In the present case, the applicants have failed in all heads of their applications.

They must therefore be ordered to pay the costs of the proceedings.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the parties;
Upon hearing the opinion of the Advocate-General;
Having regard to Articles 2, 3, 4, 5, 15, 31, 33, 37, 53, 54, 62, 67, 70 and 80 of the ECSC Treaty and Articles 10 and 23 of the Convention on the Transitional Provisions;
Having regard to the Protocol on the Statute of the Court of Justice of the ECSC;
Having regard to the Rules of Procedure of the Court of Justice of the ECSC, especially Article 29 (3) and Article 60 (1),

THE COURT

hereby:

1. **Dismisses the applications in Joined Cases 27, 28 and 29/58 as unfounded;**
2. **Orders the applicants to pay the costs.**

Donner Delvaux Rossi

Riese Hammes

Delivered in open court in Luxembourg on 10 May 1960.

A. Van Houte — Registrar

A. M. Donner — President

OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 11 FEBRUARY 1960[1]

Summary

I — Introduction 262
1- Subject matter of the proceedings 262
2. Admissibility of the applications 262
3. Other questions of admissibility, in particular observance of the time-limit for lodging applications 262

1 — Translated from the German.

II — Must the contested decisions be annulled because of the expiry of the transitional period? 262

1. Evidence of the adoption of the decisions 263

2. What effect does the expiry of the transitional period have on the powers of the High Authority? 263

A. The scope of the seventh paragraph of Article 10 of the Convention on the Transitional Provisions. . . . 264

B. The relationship between the seventh paragraph of Article 23 of the Convention on the Transitional Provisions 266

C Notification of the contested decisions after the end of the transitional period 266

III — The participation of the Committee of Experts in the examination of existing special rates and conditions in accordance with the seventh paragraph of Article 10 of the Convention on the Transitional Provisions 267

IV — Must the contested decision be annulled for infringement of the Treaty? 268

1. General observations on the interpretation of Article 70 of the Treaty 268

(a) The interpretation of the first paragraph of Article 70 . 269

(b) The interpretation of the fourth paragraph of Article 70 270

2. The application of the fourth paragraph of Article 70 to the present case 273

(a) The principle laid down in Article 2 273

(b) The prohibition on subsidies laid down in Article 4 . 273

(c) Article 67 of the Treaty. 274

(d) Equal access to production 274

(e) The establishment of the lowest prices 275

(f) Expansion and improvement of production 275

(g) Choice of an agreed theoretical delivery point for freight 275

(h) The orderly supply to the common market 275

(i) The requirements of regional policy 276

(j) The principle of the retention of traffic 277

3. Conclusion. 278

4 The periods allowed for modification of the special tariffs . 278

V — General conclusion. 279

Mr President,
Members of the Court,

I must now deliver my opinion in the three Joined Cases, 27, 28 and 29/58 in the context of the proceedings concerning transport tariffs which have been referred to the Court of Justice for a preliminary ruling. These proceedings concern the application lodged by the Société d'Exploitation Minière des Pyrénées, Société Anonyme, Ollette (Pyrénées Orientales), which extracts iron ore in the Eastern Pyrenees, the application lodged by the most important customer of that company, the Compagnie des Hauts Fourneaux et Fonderies de Givors, Établissements Prenat, Société Anonyme, Giv-

ors (Rhône) and finally the application lodged by the Compagnie des Ateliers et Forges de la Loire, Société Anonyme, Saint-Étienne.

I – Introduction

1. *Subject-matter of the proceedings*

The three undertakings have contested two decisions of the High Authority;
(a) The Compagnie des Hauts Fourneaux et Fonderies de Givors and the Société d'Exploitation Minière des Pyrenées have contested a decision ordering *inter alia*:

the progressive abolition of certain special rates and conditions of the Société Nationale des Chemins de Fer Français for the carriage of ore from the mines in western France and the Pyrénées; (that is, the decision of the High Authority of 9 February 1958 notified to the French Government by letter of 12 February 1958 and published in the *Journal Officiel* of 3 March 1958, page 127);

and

(b) The Compagnie des Ateliers et Forges de la Loire have contested a decision ordering:

the progressive abolition of certain special rates and conditions of the Société Nationale des Chemins de Fer Français for the transport of mineral fuels;
(that is, the decision of the High Authority of 9 February 1958, likewise notified to the French Government by letter of 12 February 1958 and published in the *Journal Officiel* of 3 March 1958, page 111).

2. *Admissibility of the applications*

The High Authority has already raised in the written procedure the objection of inadmissibility with regard to the applications of the first two undertakings, which correspond completely and which I do not wish to repeat here, in so far as they relate to parts of the decision which contain no special rates and conditions which are of interest to the applicants (that is, paragraphs (5) (a) and (b) of the decision). In the written procedure the applicants made no comment on that objection. However, in answer to a corresponding question during the oral procedure they acknowledged that that statement was correct and declared that they agreed that these parts of the decision should not be regarded as part of the subject-matter of the dispute. This statement by the applicants, which restricts the original application, must be regarded as a partial withdrawal of the application. The Court of Justice therefore no longer has to concern itself with this part of the applications.

3. *Other questions of admissibility, in particular observance of the time-limit for lodging applications*

As for the rest no special problems arise concerning admissibility.

Individual decisions taken by the High Authority which are of direct concern to the applicants are contested. As the decisions were not notified or communicated to the applicants, publication in the Official Journal of the European Communities is the decisive factor with regard to the date on which the period for lodging an application started to run. On the basis of that date and in view of the provisions of the Treaty and of the old Rules of Procedure of the Court of Justice which must still be applied here, it follows that the period for lodging applications was observed.

