decision in order to be able to give judgment, the conditions laid down by Article 41 are fulfilled.

2. Although the importance of the fiscal powers conferred by Articles 49 and 50 of the ECSC Treaty on the Commission in order to enable it to carry out, in the best possible conditions, the task entrusted to it by the Treaty cannot be denied, it does not necessarily follow from the nature and purposes which those articles confer upon the ECSC levies that, in the event of the insolvency of the undertaking owing them, they must automatically enjoy the same preference as that accorded by the legislation of the Member States to similar domestic taxes.

   In so far as the laws of the Member States treat certain kinds of debts preferentially in bankruptcy proceedings, such preference, being contrary to the general principle that creditors should be treated equally, may be accorded only on the basis of specific, existing legislative provisions. In the absence of any particular provision governing the preferential treatment in bankruptcy proceedings of debts owed to the Commission in respect of levies, such preference cannot be accorded.

3. Whilst it is true that a Member State may not make the recovery of Community charges subject to rules and procedures different from those governing comparable domestic charges, the principle of equal treatment does not by itself mean that Member States are under a duty, in the event of the debtor's insolvency, to accord the same preference to ECSC levies as that accorded to similar debts owed to the State, in the absence of a clear and precise provision of law, adopted by the Community legislature within the bounds envisaged by the ECSC Treaty, establishing *inter alia* the preferential status of the levy and specifying the domestic tax to which it should be compared.

In Case 168/82

REFERENCE to the Court under Article 41 of the ECSC Treaty by the Tribunale di Milano [District Court, Milan] for a preliminary ruling in the proceedings pending before that court between

the EUROPEAN COAL AND STEEL COMMUNITY (ECSC)

and

THE LIQUIDATOR OF FERRIERE SANT'ANNA SPA

on the validity of Decision No C (81) 1887 def. of 10 December 1981 of the Commission of the European Communities in so far as it provides in Article 2

that the debts owed by Ferriere Sant'Anna SpA to the ECSC (in respect of ECSC levies and interest thereon) must be regarded as "preferential debts ranking equally with similar debts owed to the State",

THE COURT

composed of: J. Mertens de Wilmars, President, P. Pescatore, A. O'Keeffe and U. Everling (Presidents of Chambers), Lord Mackenzie Stuart, G. Bosco, T. Koopmans, O. Due and K. Bahlmann, Judges,

Advocate General: P. VerLoren van Themaat
Registrar: P. Heim

gives the following

JUDGMENT

Facts and Issues

I — Facts and written procedure

1. The company Ferriere Sant'Anna SpA, a steel undertaking within the meaning of Article 80 of the ECSC Treaty, was declared insolvent on 14 May 1980 by the Tribunale di Milano.

By a letter dated 19 November 1980 the European Coal and Steel Community (ECSC) notified the liquidator that it was lodging a claim for LIT 27 383 405 including interest, in respect of levies, within the meaning of Articles 49 and 50 of the ECSC Treaty, which the company had failed to pay in due time, and requested that the debt owed to it be entered in the company's statement of liabilities as a preferential debt.

The official receiver *(giudice delegato)* admitted proof of that debt only as an ordinary debt, thus refusing to recognize it as a preferential debt. By an application served on 29 June 1981, the ECSC lodged an objection against that decision at the Tribunale di Milano in accordance with Article 98 of the Italian Law on Bankruptcy.

While the proceedings before that court were pending, the ECSC adopted Decision No C (81) 1887 def. of

10 December 1981 addressed to Ferriere Sant'Anna SpA. After stating in Article 1 the sum owed by the company by way of levies and interest, that decision adopted a position on the very point in issue by declaring in Article 2 that "the claims referred to in this decision are preferential debts ranking equally with similar debts owed to the State".

At the hearing before the Tribunale di Milano on 4 April 1982 the ECSC submitted that by virtue of that decision its claim should be admitted as a preferential debt or, in the alternative, that, if that submission were not upheld, the Court of Justice of the European Communities should be requested to give a ruling on the validity of the decision pursuant to Article 41 of the ECSC Treaty.

