2. Orders the High Authority of the European Coal and Steel Community to bear its own costs and three-quarters of the costs of the applicants, and the applicants to bear one-quarter of their own costs

Donner Hammes Trabucchi

Delvaux Rossi Lecourt Strauß

Delivered in open court in Luxembourg on 5 December 1963.

A. Van Houtte
Registrar

R. Lecourt
President

OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 16 OCTOBER 1963[1]

Mr President,
Members of the Court,

Since the oral proceedings in Cases 23, 24, 28 and 52/63 were for practical purposes dealt with in a single hearing, perhaps I may be allowed to present my opinion relating to these cases in a single statement. I think this is also justified in view of the fact that the principal legal point involved, that of admissibility, is identical in all four cases. The subsidiary conclusions, which were set out in different form in each case along with the main conclusions, will of course receive the appropriate individual treatment.

As in Cases 53 and 54/63 the applicant undertakings received letters dated 8 April 1963 from the High Authority, in which the Directorate-General for Steel, Marketing Division, calculated in connection with the liquidation of the equalization scheme for ferrous scrap the credits and debits of the undertakings in relation to the equalization scheme on the basis of Decision No 7/63 and requested them to remit certain sums of money to the High Authority by 31 May 1963 at the latest.

On various grounds, with which we need not concern ourselves at this stage of the proceedings, the undertakings consider the statements of account to be incorrect. They have, therefore, lodged applications with the principal aim of having these statements annulled.

The High Authority has not yet expressed its view as to whether the objections are well founded, but—as in Cases 53 and 54/63—contends that the applications are inadmissible on the ground that the letters are not in the nature of decisions. In the present cases, too, therefore, the Court will have to concern itself principally with the question whether the letters of 8 April 1963 can be regarded as decisions on which an application to the Court can be based.

1. The applicants are unanimous in leaving this question for the Court to determine as it sees fit. In particular they submit no arguments with regard to resolving this problem which would lead to any other result than that in Cases 53 and 54/63.

Consequently, I may be permitted to refrain from repeating my deductions and content myself with recalling the

1 — Translated from the German.

conclusion I reached in Cases 53 and 54/63 regarding the view to be taken of the letters, which—apart from the figures—were identical in form and content: according to the obligatory criteria laid down in Decision No 22/60, which have not yet been altered by the High Authority, and also to the case-law of the Court (Cases 42 and 49/59 in particular), the letters cannot be regarded as decisions on which an application to the Court can be based. All the conclusions in the case relative to this matter are therefore inadmissible.

2. As to the subsidiary conclusions submitted in the various cases, they may be evaluated as follows:

(a) In Case 23/63 the applicant also seeks to have a decision of the High Authority alleged to be contained in a letter of 5 April 1963 declared null and void. This letter too comes from the Directorate General for Steel, Marketing Division, and contains information as to the method of calculation used in connection with ferrous scrap (quantity of scrap taken into account, application of the principle of proportionality in ascertaining the amount of scrap not included). It bears neither the signature of a member of the High Authority nor an indication that the letter is signed 'on behalf of the High Authority'.

Thus its legal character cannot be different from that of the letters of 8 April 1963. There is no decision here on which an application to the Court can be based and therefore this conclusion is inadmissible.

(b) Also in Case 23/63 there appears on page 1 of the application, in the description of the subject-matter of the dispute, the statement that the application for annulment is directed, if need be, against Decision No 7/63.

However, in the grounds of the application the point is neither repeated nor elaborated; in particular it is not made clear whether the applicant seeks the direct annulment of Decision No 7/63 or merely wishes to raise a preliminary objection of illegality. Since the abovementioned point is not repeated in the final part of the conclusions on page 7 of the application, which alone is binding, it may be concluded that in any event the applicant is not seeking the direct annulment of Decision No 7/63, but may possibly submit that the Decision is illegal.

However, apart from the fact that this submission is in no way substantiated and for that reason alone must be disregarded, it need not be examined further in view of the nature in law of the letters of 5 and 8 April 1963, as it is only in this connection that the objection of illegality could be significant.

