**Orders the applicant to pay the costs.**

Pilotti Hammes Serrarens

Riese Delvaux Rueff Van Kleffens

Delivered in open court in Luxembourg on 10 December 1957.

M. Pilotti
President

O Riese
Judge-Rapporteur

A. Van Houtte
Registrar

## OPINION OF MR ADVOCATE-GENERAL LAGRANGE[1]

*Mr President,*
*Members of the Court,*

The company ALMA (Acciaierie Laminatoi Magliano Alpi) asks you to annul a decision of the High Authority dated 24 October 1956 imposing on it, pursuant to Article 64 of the Treaty, a fine of Lit 800 000 for failure to publish its price lists and conditions of sale. This is an action based on Article 36, therefore an action in which the Court has unlimited jurisdiction.
The application is in due form and was submitted within the period of one month from notification of the decision pursuant to the provisions of Article 33 of the Treaty and Article 39 of the Protocol on the Statute of the Court. It is therefore admissible.

With regard to substance, two submissions have been raised:

*The first* is based on an infringement of the first paragraph of Article 36, according to which: 'Before imposing a pecuniary sanction or ordering a periodic penalty payment as provided for in this Treaty, the High Authority must give the party concerned the opportunity to submit its comments.'
The file contains a copy of a letter dated 4 November 1955, signed by a member of the High Authority, the content of which undoubtedly fulfils the formality required by the first paragraph of Article 36. Moreover, this point is not contested.
But the applicant claims that it never received the letter in question.
However, the file contains a photocopy of an acknowledgement of receipt in respect of a letter posted on 7 November 1955 in Luxembourg by the High Authority addressed to 'Acc. e Lam. di Magliona Alpi' (instead of 'Magliano Alpi'), Corso Regiodarco, 33 (instead of Corso Regioparco, 33), Turin, Italy. The acknowledgement of receipt itself bears the stamp of the receiving office (Turin, 9/11/55), the signature of the employee of the receiving office and (and this seems to me to be the decisive point and to justify the new arguments developed in the oral hearing) *the signature of the addressee preceded by the seal of the company:* 'ALMA', which proves that the minor spelling mistakes contained in the written address did not prevent delivery of the letter to the addressee at the very place indicated by the company as being its registered office. The fact (which has, moreover, not been established) that the company official whose duty it is to receive the mail did not in fact convey the letter to the place at

1 — Translated from the French.

which the works are actually situated (a hamlet in the Alps, some 100 km from Turin) is a matter internal to the company which cannot affect the regularity of the notification.

The first submission must therefore be rejected.

*The second submission* is based on an infringement of Article 64 of the Treaty, which is said to allow infringements of the rules relating to non-discrimination alone to be sanctioned, to the exclusion of those concerning publication of prices. According to the applicant, it cannot be imagined that the authors of the Treaty intended to provide for the same sanction (twice the value of 'sales effected in disregard thereof') in respect of offences differing both in character and gravity. Moreover, the expression 'sales effected in disregard thereof' clearly shows that the offence relates to the regularity of the act of sale itself, and not a purely extraneous error such as a failure to publish price lists.

In my opinion this interpretation cannot be accepted. The text of Article 64 is perfectly clear: 'The High Authority may impose upon undertakings *which infringe the provisions of this Chapter or decisions taken thereunder* fines not exceeding twice the value of the sales effected in disregard thereof.' This provision refers to *all* offences against the provisions of Chapter V, not only offences against the rule of non-discrimination. In particular, failure by an undertaking to publish its price list and conditions of sale constitutes an infringement of the provisions of Article 60 (2) (a), which requires such publication, and of the decisions in which the High Authority defined the extent and manner of such publication pursuant to that article: they are Decision No 31/53 of 2 May 1953 and the amending Decision No 2/54 of 7 January 1954 (which are well known to the Court), both published in the *Journal Officiel*, No 1, of 13 January 1954, p. 218, which provide that price lists and conditions of sale must be communicated to the High Authority. In calculating the fine, 'sales effected in disregard thereof' must be taken to mean all sales effected by the company for so long as it has not published its price list, which might obviously amount to a fine of some magnitude in view of the gravity of the offence. But that is a maximum.

I suggest therefore that the Court should also reject the second submission.

A final question arises, that is whether the Court should consider a *reduction* of the fine. It certainly has the power to do so, since Article 36 expressly provides that 'The Court shall have *unlimited jurisdiction* in appeals against pecuniary sanctions and periodic penalty payments imposed under this Treaty.'

However, in the first place, does the applicant make such a request in its conclusions? This is open to some doubt: outwardly, those conclusions merely claim the annulment of the decision imposing the fine; there is no express alternative conclusion regarding a reduction of that fine. However, we may note the following passage from the application:

'The applicant is a small undertaking in the nature of a cottage industry, providing with some difficulty a livelihood for some 50 families of Italian workers inhabiting the inhospitable mountains of Magliano Alpi. How can a pecuniary sanction of Lit 800 000 be imposed on an undertaking of such modest proportions, bearing in mind the fact that the company capital is Lit 6 million? And how could the applicant pay such a sum when it has already been obliged to ask the Community to arrange a three-year repayment plan for the discharge of arrears due in respect of levies between 1953 and 1956?'

I believe that this passage in the application may be deemed to constitute an alternative submission requesting the Court to grant a reduction of the fine.

Fundamentally, account should be taken both of the gravity of the offence and of the size and financial potential of the undertaking.

On the first point, it must be admitted that even if bad faith is not shown, the failure to publish its price lists during a period of three years amounts at the very least to a fairly high degree of negligence on the part of the company which, despite its modest dimen-

sions, could not all the same have been in ignorance of the existence of the Community nor of the most elementary duties under which the Treaty places undertakings, such as the payment of levies and the publication of price lists.

On the second point, the documents produced at the request of the Court provide the following information: the fully paid-up capital amounts to six million lire. Gross profits have been as follows: for the financial year 1954—Lit 12 868 069, 1955—Lit 14 634 274, 1956—Lit 18 317 316.

Accounts, banks, suppliers and creditors, on the debit side, account yearly for fairly high figures, in the order of some Lit 60 million on average. However, one million lire each year is paid to shareholders by way of dividend. The principal preoccupation of the sole director (which he reiterates each year in his report to the general meeting) is the fact that it is impossible for the company, in view of its lack of means, to modernize its plant.

It is my opinion that in view of all these considerations the figure of Lit 800 000 calculated by the High Authority is not excessive, taking into account both the gravity of the offence and the financial standing of the company.

It is my opinion that:

the application should be dismissed;

the costs should be borne by ALMA.