2. The Tribunale di Milano considered that, as far as Italian law was concerned, only an application by analogy of Articles 2752 and 2759 of the Italian Civil Code, governing the preferential nature of debts owed to the State in respect of certain taxes, enabled a similar preference to be accorded to debts owed to the ECSC. However, it considered such an application by analogy prohibited by Article 14 of the General Rules of Law preceding the Civil Code because preferential rights constitute an exception to the general rule laid down in Article 2741 of the Civil Code, which provides that all creditors have the same right to satisfy their claims out of the debtor's assets. It further considered that, apart from the decision of 10 December 1981 adopted while the proceedings were pending, there were no rules of Community law which accorded preference to debts owed to the ECSC.

By an order of 22 April 1982 it therefore submitted the following question to the Court of Justice:

"Is Decision No C (81) 1887 def. of 10 December 1981 of the Commission of the European Communities valid in so far as it provides in Article 2 that the debt owed by Ferriere Sant'Anna SpA to the ECSC (in respect of ECSC levies and interest thereon) must be regarded as 'a preferential debt ranking equally with similar debts owed to the State'?"

3. The order for reference was registered at the Court on 14 June 1982.

In accordance with Article 103 (3) of the Rules of Procedure written observations were lodged by the liquidator of Ferriere Sant'Anna SpA, represented by Riccardo Luzzatto, of the Milan Bar, by the Government of the Italian Republic, in the person of its Agent, Arnaldo Squillante, Head of the Department for Contentious Diplomatic Affairs at the Ministry for Foreign Affairs, represented by Ignazio Francesco Caramazza, Avvocato dello Stato, by the United Kingdom, represented by R. N. Ricks, of the Treasury Solicitor's Department, acting as Agent, and by the Commission of the European Communities, represented by its Legal Adviser, Armando Toledano Laredo, acting as Agent, assisted by Giovanni Maria Ubertazzi and Fausto Capelli, of the Milan Bar.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry. It did however request the Commission to provide it with further information about certain aspects of the case.

II — Written observations submitted under Article 103 (3) of the Rules of Procedure

The *liquidator of Ferriere Sant-Anna SpA* observes first of all that the decision of 10 December 1981 was by no means necessary in order to give rise to the debts owed to the ECSC by way of levies. The claims had in fact already been accepted by the competent authorities in the insolvency proceedings upon the application of the ECSC and duly entered in the insolvent company's statement of liabilities.

The real purpose of the decision in question was therefore merely to state that debts owed to the ECSC are preferential debts. That statement however, represents no more than an expression of the Commission's opinion.

Even if it were assumed that the Commission had the power (which it does not) to decide itself upon the priority to be accorded to its claims when the Commission itself causes them to arise by virtue of a decision, that would not be the case here since the claim came into being by virtue of various legislative instruments adopted before the Commission's decision.

Furthermore, the decision in question is undoubtedly an individual decision and can therefore be binding only on the undertaking to which it was addressed, namely Ferriere Sant'Anna SpA. Even if one disregards the fact that at the time when the decison was adopted that company was already in the process of being wound up, it is not possible in any circumstances to imagine it having any effect beyond the relations between the Commission and Ferriere Sant'Anna. The granting of preferential status affects an indefinite number of situations of concern to other persons (in this case the other creditors), who are accorded less favourable treatment; it may therefore only be done under a legislative instrument such as a so-called general decision or a regulation.

Moreover, the decision itself considers the debt preferential not as a result of the adoption of the decision but because of the general nature of Community law. The eighth recital in the preamble to the decision, which is repeated virtually word for word in Article 2 of the decision, states in fact that" . . . by their nature and purpose, debts due in respect of levies are equivalent to similar debts owed to the State, especially as regards their rank in the event of the insolvency of the company owing them".

