be ordered, equalization payments would once again be made to the Campine collieries as well.

Law

A — The admissibility of the application

The application seeks the annulment of:

1. Decision No 22/55 of the High Authority of 28 May 1955 and the price list annexed thereto, published in the *Journal Officiel,* No 12, of 31 May 1955, in so far as they fix reduced prices for certain types of coal;

2. The decisions contained in the letter addressed by the High Authority to the Belgian Government on 28 May 1955 and in the table of rates of equalization annexed thereto in so far as:

(a) the withdrawal or reduction of equalization payments in the case of certain collieries leads to discrimination between producers of identical types of coal;

(b) The letter states that in future equalization payments will be or may be withdrawn from certain undertakings on the ground that they are not making the effort to re-equip considered possible and necessary or are refusing to carry out the transfers or exchanges of deposits which are regarded as indispensable for a better development of the mining areas.

As regards Decision No 22/55, the applicants claim that it is individual in nature. The defendant, on the other hand, maintains that it is a general decision. In the opinion of the applicants, the individual nature of the decision may be deduced from the fact that, by reason of the indissoluble link between equalization and the fixing of prices, the effects of the price list on the three collieries of the Campine are different from its effects on the other Belgian mines, in so far as the equalization granted to the three Campine collieries is not the same as that received by the other mines.

Without denying that the effects of the price list will vary to the extent to which equalization itself varies, the court rejects the applicants' argument that the variations in the effects of the price list determine the nature of Decision No 22/55. That decision was adopted within the context of a special system provided for in relation to Belgium for the duration of the transitional period by Article 26 of the Convention which applies in accordance with specific rules, however detailed and varied they may be, to all undertakings and transactions governed by that system.

Within the context of that system the decision concerns the undertakings only in so far as they are producers of coal and it in no way identifies them. If new deposits were discovered in Belgium the company working them would be bound to sell at the prices fixed by the decision. Furthermore, the territorial limitation does not imply individual identification and it is justified by the fact that the Belgian industry is in need of equalization.

The fact that Decision No 22/55 lays down specific and detailed rules which are applicable in different situations does not conflict with the general nature of the decision. Article 50(2) of the Treaty in fact provides that the mode of assessment and collection shall be determined by a general decision of the High Authority, which shows that the fact that such a decision has specific consequences which are individual and varied does not affect its nature as a general decision.

As regards the decisions contained in the letter of 28 May 1955, the parties consider that the first, which relates to the reduction and withdrawal of equalization, is individual in nature and that the second, which relates to the threat to withdraw the equalization, is general in nature. On that point the Court accepts the position adopted by the parties.

During the oral procedure the defendant raised the question whether it is possible to regard the latter measure as a decision capable of forming the subject-

matter of an application for annulment in accordance with Article 33 of the Treaty. In its letter of 28 May 1955 the High Authority accepted that equalization aid must be accompanied by a series of measures to be adopted by the Belgian Government. Furthermore, it considers that the Belgian Government ought to apply four measures, indicated at points (a), (b), (c) and (d). The action referred to under (d) is, therefore, one of the series of measures which the Belgian Government would be obliged to take, if the circumstances so required. The High Authority has thus unequivocally determined the attitude which it has decided to take henceforth should the circumstances mentioned under 2(d) of the letter arise in other words, it has laid down a rule to be applied if necessary. It must therefore be seen as a decision within the meaning of Article 14 of the Treaty.
Since the individual or general nature of each of the decisions has been established, the applicants are entitled to seek the annulment of the reduction or withdrawal of the equalization — the individual decision contained in the letter of 28 May 1955 — by putting forward all the submissions referred to in Article 33 of the Treaty. In so far as the applicants consider that the two other decisions involve a misuse of powers affecting them, they may lodge an application for their annulment, since they are general in nature.