(c) In Case 28/63 the applicant alternatively requests the annulment of Article 6 of Decision No 7/63. It expressly states in its observations on the High Authority's conclusions, however, that at the present stage in the proceedings it is preferable to link the fate of the subsidiary conclusions to that of the principal conclusion. The principal conclusion, directed against the letter of 8 April 1963, has proved to be inadmissible; and with that, in accordance with the applicant's wishes, the need to consider the subsidiary conclusions ceases to exist.

(d) Finally, there are subsidiary conclusions in Cases 23, 24 and 52/63 for an award of damages on the ground of a wrongful act or omission by the High Authority when making its equalization assessment for ferrous scrap.

However, in all three actions the subsidiary conclusions are so framed that it becomes unnecessary to deal with them if my proposals as to the adjudication upon the principal conclusion are followed. In fact, the only reason for them was in case the contested Decision of the High Authority were held to be lawful (Cases 23 and 24/63) or—as Case 52/63 puts it—if the contested Decision cannot be annulled, that is to say, if it is to be upheld on the ground that it must be regarded as legally valid.

In none of the three cases are these conditions satisfied, since the contested measure does not constitute a decision and therefore its legality cannot be examined by the Court.

3. Costs

Regarding the decision as to costs, the applicants in these actions ask that the High Authority be ordered to pay the costs in accordance with Article 69 (3) of the Rules of Procedure. Their arguments in support of these conclusions are substantially the same: they refer to the terms of the disputed letters, in particular the time-limit set therein, and the mention made of Decision No 7/63, Article 6 of which also contains a time-limit for payment. They refer to the terms of the explanatory note, which also speaks of demands for payment and which permits undertakings to present counter-proposals only to the extent that the High Authority has not yet adopted a position on certain questions. (The applicant in Case 52/63 notes, in particular, that on several occasions prior to receiving the letter of 8 April 1963 it had already expressed its views to the High Authority on questions of assessment such as those in dispute in the present proceedings and had already obtained a reply in a letter of 8 October 1962.) Furthermore all the conclusions refer to the previous decisions of the Court concerning the legal status of administrative measures taken by the High Authority. In addition the applicant in Case 24/63 submits that during the course of the period allowed for the institution of proceedings it asked the High Authority for an explanation and received the reply that the letter of 8 April 1963 did not constitute a decision; but there could be no guarantee that the Court would share this view. The applicant in Case 52/63 lastly relies on contradictory statements by representatives of the High Authority in meetings of the liquidators of the equalization scheme for ferrous scrap and on advice given by the French Representative on the Liquidation Committee who suggested that proceedings be instituted against the letter of 8 April 1963.

The main points of these arguments agree with those submitted in Cases 53 and 54/63. In assessing them, I have admitted that the terms of the letter of 8 April 1963 could easily create the impression that administrative instructions of a mandatory nature were concerned, that is, that they constituted a decision of the High Authority, and I stressed the fact that all the other points of view bearing on the decision as to costs—patent disregard of the criteria contained in Decision No 22/60, previous judgments of the Court in similar cases, statements by members and officials of the High Authority—are not capable of so reducing the impression created by the content of the disputed letter as to make the institution of proceedings unreasonable.

While this consideration affords sufficient basis for the same conclusions as to costs as in Cases 53 and 54/63, and also, indeed, in Case 23/63, where a letter of the High Authority of 5 April 1963 is likewise disputed, there are circumstances in some of the present cases which could have reinforced the applicants still further, if that were necessary, in their decision to institute proceedings. That is so where problems concerning assessment had already been discussed with the applicants by the departments of the High Authority in writing, from which it could be concluded that counter-proposals within the meaning of the explanatory note were no longer allowed, and that the High Authority's statement was accordingly final; and that is the case where the applicants were led to take proceedings by the information gathered from conflicting statements made by the representatives of the High Authority at meetings of the Liquidation Committee.

Similarly, in the present case I have come to the conclusion that it was the conduct of the High Authority which gave rise to the institution of proceedings and accordingly it must bear the costs of the proceedings.

I am therefore of the opinion that the applications should be dismissed on the ground of inadmissibility and the question of costs should be decided in favour of the applicants under Article 69 (3) of the Rules of Procedure.