The liquidator of Ferriere Sant'Anna points out that the requirement that debts in respect of ECSC levies be deemed "equivalent to similar debts owed to the State" is in any case extremely vague as far as preferential status is concerned. Not all tax debts owed to the State are in fact preferential. Moreover, in domestic law there is no such thing as a debt in respect of "levies". This lack of clarity leads to the conclusion that the decision does not constitute a rule capable of binding anyone.

The Tribunale di Milano was therefore perfectly entitled to consider that it was not a question of disregarding a Commission decision but simply of not following an opinion which the Commission had expressed and which, as such, was not binding. However, with commendable conscientiousness it decided to refer the matter to the Court of Justice, although, in the view of the

liquidator, it is doubtful whether the conditions for the application of Article 41 of the ECSC Treaty are in fact fulfilled.

On the issue raised by the order for reference the liquidator of Ferriere Sant'Anna maintains that a question as to the validity, in the technical sense, of the decision of 10 December 1981 does not even arise. A question of validity can arise only in relation to a measure which is theoretically capable of having binding effect; for the reasons already given, that is not so in the case of the decision which the Court is asked to examine.

The position would be different if the decision had been addressed to the Italian State and not to Ferriere Sant'Anna since it could then be construed as an obligation upon the State to treat the debt in the way sought, on the basis of its own legal order, and therefore to disregard rules of domestic law contrary to those of Community law.

But even if, for the sake of argument, the decision could be construed in that way, there would still be no escaping the conclusion that it is invalid. Under the ECSC Treaty, as under the other treaties, the Commission has only such powers as are expressly conferred upon it and no provision empowers the Commission to determine the status of its debts in the internal legal order of the Member States.

The liquidator of Ferriere Sant'Anna considers, however, that in adopting its decision of 10 December 1981 the Commission was seeking not so much to establish new rules governing the priority, under national law, of debts owed to it in respect of levies but more to affirm what, in its opinion, ensues from Community law as it now stands. But if that is so, it is no longer a question of examining the validity of the decision.

On the other hand, the question arises whether in making the reference to the Court of Justice which led to these proceedings the national court also wished to obtain a decision on the rules and principles of Community law governing debts owed to the ECSC in respect of coal and steel production levies.

The answer must be negative. The national court concentrated entirely on the decision of 10 December 1981, which, in its view, introduced new legal consequences not based on any existing legal rule.

Be that as it may, a preliminary ruling on this point is precluded by Article 41 of the ECSC Treaty, which restricts the jurisdiction of the Court of Justice to questions as to the validity of acts.

The liquidator of Ferriere Sant'Anna none the less makes some observations on this question also.

He observes first that, although it may well be desirable that there should be greater guarantees for the recovery of debts owed to the Community, especially in the event of the debtor's insolvency, that is nevertheless only a submission as to what the law should be. There is nothing to warrant the Commission's

conclusion that, because debts owed to the ECSC are not treated as preferential debts, a state of affairs exists "which is unacceptable from the general theoretical point of view" and that therefore such treatment is already prescribed by positive law.

The liquidator contests the Commission's contention that its view is confirmed by the case-law of the Court, pointing out that the judgment cited in support of that contention, given on 27 March 1980 in Joined Cases 66, 127 and 128/79 (*Amministrazione delle Finanze* v *Salumi* [1980] ECR 1237), specifically concerns only the financial provisions of the law of the EEC; it is very difficult to extend the considerations expressed in that regard to a different body of rules such as those of the ECSC. Only with reference to the EEC provisions (which do not appear to be capable of application by analogy) did the Court lay down certain limits, though very vague, on the applicability of the rules belonging to the national legal system.

In conclusion the liquidator considers that debts owed to the ECSC in respect of levies have no preferential status under the applicable provisions of Community law and that the decision of 10 December 1981 does not have the effect of giving them such status under the applicable provisions of national law.

The *Government of the Italian Republic* considers that the question which must be asked in this case seems to be that of the nature — general or individual — of the decision, considered in relation to the Community rules previously in force.

On the assumption that the decision is general in nature, then in general and apart from any question as to its precise effect, it must, as a legislative measure, be considered valid.