After these preliminary observations I can turn immediately to the points at issue in the present proceedings.

II – Must the contested decisions be annulled because of the expiry of the transitional period?

Just as in the proceedings concerning the German special rates and conditions, the Court of Justice is in this case first confronted with the question whether the decisions of the High Authority were adopted at the proper time, that is before the end of the transitional period, or whether they must be

annulled because they did not comply with that requirement.

In these proceedings it is first necessary to note the fact that the objections raised by the applicants in this respect were modified during the written procedure. The applications read:

'The powers of the High Authority under Articles 1 and 10 of the Convention on the Transitional Provisions . . . had already expired when the High Authority communicated its refusal by letter of 12 February 1958';

but their second statement reads:

'Therefore the question arises whether the decision can establish its date absolutely and whether the mere statement of a date is sufficient evidence of that date . . . In the case of individual decisions, notification is evidence of the date on which they are adopted.'

The objection in its altered form therefore only concerns the manner of establishing that a decision was adopted on a particular date.

1. *Evidence of the adoption of the decisions*

If the latter viewpoint alone is considered the solution of the problem in my opinion presents very few difficulties. In contrast to the field of private law, the principle applies with regard to measures taken by the public administration that, in the absence of specific provisions, they are legally valid in their entirety, that is they are presumed to be authentic so long as evidence is not brought to the contrary. Recourse is had to this principle in French law (see Waline, Droit Administratif, Eighth Edition, page 865) but it is also recognized for example in German administrative law (see Turegg, Lehrbuch des Verwaltungsrechts, Third Edition, page 22). In particular the notification does not have to *prove* that a measure taken by the administration was *adopted* on a specific date, either under national systems of administrative law or under the Treaty establishing the European Coal and Steel Community. Therefore if the contested letter of the High Authority to the French Government contains the statement that the decisions of the High Authority were adopted on 9 February 1958, this statement is deemed to be correct until facts are brought forward to refute it.

2. *What effect does the expiry of the transitional period have on the powers of the High Authority?*

The question takes on another aspect if the legal viewpoint is adopted that a measure taken by the administration is only *adopted when it is notified.* On the basis of that argument the fact that the contested decisions were indeed taken by the High Authority before the end of the transitional period but only notified after that date to the French Government becomes important. It is then necessary to ask whether the expiry of the transitional period is of decisive importance with regard to the powers of the High Authority in the field of special rates and conditions and if the answer to this question is in the affirmative, to consider whether the 'theory of receipt' put forward by the applicants in the applications must be accepted with regard to the decisions adopted by the High Authority.

The High Authority based the contested decisions on Article 70 of the Treaty and Article 10 of the Convention on the Transitional Provisions, as is made clear in the statement of reasons upon which they are based. The transitional period came to an end at midnight on 9 February 1958. That is not in dispute and objectively correct as the provisions of the Convention on the Transitional Provisions themselves (Article 1 (4) and Article 8) in conjunction with the letter of the High Authority of 7 February 1953 (*Journal Officiel*, page 5) clearly show. At the end of the transitional period the provisions contained in the Convention on the Transitional Provisions (save where expressly provided otherwise) are no longer applicable. Implementing measures cease to have effect on the same date (Article 1 (5) of the Convention on the Transitional Provisions). Since Article 10 does not provide for derogations (except in the ninth para-

graph thereof which is of no interest in this case), the seventh paragraph of Article 10, the provision concerning existing special rates and conditions, is therefore no longer applicable after the end of the transitional period.

Before it is possible to draw further conclusions from these facts it is necessary to analyse exactly the scope of that provision.

A. The scope of the seventh paragraph of Article 10 of the Convention on the Transitional Provisions

Two matters are provided for in the seventh paragraph of Article 10:
(a) The rates and conditions referred to in the fourth paragraph of Article 70 which are in force when the High Authority is set up, that is special internal rates and conditions in the interest of one or more coal- or steel-producing undertakings, must be notified to the High Authority;

(b) The High Authority must allow such time for their modification as may be necessary to avoid serious economic disturbances.

In the present case only the second part of this provision is of interest. Its meaning can be interpreted in various ways:

(a) The seventh paragraph is a provision which authorizes the High Authority to require the modification of existing rates and conditions;

(b) The seventh paragraph places the High Authority under a duty to examine existing special rates and conditions until the end of the transitional period and, where appropriate, to require their modification, *without restricting the power* of the High Authority to that period;

(c) The seventh paragraph merely gives the High Authority the possibility of granting periods of grace.

The meaning and scope of this provision can only be determined by consultation of the text of the Treaty itself and by the establishment of the relationship of the Convention on the Transitional Provisions to the text of the Treaty *stricto sensu*.

Article 1 of the Convention on the Transitional Provisions provides that upon the entry into force of the Treaty the provisions thereof shall apply *subject to the derogations and supplementary provisions* contained in the Convention on the Transitional Provisions. The *derogations and supplementary provisions* contained in the Convention on the Transitional Provisions cease to apply at the end of the transitional period.

Therefore it is necessary to establish exactly what, in the Convention on the Transitional Provisions, constitutes a derogation from the Treaty or a supplementary provision thereto.

With regard to the special rates and conditions the following question arises:

Does the seventh paragraph of Article 10 *order* the modification of certain special rates and conditions or is the requirement of the modification of the special rates and conditions contained in the Treaty itself and *understood* in the seventh paragraph of Article 10 of the Convention on the Transitional Provisions?