In order for an application for the annulment of a general decision to be admissible it is sufficient for the applicants to claim formally that there has been a misuse of powers affecting them, indicating convincingly the reasons which, in their opinion, give rise to the presumption of a misuse of powers.
As regards the fifth and sixth complaints, the defendant raised the question whether the application brought by the applicants satisfies the requirements of Article 22 of the Statute of the Court of Justice and of Article 29 of the Rules of Procedure of that Court, in particular as regards the statement of the grounds relied on and the brief description of them.

The conclusions of the parties in the application indicate the grounds relied on in support of those complaints, which is sufficient to satisfy the aforementioned provisions. Similarly, a brief description of those grounds may be regarded as incorporated within the application in support of the fifth complaint, but not as regards the fourth. In fact, the fourth complaint consists solely of a reference to 'the statement contained in the application lodged by Fédéchar that the decision of the High Authority is unlawful in so far as it imposes reduced prices for certain types of coal'. In spite of the unquestionable link between the two applications a general reference to a statement made in another case is not sufficient for the application to be in accordance with the aforementioned provisions, in particular as the reference—as is the case as regards the fourth complaint in the present application—was not accompanied by an application for the affairs to be joined. That application was made only at the beginning of the oral procedure. The fourth complaint is therefore inadmissible.

Similarly, the grounds upon which the parties relied for the first time in their reply without having mentioned them in the application must also be declared inadmissible. That applies therefore to the relationship between selling prices and estimated production costs and to the intervention by the Belgian Government. Subject to the foregoing, the application is admissible.

However, the parties disagree over the exact scope of Article 33 of the Treaty in relation to the admissibility of certain submissions made by the applicants against the general decisions.

The defendant maintains that an undertaking cannot put forward a submission of misuse of powers affecting it unless the High Authority has camouflaged an individual decision 'affecting' that undertaking beneath the external appearance of a measure laying down general rules.

That argument must be rejected. A disguised individual decision remains an individual decision, since its nature depends on its scope rather than on its form. Furthermore, such an interpretation of Article 33 and especially of the words 'affecting them' cannot be accepted, since the phrase 'accepting them' can be understood only in the sense of the words which express it, that is, where it concerns an undertaking which is the subject or at any rate the victim of the misuse of powers alleged by that undertaking. The Court considers that Article 33 clearly states that associations and undertakings may contest not only individual decisions but also general decisions in the true sense of the term.

The defendant maintains in the alternative that the applicants are entitled to put forward only the submission of misuse of powers and that all the other submissions must be set aside. The applicants, on the other hand, consider not only that they are entitled to put forward all the grounds for annulment, provided that they plead a misuse of powers convincingly, but also that they may bring proof of the other defects in order to support the submission of misuse of powers. They consider that the Treaty has established a legal system in which, in order for their actions to be admissible, private undertakings may only plead a misuse of powers affecting them; it would therefore be illogical to regard that submission as being merely exceptional and secondary in nature.

That argument must be dismissed. If the Treaty provides that private undertakings are entitled to seek the annulment of a general decision on the ground of misuse of powers affecting them, that is because they have no right of action on any other ground.

If the applicants' argument were correct, undertakings would have a right of action as extensive as that of the States and the Council and it would be difficult to explain why, instead of simply treating actions brought by undertakings in the same way as those brought by States or the Council, Article 33 introduced a clear distinction betweeen individual decisions and general decisions, while restricting the annulment of general decisions in the case of undertakings to the submission of misuse of powers affecting them. The phrase 'under the same conditions' cannot be interpreted as meaning that, after establishing a case of misuse of powers affecting them, undertakings are entitled to put forward in addition the other