However, if the decision is, as would appear to be the case, individual in nature, then its validity would seem to depend on the existing Community rules and therefore on the possibility of finding a rule in the legal order in question conferring preferential status on debts owed to the ECSC.

The Italian Government considers it doubtful that such a rule actually exists but reserves the right to make further submissions at the hearing.

The *United Kingdom* takes the view that, contrary to the opinion put forward by the Commission in the proceedings before the national court, levies under Article 49 of the ECSC Treaty cannot be treated as taxes imposd by a Member State under its own domestic legislation. Decisions fixing ECSC levies do not and could not convert such levies into domestic taxes, nor does a levy so fixed automatically attract domestic provisions relating to the collection of domestic taxes.

That this is so is evidenced by the provisions of the ECSC Treaty itself. Article 50 (2), which lays down the procedure and criteria for determining the mode of assessment and collection of levies, and Article 92, which adopts the procedure for the enforcement of decisions of the High Authority imposing a pecuniary obligation, would be unnecessary if it were true that levies

imposed by the Commission under Article 49 of the Treaty automatically attracted the relevant domestic provisions as to the collection and enforcement of domestic taxes.

The preference to be accorded to tax debts in the event of the insolvency of the tax-payer is a creature of the domestic law concerned. In order for debts in respect of ECSC levies to be regarded as taxes in any Member State it would therefore be necessary for the domestic laws of the State concerned so to provide.

That State might adopt such a provision either of its own volition or in implementation of an obligation under Community law.

In formulating its domestic law it is for a Member State to balance the interests of the State against the interests of individual creditors, so that the two classes of interests are not unfairly prejudiced. In the United Kingdom, for example, only some debts due to the Crown are treated preferentially; in other respects the Crown is treated in the same way as other creditors. In the United Kingdom neither debts in respect of ECSC levies nor, more generally, other debts arising out of the Treaties establishing the European Communities are treated as preferential debts. To require Member States to treat such debts as preferential debts would upset the balance which each Member State strikes in its domestic law between the interests of the individual creditor and the interests of the people as a whole.

Furthermore, at the Community level, it would be wholly inappropriate to require Member States to confer on debts owed to the ECSC the same preference as that enjoyed by their domestic tax debts unless the tax debts in question were broadly comparable throughout the Community, which is not the case.

The United Kingdom submits that there is no principle of Community law which requires such debts to be treated preferentially. Such an effect cannot be attributed to the decision of 10 December 1981, which is an individual decision, or to Decisions Nos 2-52 and 3-52 of 23 December 1952, which determine the mode of assessment and collection of levies imposed under Article 50 (2) of the Treaty. Neither of those last two decisions purports to confer any preferential status on debts owed to the ECSC, nor could they do so since decisions adopted under Article 50 (2) must remain within the limits set by that provision.

The United Kingdom states that it is not aware of any other provision of the ECSC Treaty or of the secondary legislation adopted thereunder which has, or is capable of having, the effect of conferring preferential status on debts owed to the ECSC or of requiring Member States to confer such status thereon.

The United Kingdom therefore concludes that the question whether a

debt in respect of levies imposed under Article 49 of the ECSC Treaty must enjoy the same preferential status as that enjoyed by debts in respect of taxes due to the State must be answered in the negative.

The *Commission of the European Communities* observes that, if, like the Tribunale di Milano, one denies that the decision of 10 December 1981 has any legal basis, then it is clear that the validity of that decision (regarding, of course, the classification of the debt as preferential) must be examined with reference to the provisions of the Treaty and the Community implementing provisions from which the Commission derives its relevant powers. In order to assess the validity of the decision in question the Court of Justice must therefore determine the legal effect of those provisions.

Since Article 41 of the ECSC Treaty does not expressly provide that the Court has jurisdiction to interpret the provisions of the ECSC Treaty, the Commission considers it expedient to set out the considerations which lead it to conclude that the Court does have such jurisdiction.