First, the wording of the seventh paragraph speaks in favour of the second hypothesis. If the legislative content of that provision formed the basis of the power to order the modification of special rates and conditions then it would not be merely mentioned almost casually, as it is here, in one sentence, the main subject of which is the authorization of periods for modification.

However, it is above all important that the Treaty itself contains some provisions which, from their meaning and purpose, may also apply to special rates and conditions.

Thus Article 4 of the Treaty provides:

'The following are recognized as incompatible with the common market for coal and steel and shall accordingly be abolished and

prohibited within the Community, as provided in this Treaty:

. . . . . .

(b) Measures or practices which discriminate between producers, between purchasers or between consumers, especially in . . . *tranport rates and conditions* . . .

(c) *Subsidies* . . . granted by States . . .

I do not need to mention here that Article 4 is, according to the case-law of the Court of Justice, not only the statement of a programme but also constitutes directly applicable law with binding effects on States and undertakings and that its provisions are independently applicable in so far as they are not repeated in other provisions of the Treaty. However, I would like to point out that with regard to cartels there is a provision in the Convention on the Transitional Provisions according to which the prohibitions contained in Article 65 only apply after the expiry of the time-limits set by the High Authority (Article 12). It is true that the same wording is not used in Article 10 with regard to special rates and conditions, but the same idea is meant: the High Authority can postpone the application of the provisions in the Treaty laying down prohibitions by granting periods for modification. It follows that the *Treaty itself* requires the *abolition* of special rates and conditions in so far as they do not comply with the requirements laid down in the fourth paragraph of Article 70. The Convention on the Transitional Provisions did not introduce a *power* for the High Authority *to require* the abolition of special rates and conditions.

The High Authority is under a duty to examine the special rates and conditions of which it is notified and, if during that examination it reaches the conclusion that the rates and conditions are not compatible with the principles laid down in the Treaty, that is, that the Treaty itself orders them to be abolished, to relax the strict application of the provisions of the Treaty by granting periods of grace appropriate to the circumstances of each particular case. This constitutes the only power of the High Authority with regard to existing special rates and conditions under the Convention on the Transitional Provisions. It is therefore also incorrect to speak of the *approval* of existing special rates and conditions which are compatible with the Treaty. Such approval is unnecessary in law and is therefore not mentioned in the seventh paragraph of Article 10.

Thus if, as regards the relationship between the Treaty and the Convention on the Transitional Provisions so far as special rates and conditions are concerned, the only derogation from or supplementary provision of the actual provisions of the Treaty is the second part of the seventh paragraph of Article 10 of the Convention on the Transitional Provisions, according to which such time shall be allowed for the modification of special rates and conditions which are not compatible with the Treaty as may be necessary, then that characterization of the legislative content of the seventh paragraph of Article 10 at the same time clearly shows what happened when that provision ceased to have effect after the end of the transitional period: only the power of the High Authority to authorize periods for the elimination of existing rates and conditions in accordance with the seventh paragraph expired; as from that date the general prohibitions laid down in the Treaty with regard to special rates and tariffs already in existence were still applicable.

There are no indications either in the Convention on the Transitional Provisions or in the text of the Treaty in support of the argument that the duty of the States, which stems directly from the Treaty, to abolish special rates and conditions was modified by the seventh paragraph of Article 10 so that that duty only exists in so far as the High Authority requires modification of those rates and conditions.

At the most it would be possible to deduce from the seventh paragraph of Article 10 of the Convention on the Transitional Provisions a *duty* on the part of the High Authority to conclude the examination of existing special rates and conditions during the transitional period. However, if this duty

were not fulfilled the result would not be that prohibitions contained in the Treaty, observance of which the High Authority must ensure, would become inapplicable.

In this connexion the concept of *extinguishment* must be disregarded, first, because in view of the constant negotiations between the High Authority and the Governments in which the undertakings took part it was impossible to imagine that no changes would be made with regard to the special rates and conditions, and, secondly, because it is possible to speak of extinguishment only in the case of individual rights and powers and not in the case of objective requirements laid down in the Treaty.

B. The relationship between the seventh paragraph of Article 10 and Article 23 of the Convention on the Transitional Provisions

During the oral procedure, for the first time, incidentaly, so far as I can see, the applicants introduced the argument that because Article 23 of the Convention on the Transitional Provisions (which provides for aid towards readaptation) ceases to apply at the end of the transitional period, it is necessary for decisions of the High Authority concerning special rates and conditions to have been taken at the proper time before the end of the transitional period, so that if necessary that aid could be used. Not only is that conjunction of two provisions of the Convention not expressed anywhere in the Convention to that effect, but that argument would also make it necessary for the periods for elimination of special rates and conditions to be limited to the end of the transitional period. For as a rule it will only be apparent after the period has expired whether the abolition of the special rates and conditions leads to the shutting down of the undertaking. However, the sole criterion stated with regard to the periods to be authorized under the seventh paragraph of Article 10 is the avoidance of serious economic disturbances.

Therefore I am of the opinion that the argument is also incapable of restricting the modification of existing special rates and conditions to the transitional period.

C. Notification of the contested decisions after the end of the transitional period

Since it appears that the expiry of the transitional period did not have the effects on the power of the High Authority which the applicant supposed with regard to existing special rates and conditions, it is unnecessary to pursue the question whether a decision taken before the end of the transitional period is legally valid if it is notified only after that date: the High Authority can still establish in decisions which take effect after that date that specific special rates and conditions are not compatible with the principles of the Treaty and thereby give notice that the Treaty requires them to be abolished. I am moreover convinced that the Treaty itself also permits time-limits to be set after that date, even if more stringent conditions are laid down: in this connexion I refer to Article 2, which provides that care should be taken not to provoke fundamental and persistent economic disturbances. Thus the part of the decisions which authorizes periods of grace (which, since it is a measure favourable to the applicants, is not contested) should not be annulled for lack of a corresponding power on the part of the High Authority.