grounds for annulment, since once the misuse of powers affecting them is established the decision in question is annulled, and that annulment does not have to be pronounced again on other grounds.
The foregoing considerations clearly contradict the applicants' illogical view that the interpretation of the Treaty must be subordinated to the desire to grant to private undertakings a right of action which is almost identical to that available to the States and to the Council. Although such a wish is understandable, there is nothing in the Treaty from which it may be concluded that private undertakings have been granted such a right to review the 'constitutionality' of general decisions, that is, their conformity with the Treaty, since they are quasi-legislative measures adopted by a public authority with legislative effect *'erga omnes'*.
Although it is true that Article 33 accepts the existence of a right to bring an application for the annulment of a general decision on the ground of misuse of powers affecting an undertaking, that is an exception which is explained by the fact that, in this case, it is still the individual factor which prevails.
As against the general decisions, therefore, the applicants may rely only on the submission of misuse of powers affecting them. As regards the individual decision, since the parties are agreed that it may be so described, the applicants may rely on all the submissions set out in the first paragraph of Article 33.

B — Substance

The first complaint — Reduction or withdrawal of equalization as regards certain undertakings

The applicants maintain, first that the introduction into the equalization scheme of a selective criterion, that is, the adjustment of the equalization payments to the individual situation of the undertakings, constitutes discrimination which is prohibited by the Treaty.
That argument must be rejected. As a result of the decision contained in the letter of 28 May 1955 equalization payments are reduced or even abolished where the disadvantages resulting from less favourable geological conditions, which are indeed one of the premises of the special provisions applying to the Belgian coal industry, no longer exist. It follows therefrom that the payment of differing rates of equalization on the basis of physical conditions of production is evidence of a desire to acknowledge differences which actually exist, so as to ensure that comparable cases receive comparable benefit and, therefore, to avoid discrimination. The applicants' argument would be convincing only if the High Authority had not applied an objective and uniform criterion in order to check whether the individual situation of the undertakings satisfied the conditions fixed for the award of equalization. The decision contained in the letter in fact laid down such a criterion and it has not been disputed that the situation of the three colleries is in accordance therewith.

Secondly, the applicants consider that as Article 26(2) (a) refers to 'Belgian coal' and the equalization payments provided for under subparagraphs (b) and (c) are general in nature, the equalization provided for under subparagraph (a) must also be general in nature.

That argument is not conclusive, since the equalization payments provided for under subparagraphs (b) and (c) are clearly intended to put both the Belgian iron and steel industry and exporters of coal in a position to meet competition in the common market if the limit represented by the estimated production costs is too far above the level of the ruling common market prices. For those reasons the aims pursued by the equalization payments under subparagraphs (b) and (c) are different from that pursued by equalization under subparagraph (a). Furthermore, subparagraphs (b) and (c) contain a number of provisions which are intended to govern the distribution of the equalization payments made thereunder, while there are no such rules for the equalization payments made under subparagraph (a). In the light of those differences between subparagraphs (a), (b) and (c) and of the fact that the phrase 'Belgian coal' admits of either interpretation, it cannot be concluded on the basis of the text of Article 26 alone that the equalization provided for under subparagraph (a) must be general in nature.

On the assumption that equalization payments made under subparagraph (a) were the same for all undertakings without regard to differences in their conditions of production, equalization would become discriminatory and its existence unjustified since, in so far as it was awarded to undertakings whose conditions of production do not suffer the disadvantages which are the very requirements of the award, it would become a subsidy. It follows that equalization must necessarily take account of the individual position of the undertakings as regards their conditions of production.

In support of their argument the applicants again refer to the existence of a guarantee to maintain previous levels of receipts.