The first point it makes is that logic alone would suggest that it is not possible to appraise the validity of a decision without at the same time interpreting the provisions of the Treaty from which the Commission derived the power to adopt that decision. The same conclusion may also be reached by theoretical argument. Relying on quotations from various sources (opinions of advocates general, reports of the Legal Affairs Committee of the European Parliament, commentaries on the ECSC Treaty), the Commission contends that Article 31 of the ECSC Treaty, which provides that "the Court shall ensure that in the interpretation and application of this Treaty, and of rules laid down for the implementation thereof, the law is observed", cannot be understood as meaning anything other than that the Court of Justice has the widest jurisdiction to interpret the provisions of the ECSC Treaty, even in proceedings brought under Article 41 of that Treaty.

After setting out those considerations, the Commission approaches the question of the validity of the decision and examines its legal basis.

It emphasizes the fundamental role which ECSC levies play as a source of Community finance and the importance of its being able to recover those levies. As they are by far the most important financial contribution for the ECSC, it is obvious that the legal and administrative rules governing them at the Community level must be such as to ensure their effective recovery, with a guarantee at least equal to that accorded at the national level to the recovery of comparable debts (identical or similar in nature) owed to Member States.

In this regard the Commission is of the opinion that an ECSC levy is of the same nature as a tax because it is (i) based upon a relationship governed by public law, (ii) proportionate to the resources of those subject to it, (iii) designed to finance public needs and objectives of public interest and (iv) directly and immediately enforceable. A closer examination of the characteristics of the ECSC levy leads to the conclusion that it is equivalent to a direct tax.

Not only academic writers but also, in some judgments, the Italian courts have recognized that ECSC levies are fiscal in nature and, more precisely, that they may be considered equivalent to direct taxes.

On the assumption that the legal nature of ECSC levies is entirely comparable to that of direct taxes collected by the State, it is for the Court of Justice to determine whether it is possible to conclude, on the basis of the principles underlying the ECSC Treaty and the other European Treaties, that the recovery of ECSC levies in the Member States must be accompanied by the same guarantees as those available to the Member States in the recovery of debts owed to them in respect of identical or at least comparable levies.

An obligation upon Member States to treat ECSC levies in the same way as domestic taxes ensues from the principle of non-discrimination, one of the fundamental principles of Community law, which is enunciated *inter alia* in Article 4 (b) and also in Articles 60 and 63 of the ECSC Treaty.

The Commission then considers the application of that principle to the recovery, in the Member States, of debts of a Community origin. It observes that, in the sphere of the EEC Treaty, the Community has set out to regulate uniformly the criteria for the collection of its own resources by adopting Regulation (EEC) No 1697/79 on the post-clearance recovery of customs duties, agricultural levies and other Community import duties or export duties which have not been paid on declared goods in respects of which payment was obligatory. Under that regulation the Member States, which collect the EEC's own resources on its behalf, are henceforth required to accord equal treatment to the recovery of debts owed to the Community.

The Commission concedes that in theory the obligation to accord equal treatment to actions for the recovery of debts owed to the Community is not necessarily synonymous with an obligation to accord debts owed to the Community the same treatment as comparable domestic debts in the same Member State.

It observes that, as far as Italy is concerned for example, the point does not arise in practive since the Italian customs legislation (Law No 43 of 23 January 1973) already treats the duties governed by Regulation (EEC) No 1697/79 in entirely the same way as customs duties owed to the Italian State. For the purposes of its argument, however, it considers what the position would be if they were not so treated and raises the question whether in such a case the Italian State could refuse to treat Community agricultural levies preferentially. In its view, the answer to that question can only be negative once it is established that the levies are comparable in nature to charges imposed by the State, since Member States are under an implied obligation to accord the same treatment to the recovery of their own charges and Community charges.

The same argument holds good in the case of ECSC levies which differ from debts owed to the EEC only inasmuch as they are collected directly by the ECSC and not through the intermediary of the Italian State. A difference of treatment cannot however be justified by the fact that the agent actually recovering the debts is not the same in both cases.