I cannot understand how the view put forward here could result in legal uncertainty as feared by the applicants. I have already indicated that it is possible to deduce from the seventh paragraph of Article 10 that the High Authority is under a duty to solve these problems during the transitional period. If the High Authority delays fulfilling that duty without reasonable cause beyond the end of the transitional period the undertakings concerned might perhaps be able to base claims for damages thereon which could prevent them from suffering the consequences which they fear.

III – The participation of the Committee of Experts in the examination of existing special rates and conditions in accordance with the seventh paragraph of Article 10 of the Convention on the Transitional Provisions

Since the expiry of the transitional period has no effect on the legal validity of the contested decisions I must now turn to the question whether there was a failure to comply with essential procedural requirements when the decisions were prepared which could entail the annulment of those decisions. In this connexion I refer to the second objection raised by the applicants, that the decisions did not mention the participation of the Committee of Experts.

This complaint that there has been an infringement of an essential procedural requirement implies a complaint that there has been a breach of the Treaty. Therefore it is necessary first to examine whether the Treaty or the Convention on the Transitional Provisions provides for the participation of the Committee of Experts when special rates and conditions are examined. If that is the case then it is necessary also to have regard to Article 15 of the Treaty which provides:

'Decisions . . . of the High Authority . . . shall refer to any opinions which were required to be obtained.'

There is no mention in the seventh paragraph of Article 10 of consulting the Committee of Experts. However, the applicants are of the opinion that this requirement follows from the provisions of Article 10 as a whole.

The first paragraph describes the task of the Committee of Experts in general terms: it must study the arrangements to be proposed to the Governments in order to attain the objectives set out in Article 70.

The abolition of discrimination is certainly one of the objectives laid down in Article 70 as follows from the first paragraph thereof. However, the first paragraph of Article 10 of the Convention refers only to the arrangements to be *proposed* to the Governments and to which the Governments must give their agreement (second paragraph of Article 10).

The fifth and sixth paragraphs of Article 10 which concern the agreement of the Governments to certain proposals show which measures are involved. However, only measures in accordance with the second and third subparagraphs and of the third paragraph are mentioned therein.

The inter-relationship between the first six paragraphs shows therefore that the participation of the Committee of Experts is only provided for with regard to precisely determined tasks.

The third paragraph states that the Committee must *study*:

1. Measures to eliminate discriminatory practices contrary to the second paragraph of Article 70.

2. Measures to establish through international tariffs.

3. The examination of the rates and conditions with a view to their harmonization.

The examination of special rates and conditions cannot be classified in any of these categories. In particular it is not laid down that the Committee of Experts must participate each time it is necessary to avoid serious disturbances. That is expressly provided only in the sixth paragraph of Article 10.

Finally, the eighth and ninth paragraphs mention the participation of the Committee of Experts when special questions are examined which relate to the situation with regard to Luxembourg.

It follows from this examination that Article 10 does not contain a general requirement with regard to the participation of the Committee of Experts but on the contrary makes provision for it in a very precise and

enumerative manner. It is necessary to draw from this the conclusion that participation beyond the tasks which have been described is at least not essential.

Since it follows from Article 10 that as regards the seventh paragraph no provision is made for the participation of the Committee of Experts, the applications in this case cannot rely upon the fact that there was no mention of that participation in the contested decisions.

To summarize, I reach the conclusion after this part of my examination that the decisions of the High Authority are not subject to annulment on grounds of form.

IV – Must the contested decisions be annulled for infringement of the Treaty?

I must now concern myself with the complaints that the High Authority *contravened the Treaty* when it adopted its decisions. The Court of Justice has heard in recent months the opinions of many important practising and academic lawyers on this question, which principally revolves around the interpretation of Article 70 of the Treaty; they have clearly shown by the diversity and number of their arguments that the questions raised here are of great economic importance and that an easy solution of them cannot be expected.

I shall begin my comments on this section with my general observations on the interpretation of Article 70 to which the abovementioned discussions gave rise.

1. *General observations on the interpretation of Article 70 of the Treaty*

The question of the relationship between the fourth paragraph of Article 70 and the remaining provisions of Article 70 arose: does the fourth paragraph permit the avoidance of a general prohibition on discrimination with regard to rates and conditions of carriage in individual cases or are special rates and conditions under the fourth paragraph differentiations which by their nature do not come within the prohibition on discrimination? Or is there no such general prohibition on discrimination, with the result that the fourth paragraph of Article 70 cannot for that reason constitute an avoidance of the prohibition?

(a) The interpretation of the first paragraph of Article 70

Article 4 (b) clearly speaks of a prohibition on discriminatory transport rates and conditions. However it only applies 'as provided in this Treaty'.

In its judgments in Joined Cases 7 and 9/54 (Recueil, Vol. II p. 91) the Court of Justice held that 'the provisions of Article 4 are sufficient of themselves and are directly applicable if they are not restated in any part of the Treaty. Where, however, the provisions of Article 4 are referred to, restated or elaborated on in other parts of the Treaty, the texts relating to one and the same provision must be considered as a whole and applied simultaneously'.

Therefore Article 4 can only be read in conjunction with Article 70. This also applies to the question whether there is a general prohibition on discrimination with regard to transport rates and conditions.