Despite the fact that the Convention does not refer to the existence, where appropriate, of a relationship between equalization and receipts, the latter being mentioned only in Article 25 in relation to the basis of assessment of the levy, such an interpretation would be admissible only if equalization had necessarily and in all circumstances to cover the entire difference between the reduced selling prices and receipts at the beginning of the transitional period. That is not the case, since equalization is only a necessary protective measure to avoid hurried and dangerous shifts in production levels. In accordance with Article 24 of the Convention the special system established for that purpose must take account of situations existing when the common market is established. However, it is not possible to interpret that provision widely, as guaranteeing the maintainance of the original level of receipts. The introduction of a special system, such as the equalization scheme, is to be explained by the existence in Belgium of certain conditions of production which are inherently different from those in other countries participating in the common market. Equalization must, therefore, not exceed the limits of what is strictly necessary in order to neutralize to a cer-

tain extent the effects of the disadvantage resulting from those differences, which does not imply a guarantee that the original level of receipts will be maintained. The question of the extent to which the total of selling prices and equalization payments—which determines the receipts of the undertakings—must vary during the transitional period is a question which the High Authority must examine in the light of the progress of the programmes for the re-equipment and reorganization of the Belgian mines.

Furthermore, if the purpose of equalization was to guarantee the maintenance of original levels of receipts, it would be in contradiction with the principle of the decrease of the equalization levy laid down in Article 25 of the Convention. In addition, Article 1 of the Convention refers to production being progressively adapted to the new conditions resulting from the establishment of the common market and not to the new conditions being adapted to the maintenance of situations existing at the beginning of the transitional period.

Moreover, if, as the applicants maintain, equalization was intended to ensure that the collieries have the financial resources available which are regarded as indispensable to the implementation of their re-equipment programmes, the aim of the equalization scheme would greatly exceed the reasons for its establishment and would transform it into a measure intended to contribute actively and directly to the reorganization of the Belgian mines, which would be contrary to the rather passive nature of a protective measure.

Finally, the applicants maintain that equalization payments must be the same for all collieries since the Treaty and the Convention provide, in particular in the fourth paragraph of Article 5 and Article 62 of the Treaty and in Articles 24(b) and 26(4) of the Convention, for special measures intended to iron out the differences existing between the collieries considered individually.

That argument is not valid, since although the aforementioned provisions provide for measures other than equalization in order to bring to an end differences existing between the collieries, that does not in any way prevent equalization also taking individual differences into account in the case of Belgium, in so far as the equalization scheme established for that country permits.

The present complaint is therefore unfounded.

The second complaint—Fixing of the new rates of equalization at a flat rate

This complaint alleges that the new method, which consists in fixing the new rates of equalization at a flat rate without any indication of the price list 'for accounting purposes', is arbitrary and based on reasons which are extraneous to Article 26 of the Convention.

It should be observed, first, that the selling price fixed for each type of coal together with the equalization payments is equivalent to what was previously called the price 'for accounting purposes' and that the total of those two elements is lower in four cases and higher in fifty-two cases than the price 'for accounting purposes' previously in force. Before considering whether the new rates of equal-

ization which are added to the new selling prices are arbitrary in nature it should be noted that the nature of the equalization arrangements cannot be ascertained in terms of the variations resulting from the 'principle of selectivity' which the High Authority was entitled to apply.

As regards the fixing of rates of equalization for the various types and categories of coal, the Court considers that the very nature of the equalization scheme obliged the High Authority to adjust the payments to the needs of the undertakings. It should be added that the High Authority must take particular account of the gradual decrease in the equalization funds available and the progress made or considered possible as regards the effort to re-equip and reorganize the Belgian collieries.

It results from the foregoing considerations that the amounts of equalization will necessarily vary from one case to another, but that the mere existence of variations is not proof that the High Authority fixed those amounts arbitrarily and in a manner extraneous to the aim of the Convention. The present complaint must therefore be dismissed.

The third complaint—The threat to withdraw equalization

Since equalization is a protective measure enabling Belgian coal to be integrated into the common market from the beginning of the transitional period during which the process of reorganization and re-equipment must be implemented, it is not intended to make any direct and active contribution to that process. It is clear that equalization is granted on the assumption that the reorganization and re-equipment of the Belgian collieries may be achieved to a sufficient degree to enable the final integration of Belgian coal into the common market at the end of the transitional period.