Relying on a judgment delivered on 4 March 1982 by the Tribunale di Milano in a case concerning the treatment for tax purposes of bonds issued on the Italian market by the European Investment Bank, the Commission contends that in tax matters, which are strictly the State's province the Italian courts recognize the right of the European Community to be treated in the same way as the State treats itself.

As regards previous decisions of the Court of Justice, the Commission points out that on numerous occasions the Court has fully upheld the principle that equal treatment should be accorded, in the courts of Member States, to the recovery of Community charges and of domestic charges. Member States must therefore not only observe that principle of equal treatment as far as procedures for the recovery of Community charges and of purely domestic charges are concerned but must also ensure that the European Communities are not discriminated against when they themselves take proceedings in the national courts to recover sums due to them.

Finally, the Commission denies that in order to treat debts owed to the ECSC in the same way as debts owed to the State it would be necessary to apply by analogy exceptional provisions, namely those governing preference, thereby infringing Article 14 of the General Rules of Law preceding the Italian Civil Code, which provides that laws "derogating from general rules or from other laws shall apply only in the cases and within the periods stipulated therein".

In the Commission's view, it is not a question in this case of applying rules by analogy, but of giving an extensive interpretation to the provisions of the Italian Civil Code governing preference. An extensive interpretation is defined by some writers as one which extends the literal meaning of the words of a provision in order to give them the meaning which the legislature intended. In the present case to regard the ECSC as a preferred creditor but only, of course, in the case of debts comparable to those owed to the State and having the same rank — would be to acknowledge that the legislature intended to put the ECSC on the same footing as the State in the recovery of debts, as it saw fit to do in the field of taxation when enacting Law No 1231 of 31 October 1961 and Law No 1333 of 16 August 1962, which were also given an extensive interpretation by the Tribunale di Milano in its aforesaid judgment of 4 March 1982.

The Commission contends that a further argument supporting its proposition may be derived from the Vienna Convention on the Law of Treaties, which was ratified by Italy in 1974 and has been in force in that country since 27 January 1980. According to the Commission, it is possible to infer from the provisions of that Convention that national courts are under a duty to construe rules of domestic law in accordance with the provisions of a treaty if, failing such a construction, the application of those rules would be incompatible with that treaty.

For those reasons the Commission submits that the answer to the question referred to the Court by the Tribunale di Milano should be that the Commission's decision of 10 December 1981 is valid.

III — Oral procedure

At the hearing on 19 January 1983 oral argument was presented by the following: Riccardo Luzzatto, of the Milan Bar, for the liquidator of Ferriere Sant'Anna SpA; Armando Toledano Laredo, acting as Agent, assisted by Giovanni Maria Ubertazzi and Fausto Capelli, of the Milan Bar, for the ECSC; and P. Goldsmith, acting as Agent, for the United Kingdom.

During the hearing the Commission's Agent confirmed the view previously expressed in the Commission's reply of 3 December 1982 to certain questions asked by the Court, namely that "the classification of the debt as a preferential debt has declaratory, rather than legislative, effect, since its preferential nature is clear from the principles and rules of Community law referred to in the Commission's written observations".

The Advocate General delivered his opinion at the sitting on 2 March 1983.

Decision

1 By an order dated 22 April 1982, which was received at the Court on 14 June 1982, the Tribunale di Milano [District Court, Milan] referred to the Court for a preliminary ruling under Article 41 of the ECSC Treaty a question as to the validity of Decision No C (81) 1887 of 10 December 1981, which provides in Article 2 that the debts owed to the ECSC by Ferriere Sant'Anna SpA are preferential debts ranking equally with similar debts owed to the State.

2 That question was raised in a dispute concerning the entering of a debt of LIT 27 383 405 as a preferential debt in the statement of liabilities of the insolvent company Ferriere Sant'Anna SpA, against which a winding-up order was made by the Tribunale di Milano on 14 May 1980. That sum is owed by the company to the ECSC in respect of steel production levies and interest for late payment.