An examination of the wording of the first paragraph of Article 70 raises doubts. A comparison with other provisions of the Treaty and the examination of the scheme of the Treaty as a whole and the background to it should help to clarify this question.

Under the first paragraph of Article 70:

'It is recognized that the establishment of the common market necessitates the application of such rates and conditions for the carriage of coal and steel as will afford comparable price conditions to comparably placed consumers.'

This wording causes speculation because the drafting of legal provisions in other places in the Treaty is clearer.

I refer first to Article 69, (1), according to which:

'Member States *undertake* to remove any restriction based on nationality upon the employment in the coal and steel industries of workers who are nationals of Member States and have recognized qualifications in a coal-mining or steel-making occupation . . .'

Article 69 (4) (prohibition on discrimination in remuneration) also shows that in the drafting of of the Treaty prohibitions on discrimination were worded in the usual clear form of prohibition.

It is of course possible to say with regard to the prohibition on discrimination that Article 4 is identified as a prohibition clearly enough for there to be no need to repeat the prohibition in Article 70.

However, it is necessary to counter that argument with the fact that, in other cases in which Article 4 already lays down prohibition, that prohibition is repeated and made more specific in special provisions of the Treaty.

This applies to the prohibition on price discrimination.

Thus, on the one hand, under Article 4:

'The following are recognized as incompatible with the common market for coal and steel and shall accordingly be abolished and prohibited within the Community, as provided in this Treaty:

. . . . . .

(b) Measures or practices which *discriminate* between producers, between purchasers or between consumers, especially in *prices and delivery terms* . . .:'

and, on the other, Article 60 (1) repeats:

'Pricing practices contrary to Articles 2, 3 and 4 shall be *prohibited*, in particular:

unfair competitive practices, especially purely temporary or purely local price reductions tending towards the acquisition of a monopoly position within the common market;

discriminatory practices involving, within the common market, the application by a seller of dissimilar conditions to comparable transactions, especially on grounds of the nationality of the buyer.

The High Authority may define the practices covered by this prohibition by decisions taken after consulting the Consultative Committee and the Council.'

With regard to cartels Article 4 provides on the one hand:

'The following are recognized as incompatible with the common market for coal and steel and shall accordingly be abolished and prohibited within the Community, as provided in this Treaty:

. . . . . .

(d) *restrictive practices* which tend towards the sharing or exploiting of markets,'

while on the other hand, under Article 65 (1):

'All agreements between undertakings, decisions by associations of undertakings and concerted *practices* tending directly or indirectly to prevent, *restrict* or distort normal competition within the common market shall be *prohibited*, and in particular those tending:

(a) to fix or determine prices;
(b) to restrict or control production, technical development or investment;
(c) to share markets, products, customers or sources of supply.'

In particular, a comparison between Article 60 (together with Article 4) and Article 70 (together with Article 4) is striking: both cases involve the application of dissimilar conditions to comparable transactions (Article 60) or comparably placed consumers to whom comparable price conditions must be afforded (Article 70), and discrimination against buyers on grounds of nationality (Article 60) or discrimination based on the country of origin or destination of products (Article 70) is given special emphasis. Only

in the last two cases do *both* provisions contain an express prohibition whereas Article 70, in contrast to Article 60, contains no express general prohibition on discrimination. The reference to the prohibition contained in Article 4 which makes it superfluous to repeat it in other provisions of the Treaty should also apply in the same way to Article 60. It is quite permissible to infer a difference in substance from the difference in the wording of these similar provisions.

However, there is yet another difference to be added to those which have already been mentioned: under Article 60 the High Authority has the power to define the prohibited practices by decisions taken after consulting the consultative committee and the Council.

The introduction of the latter procedure would have been at least as possible with regard to the determination of the concept of discrimination in a field which comes within the juridiction of the Community only in exceptional cases and to a limited extent.

If the first paragraph of Article 70 contained a general prohibition on discrimination with regard to transport rates and conditions it would be strange that Article 10 of the Convention on the transitional Provisions should mention discrimination under the second paragraph of Article 70 with regard to the measures which must be examined by the Committee of Experts but not the discrimination (the examination of which is certainly just as complicated) under the first paragraph of Article 70.

Finally, it is well known from the preparatory documents to the Treaty that at that time the definition of discrimination was restricted to national discrimination. Thus according to one of the preparatory documents:

'The German delegation however had to insist that the more detailed definition of discrimination should cover *all* cases and that it should not only give examples . . . After lengthy discussion a wording was found which includes both points (a) and (b) in a single sentence. Thus with regard to railway transport in *trade between several countries* of the Community it is necessary to apply the same scales, rates and other tariff conditions of all kinds as in domestic trade.'

It is quite justifiable to conclude from all these arguments that the Treaty does not contain a *general* prohibition on discrimination in the field of transport rates and conditions and that such a prohibition exists only with regard to *national* discrimination. However, if the Treaty contains no general prohibition on discrimination with regard to transport then it is also impossible for the fourth paragraph of Article 70 to provide for an exception to such a prohibition. Thus the appraisal of special rates and conditions is carried out *a priori* from a viewpoint different from that which the High Authority adopted.

(b) The interpretation of the fourth paragraph of Article 70

Assuming, in contrast to these conclusions, that the first paragraph of Article 70 is not only a programme clause but contains a directly applicable general prohibition on discrimination, the following question arises in addition:

Does the fourth paragraph of Article 70 authorize an exception in a particular case or do special rates and conditions not come within the prohibition on discrimination at all, so that the authorization under the fourth paragraph only acts as a control?

The expression 'in accordance with the principles of this Treaty' used in the fourth paragraph argues against the assumption of an exception. The prohibition on discrimination is also one of the principles of the Treaty (cf. Article 4).