The aim of the equalization scheme is not to finance the re-equipment and reorganization of the collieries. Furthermore, if it were to appear that certain undertakings were not carrying out the work of reorganization and re-equipment, such that they incurred liability, it would have to be acknowledged that there was no longer any basis or justification for equalization. Those undertakings would thus have deprived themselves by their own fault of the right to benefit from equalization.

The High Authority must take such a possibility into account. It did so conditionally at point 2(d) of its letter of 28 May 1955, when it authorized the Belgian Government to withdraw equalization where appropriate, subject to the prior agreement of the High Authority. It cannot be concluded from the wording of the letter that the High Authority would have made its agreements dependent upon non-objective criteria which are not justified by the facts. The High Authority is not therefore guilty of a misuse of powers and the application is without foundation on that point.

The fifth complaint—Fixing of selling prices in certain cases without provision for equilization

The defendant alleges that the exclusion from the benefit of equalization of unclassified bituminous coals from the Campine in no way implies that those types are already sufficiently integrated into the common market to be placed outside the system of equalization. It considers that account must be taken of the fact that it may be necessary to make a further reduction in Belgian prices and, where appropriate, to recommence payment of equalization to the collieries in the Campine as well.

In fact, the letter of 28 May 1955 leaves unchanged the types of coal in question within the equalization system in spite of the modifications which it makes to the rules which determine the amount of the equalization payments to certain undertakings. The system laid down in Article 26(2) (a) of the Convention is therefore applicable to those types, in particular as regards the need to ensure that that system takes full effect through the fixing of prices by the High Authority.

The fixing of prices is a general measure which is necessary to the application of the exceptional system laid down in Article 26(2) for the entire Belgian coal production.

The question whether that system enables equalization to be reduced or even withdrawn on the basis of the conditions of production of certain individual undertakings forms the subject of the complaint relating to the application of the principle of selectivity in the implementation of Article 26. The lawful nature of the principle of selectivity has been established in relation to all the provisions of the letter of 28 May 1955 from the High Authority to the Belgian Government. However, it may be stated that it is impossible to conceive either of the existence of several price lists applying to consumers of Belgian coal or of the coexistence of both liberalized and fixed prices for coals of the same type.

It follows that in the foregoing case the reduction or even withdrawal of equalization in respect of certain types and in certain individual cases does not result in those types being placed outside the price list, since there can be only one price list resulting from the application of Article 26(2) for all consumers of Belgian coal.

Decision No 22/55 is therefore to be explained by the normal application of the system referred to in Article 26 and the normal exercise of a power which is necessary for the implementation of that system. The submission of misuse of powers is therefore unfounded.

Costs

Under the terms of Article 60 of the Rules of Procedure of the Court the unsuccessful party shall be ordered to pay the costs. The applicants must therefore be ordered to bear the costs of the action.

Upon reading the pleadings;
Upon hearing the parties;
Upon hearing the opinion of the Advocate General;
Having regard to Articles 2, 3(c), 4, 5, 8, 14, 33, 34, 36, 50, 60, 61 and 62 of the Treaty and Articles 1, 8, 24, 25 and 26 of the Convention;
Having regard to the Protocol on the Statute of the Court of Justice;
Having regard to the Rules of Procedure of the Court and to the Rules of the Court concerning costs,

THE COURT

hereby:

1. **Dismisses the application for the annulment of certain decisions of the High Authority resulting from its letter of 28 May 1955 to the Government of the Kingdom of Belgium concerning the adjustment of the equalization system and of Decision No 22/55 of the High Authority of 28 May 1955;**

2. **Orders the applicants to bear the costs.**

Pilotti Rueff Riese

Serrarens Delvaux Hammes van Kleffens

Delivered in open court in Luxembourg on 29 November 1956.

M. Pilotti
President

A. van Kleffens
Judge-Rapporteur

A. Van Houtte
Registrar

OPINION OF THE ADVOCATE GENERAL

(see case 8/55 pp. 260 and 292)