3 After the company had been declared insolvent, the Commission, by a letter dated 19 November 1980, notified the liquidator of the amount of the debt and requested that it be treated as a preferential debt.

4 By a decision of 20 May 1981 the official receiver *(giudice delegato)* admitted proof of the debt owed to the ECSC, but only as an ordinary debt.

5 On 29 June 1981 the Commission appealed against the official receiver's decision under Article 98 of the Italian Law on Bankruptcy and requested the Tribunale de Milano to declare the debt owed to it a preferential debt or, in the alternative, to refer the issue to the Court of Justice of the European Communities.

6 In the course of those proceedings the Commission, relying on Articles 49 and 50 of the ECSC Treaty, adopted an individual decision addressed to Ferriere Sant'Anna SpA. Article 2 of that decision provides that the debts in question are "preferential debts ranking equally with similar debts owed to the State". At the Commission's request, the competent Italian ministry appended an order for enforcement to that decision.

7 At the hearing before the Tribunale di Milano on 4 April 1982, the Commission, relying on its aforesaid decision, submitted that its claim should be admitted as a preferential debt or, in the alternative, if that submission were not upheld, that the case should be referred to the Court of Justice for a ruling on the validity of the decision in accordance with Article 41 of the ECSC Treaty.

8 Pursuant to that provision the Tribunale di Milano referred the following question to the Court for a preliminary ruling:

"Is Decision No C (81) 1887 def. of 10 December 1981 of the Commission of the European Communities valid in so far as it provides in Article 2 that the debt owed by Ferriere Sant'Anna SpA to the ECSC (in respect of ECSC levies and interest thereon) must be regarded as 'a preferential debt ranking equally with similar debts owed to the State'?"

9 When asked by the Court to explain, before the hearing, "the purpose and scope of its decision of 10 December 1981, particularly Article 2 thereof, with respect to the main proceedings", the Commission replied that "the

classification of the debt as a preferential debt has declaratory, rather than legislative, effect, since its preferential nature is clear from the principles and rules of Community law referred to in the Commission's written observations".

10 In view of that reply and the circumstances in which the Commission adopted the decision in issue, the United Kingdom and the liquidator of Ferriere Sant'Anna SpA have questioned whether the conditions permitting the application of Article 41 of the ECSC Treaty exist. They observe in particular that, if, as the Commission maintains, the purpose of the decision is simply to declare what the applicable Community law is, it should be treated as a mere opinion of the Commission and not as a genuine decision, which, in their view, means that the Court has no jurisdiction to deliver a preliminary ruling under Article 41 of the Treaty.

11 That argument cannot be accepted. Article 41 of the ECSC Treaty provides in fact that: "The Court shall have sole jurisdiction to give preliminary rulings on the validity of acts of the High Authority and of the Council where such validity is in issue in proceedings brought before a national court or tribunal." Even if it is not contested that by virtue of Article 92 of the ECSC Treaty the validity of the decision in issue is no longer open to challenge, as regards the amount of the pecuniary obligations which it entails, none the less in Article 2 the decision purports to have legal effect as against third parties, in particular as against other creditors of the undertaking concerned, in the insolvency proceedings commenced in the national court. Since that court considered it necessary to submit a preliminary question on the validity of Article 2 of the decision in order to be able to resolve the matter, the conditions laid down by Article 41 of the ECSC Treaty are fulfilled.

12 The Commission maintains that the decision in issue must be considered valid in the light of the rules and general principles of Community law, by virtue of which each Member State is required to accord the same preference to ECSC levies as that accorded to similar debts owed to the State.

13 It points out, first, that Articles 49 and 50 of the ECSC Treaty empower the High Authority to exercise fiscal powers which include the right to create, fix within certain limits and collect directly from undertakings a tax the payment of which may be obtained even by process of enforcement within the meaning of Article 92 of the Treaty. According to the Commission, it follows that ECSC levies must be subject to rules of such a nature as to ensure effective recovery in all circumstances and that they must therefore enjoy the same preference as similar taxes levied by the State.