However, the fact that the Treaty is very rigorous in complying with its fundamental principles also argues against an exception. This is shown by Article 94 (minor amendment of the Treaty) according to which even when the conditions which justify an amendment of the Treaty are fulfilled, the principles laid down in Articles 2, 3 and 4 must not be affected.

This is also shown by Article 88, according to which it is only permissible to derogate from Article 4 if a Member State has been guilty of infringing the Treaty and only then with the assent of the Council.

Finally, this is shown by Article 58 (2) which provides that with regard to the determination of quotas (that is, in a period of manifest crisis), it is necessary to take into account the principles laid down in Articles 2, 3 and 4.

In this connexion it is necessary to make a further observation: if special rates and conditions were really only possible by way of an exception to a prohibition, then it would have been necessary to provide for an authorization for special rates and conditions which already exist (which is not the case under the seventh paragraph of Article 10).

A comparison with the treatment of existing subsidies and agreements under Articles 11 and 12 of the convention on the Transitional Provisions suggests this conclusion. In both cases it is provided that subsidies and agreements which already exist also require the agreement (Article 11 with regard to subsidies) or authorization (Article 12 with regard to cartels) of the High Authority.

With regard to existing special rates and conditions there is no corresponding provision so that agreement under the fourth paragraph of Article 70 to special rates and conditions to be newly introduced, which must be judged by the same substantive criteria as the old special rates and conditions, can only act as a control, that is, agreement is intended to ensure that a special rate is, in the opinion of the High Authority, compatible with the Treaty. If existing special rates and conditions already fulfil these conditions, no agreement is required and it is sufficient for the High Authority to leave such rates and conditions untouched.

Assuming that the first paragraph of Article 70 contains a perfect prohibition on discrimination the following conclusion is reached:

The fourth paragraph of Article 70 does not give the High Authority power to authorize a derogation from the general prohibition on discrimination. The authorization laid down in the fourth paragraph is only intended to ensure that special rates and conditions which *might* be discriminatory are only applied when the High Authority has checked that they are differentiations which are compatible with the Treaty.

This interpretation of Article 70 also leads to an approach which is basically different from that which the High Authority adopted.

It is only necessary to bear in mind that the High Authority in its interpretation of the fourth paragraph of Article 70 (exception to a prohibition in particular cases) read into the fourth paragraph a factor which it does not contain, that is, the concept of 'necessity'. In the opinion of the High Authority an exception to the prohibition must be necessary for the attainment of the objectives laid down in the Treaty.

Compare the Sixth General Report on the Activities of the Community, volume I, page 81:

'As regards *support rates*, the High Authority, which must establish that they are in accordance with the principles laid down in the Treaty, is of the opinion that the application of such rates is permissible only if it is *necessary* for the attainment of the objectives laid down in Articles 2 and 3 of the Treaty, that is, that those rates can be justified only by the unusual situation of one or more undertakings which makes a reduction in the general tariff indispensable for the attainment of the objectives laid down in the abovementioned articles of the Treaty.'

In addition it is necessary to observe that in this respect the Treaty is in general clear and reliable in the choice of concepts. If in a particular case the requirement for action by the High Authority is 'the necessity of attaining the objectives of the Treaty' the text of the Treaty is worded correspondingly.

See for example Article 53 (a):

'Without prejudice to the provisions of Article 58 or of Chapter V of Title III, the High Authority may:
(a) after consulting the Consultative Committee and the Council, authorize the making, on conditions which it shall determine and under its supervision, of any financial arrangements common to several undertakings which it recognizes to be *necessary* for the performance of the tasks set out in Article 3 and *compatible* with this Treaty, and in particular with Article 65.'

(A clear distinction is made here between 'necessary' and 'compatible'). See also Article 61 (a) and (b):

'On the basis of studies made jointly with undertakings and associations of undertakings, in accordance with the first paragraph of Article 46 and the third paragraph of Article 48, and after consulting the Consultative Committee and the Council as to the advisability of so doing and the price level to be so determined, the High Authority may, for one or more of the products within its jurisdiction:

(a) fix maximum prices within the common market, if it finds that such a decision is *necessary* to attain the objectives set out in Article 3, and particularly in paragraph (c) thereof;

(b) fix minimum prices within the common market, if it finds that a manifest crisis exists or is imminent and that such a decision is *necessary* to attain the objectives set out in Article 3'

and, finally, the first paragraph of Article 95:

'In all cases not provided for in this Treaty where it becomes apparent that a decision or recommendation of the High Authority is *necessary* to attain, within the common market in coal and steel and in accordance with Article 5, one of the objectives of the Community set out in Articles 2, 3 and 4, the decision may be taken or the recommendation made with the unanimous assent of the Council and after the Consultative Committee has been consulted.'

These examples show that it is wrong for the High Authority to require with regard to the fourth paragraph of Article 70 that special rates and conditions must be *necessary* for the attainment of the objectives of the Treaty.

Thus the preceding considerations as a whole yield the following postulate with regard to the application of the fourth paragraph of Article 70:

The High Authority must examine special rates and conditions to see whether they are in accordance with the principles of the Treaty or whether they infringe those principles. The High Authority also puts forward this opinion in another passage in the Sixth General Report, page 82:

'In these decisions, by which all support rates incompatible with the principles of the Treaty are abolished, the High Authority has been concerned in each individual case to take into account the special situation of the undertaking or group of undertakings.'