14 The importance of the fiscal powers conferred by Articles 49 and 50 of the ECSC Treaty on the High Authority (now the Commission) in order to enable it to carry out, in the best possible conditions, the task entrusted to it by the Treaty cannot of course be denied. However, it does not necessarily follow from the nature and purposes which those articles confer upon the levies that, in the event of the insolvency of the undertaking owing them, they must automatically enjoy the same preference as that accorded by the legislation of the Member States to similar domestic taxes.

15 A comparative study of the laws of the Member States shows in fact that, in so far as certain kinds of debts are treated preferentially in bankruptcy proceedings, such preference, being contrary to the general principle that creditors should be treated equally, may be accorded only on the basis of specific, existing legislative provisions. In the absence of any particular provision governing the preferential treatment in bankruptcy proceedings of debts owed to the Commission in respect of levies, such preference cannot be accorded.

16 The Commission further contends that it follows from the general principle of equality that the ECSC should not be at a disadvantage in the recovery of levies in comparison with similar tax debts to which the Member States accord preferential status.

17 In support of that proposition the Commission cites previous decisions of the Court, in particular the judgment of 27 March 1980 in Joined Cases 66, 127 and 128/79 *(Amministrazione delle Finanze* v *Salumi* [1980] ECR 1237), according to which Member States may not make the system for collecting

Community charges and dues less effective than that for collecting national charges and dues of the same kind.

18 Whilst it is true that a Member State may not make the recovery of Community charges subject to rules and procedures different from those governing comparable domestic charges, the principle of equal treatment does not by itself mean that Member States are under a duty, in the event of the debtor's insolvency, to accord the same preference to ECSC levies as that accorded to similar debts owed to the State, in the absence of a clear and precise provision of Community law establishing *inter alia* the preferential status of the levy and specifying the domestic tax to which it should be compared.

19 It must therefore be concluded that in the absence of such a provision, adopted by the Community legislature within the bounds envisaged by the Treaty, the Court of Justice cannot construct a rule establishing a preference of the kind claimed by the Commission. As the Court stated in its judgment of 5 March 1980 in Case 265/78 *H. Ferwerda BV* v *Produktschap voor Vee en Vlees* [1980] ECR 617), the absence of provisions which would necessarily be technical and detailed cannot be made good by judicial interpretation.

20 In those circumstances the answer to the question submitted to the Court must therefore be that the Commission's decision of 10 December 1981 is not valid in so far as it provides in Article 2 that the debts owed by the insolvent company in respect of ECSC levies are preferential debts ranking equally with similar debts owed to the State.

Costs

21 The costs incurred by the Government of the Italian Republic, the United Kingdom and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, a step in the proceedings before the national court, costs are a matter for that court.

On those grounds,

THE COURT,

in answer to the question submitted to it by the Tribunale di Milano by order of 22 April 1982, hereby rules:

The Commission's decision of 10 December 1981 is not valid in so far as it provides in Article 2 that the debts owed by the insolvent company in respect of ECSC levies are preferential debts ranking equally with similar debts owed to the State.

Mertens de Wilmars Pescatore O'Keeffe Everling
Mackenzie Stuart Bosco Koopmans Due Bahlmann

Delivered in open court in Luxembourg on 17 May 1983.

P. Heim
Registrar

J. Mertens de Wilmars
President

OPINION OF MR ADVOCATE GENERAL VERLOREN VAN THEMAAT DELIVERED ON 2 MARCH 1983 [1]

Mr President,
Members of the Court,

1. The question submitted

In the winding up of the insolvent company Ferriere Sant'Anna SpA the Tribunale di Milano initially admitted proof of a debt owed to the ECSC under Articles 49 and 50 of the ECSC Treaty only as an ordinary debt. Whilst proceedings were pending in which it sought to have preferential status conferred on the debt, the Commission of

1 — Translated from the Dutch.