Thus the High Authority has a sort of policing function in a field which, in principle, does not come within its jurisdiction (as is shown by the fifth paragraph of Article 70): it must ensure that the principles of a partially integrated market are not paralysed by influences from fields which lie outside the Treaty.

However, on the other hand this interpretation of the fourth paragraph of Article 70 invalidates the argument of the applicants, according to which it is permissible for the High Authority to intervene in the field of existing special rates and conditions only if that intervention is necessary for the *attainment* of the *objectives* of the Treaty, in particular if it directly results in the most rational distribution of production at the highest possible level of productivity. The action of the High Authority in the field of rates and conditions of carriage is not dependent on that condition. It has only to

establish whether special rates and conditions are *in accordance* with the *principles of the Treaty*. If such is not the case, the Treaty requires them to be abolished; it does not give the High Authority *discretion* to intervene.

2. *The application of the fourth paragraph of Article 70 to the present case*

In examining the contested decisions of the High Authority after making these introductory remarks, I must inquire whether, when examining the French special rates and conditions, the High Authority wrongly reached the conclusion that retention of those rates and conditions constituted a breach of the principles laid down in the Treaty.

Essentially, the principles of the Treaty are laid down in the first few articles, that is in Articles 2, 3 and 4. Some of them are supplemented and made more specific in other provisions of the Treaty. The Court of Justice has already correctly held that those principles cannot all be implemented simultaneously and completely. Thus the objectives must be placed in order of importance according to the facts and circumstances which apply at the date when the decision is adopted (Recueil, Vol. IV, p. 259).

(a) The principle laid down in Article 2

The starting-point for the examination of the principles of the Treaty is Article 2, according to which:

'The Community shall progressively bring about conditions which will of themselves ensure the most rational distribution of production at the highest level of productivity, while safeguarding continuity of employment and taking care not to provoke fundamental and persistent disturbances in the economies of Member States.'

the Court of Justice held in its judgment in Joined Cased 7 and 9/54 (Recueil Vol. II, p. 92) that: 'The most rational distribution of production in accordance with Article 2 is that which is based upon the composition of production costs resulting from output, that is, from the *physical and technical* conditions in which the various producers operate'. In this way it clearly stated that artificial measures which influence productivity, in particular those taken by a State, are incompatible with that principle of the Treaty.

Only undertakings which are by themselves in a position to take part in competition within the common market are capable of participating in the attainment of the objective of rationalization laid down in Article 2. Artificial measures of support drain the general economy of resources and thus reduce the opportunities of expansion for rationalized undertakings.

(b) The prohibition on subsidies laid down in Article 4

This concept is emphasized in other provisions of the Treaty, in particular by the prohibition on subsidies laid down in Article 4 (c). It is necessary in my opinion, as I must emphasize here, to consider the fourth paragraph of Article 70 in the light of that provision. This is not only consistent with the system of the ECSC Treaty but is also confirmed by that of the EEC Treaty which reserves the prohibition on discrimination to Article 79 and the treatment of support rates and conditions, on the other hand, to a separate article (Article 80) in which there is no mention of discrimination.

If one considers the prohibition on subsidies contained in the ECSC Treaty which, like all the prohibitions contained in Article 4, applies 'as provided in this Treaty', an examination of the system of the Treaty shows how rigorously that principle is observed. Not only does Article 4 contain a categorical and general prohibition on subsidies 'in any form whatsoever', but the same concept appears in Article 3 (measures for expansion and modernization may only be promoted in the absence of protection against competing industries) and in the fifth paragraph of Article 54 (the High Authority may prohibit the use of outside funds if the financing of a programme or the operation of the installations therein planned involves subsidies).

In addition, the system of the Treaty (which also includes the Conventtion on the Transitional Provisions) shows under what strict conditions aid given by the States or the Community is permissible. The equalization machinery authorized or created by the High Authority is an outstanding example.

Subsidies granted by States or aid granted by the Community are provided for in particularly serious cases above all ultimately for the benefit of workers who have to change their place of employment or, where appropriate (within the context of the Convention on the Transitional Provisions) temporarily for measures of adaptation and rationalization.

This basic attitude of the Treaty to the question of the subsidizing of undertakings provides the guideline for all cases in which the principle laid down in Article 4 (c) of the Treaty is relaxed, that is, with regard to the special rates and conditions mentioned in the fourth paragraph of Article 70. Constant support for undertakings as compensation for disadvantages arising from their operation or location is clearly incompatible with that principle.

(c) Article 67 of the Treaty

It would in particular be wrong to relax the prohibition on subsidies by reference to Article 67 which, as regard the assessment of measures taken by States, is restricted to the repercussions which those measures have on conditions of competition and leaves the High Authority the possibility of compensating for those repercussions by means of other measures.

This attempt was made on the ground that the special rates and conditions in question would not adversely affect other undertakings. In my opinion it is not permissible to generalize the provisions of Article 67 in this way. This would lead to an extensive renunciation of the objectives of Article 2 and imply that the Treaty places primary emphasis on the maintenance or creation of balanced competitive situations. Article 67 must rather be understood as meaning that protective measures may be adopted by the Community authorities against general national measures in fields which are not covered by integration but have repercussions on the area covered by the treaty.

(d) Equal access to production

The applicants attempt moreover to relax further the prohibition on subsidies and the principle laid down in Article 2 by referring to Article 3, according to which 'The institutions of the Community shall . . . ensure that all comparably placed consumers in the common market have equal access to the sources of production,' and to the first paragraph of Article 70, which also speaks of the need to afford comparable price conditions to comparably placed consumers.

They conclude from this that the Treaty permits compensation for unfavourable conditions arising from location and other operating disadvantages (for example the difficulties of working certain mines) by means of specially favourable tariffs so that undertakings which are at a natural disadvantage are placed in a situation similar to that of businesses which are economically sound. As a result this opinion tends however to frustrate the objective of Article 2. if it is possible to compensate for the special difficulties of an undertaking by means of special advantages the situation remains unchanged in relation to that existing before the common market was established. however, it is the stated objective of the Treaty to make allowances for changes in the structure of the commom market in the interest of a more rational distribution of production.

There is no need to say that difficulties for individual undertakings may result from attempts to achieve such a change in a given situation; the Treaty and the Convention on the Transitional Provisions provide for special aid for them.

It is therefore impossible to extend the scope of application of special national support measures, for example, support rates and conditions, on the basis of the argument of the applicants, to such a degree that

all changes in the common market are precluded. It is therefore only necessary to establish the extent to which exceptions are permitted to the principle laid down in Article 2 and the prohibition on subsidies laid down in Article 4.

(e) The establishment of the lowest prices

These remarks apply in the same way with regard to the argument of the aplicants that the rule laid down in Article 3 (c), which requires that the establishment of the lowest prices be ensured, justifies special rates and conditions for undertakings which are at a disadvantage owing to their location.

In connection with that argument I would remind the Court of Article 62, according to which the High Authority may authorize equalization payments between different undertakings if this will prevent coal from being priced at the level of the production costs of the mines which have the highest costs but which it is recognized should be *temporarily* maintained in service in order that the tasks laid down in Article 3 may be performed.

That provision shows that the influence exerted on prices by subsidies is by no means ignored in the Treaty. However, the conditions to which they are subject must be borne in mind, and above all the temporary nature of such measures and the method which was chosen for financing them: equalization payments must be made.

This provision fits without difficulty into the system of the Treaty with regard to aids and subsidies which is outlined above. Accordingly, it is impossible for special rates and conditions for certain undertakings to be justified in view of the objectives laid down in Article 3 (c).

(b) Expansion and improvement of production

Finally, the argument of the applicants that the abolition of the special rates and conditions is an obstacle to the expansion and improvement of production mentioned in Article 3 can also be summarily rejected: both Article 3 (g) and Article 54 make it clear that with regard to these objectives of the Treaty, recourse may not be had to constant aids and subsidies.

(g) Choice of an agreed theoretical delivery point for freight

In connection with the economic principle of the Treaty passing reference was made to Article 60 and the possibility for undertakings of manipulating their location by means of the choice of an agreed theoretical delivery point for freight; it is necessary to point out that it makes a very important difference whether the the Treaty permits undertakings to carry out such manipulations on the basis of their natural production conditions or whether a change in production conditions is permissible as a result of an influence extraneous to the undertaking. The Treaty, in my opinion, clearly excludes the latter. It is therefore impossble to conclude from the fact that the Treaty has contravened an even stricter economic principle by accepting the choice of an agreed theoretical delivery point for freight that it has thus also accepted the much wider possibility of an influence exerted by the State or at least from outside the undertaking over the conditions relating to geographical location.

(h) The orderly supply to the common market

In the examination and assessment of the fundamental provisions of the Treaty it would be possible, finally, to raise the question whether Article 3 (a), that is, the requirement of an orderly supply to the common market, is capable of modifying to a certain extent the principle laid down in Articles 2 and 4.

It is true that efforts towards self-sufficiency are ignored in the Treaty; however, it is possible that the demand from a specific market requires the maintenance of certain sources of supply within the Community at a certain level and therefore, in view of that special situation, justifies special measures,

for example, support tariffs, for those sources of supply. I wish merely to mention that idea without going into it more deeply because I do not consider that the present applications supply sufficient indications for the application of that theory. It is only necessary to recall the small proportion of the French consumption of iron ore constituted by iron ore production in the Pyrenees. (See the annex to the reply, II, p. 2); a comparison with the total consumption of the Community would give an even clearer idea in that respect.

(i) The requirements of regional policy

An important question in these proceedings seems to me to be that of the permissibility of a special regional policy supported by special rates and conditions. The discussion of that problem receives great attention in the statements of the parties. Therefore the Court of Justice will have to examine whether that point of view is capable of justifying special rates and conditions under the fourth paragraph of Article 70.

The applicants have not failed to refer to Article 80 of the EEC Treaty in which the Commission is expressly instructed to take into account the requirements of an appropriate regional economic policy and the needs of under-developed areas when examining support tariffs. Such directions are not contained in the ECSC Treaty, the fourth paragraph of Article 70 of which is, moreover, very similar to Article 80 (1) of the EEC Treaty. Thus the consideration of local and regional policy is not one of the *principles* of the Treaty which must be taken into account for the purposes of a decision under the fourth paragraph of Article 70.

Nor can there be any question of this being a lacuna in the ECSC Treaty which may be filled by recourse to the principles of the EEC Treaty.

The abovementioned principles and objectives of the ECSC Treaty show, on the contrary, that in the drafting thereof the concern to promote the rational development and expansion of production was clearly of vital importance. In this connexion there is a basic difference between the ECSC Treaty, which brings about partial integration, and the EEC Treaty. As the objective of the latter is full integration of the whole of the economic life of the Member States, it must inevitably take into account the requirements of regional policy which are a component of the economic policy of each Member State. With regard to the Coal and Steel Community it was possible to disregard that aspect because it was feasible for the States to pursue a regional policy in the sector of the economy which was not integrated.

The fact that even after the ECSC Treaty there is still some scope for the consideration of local economic interests in a State is no obstacle thereto. The wording of Article 2 shows that the principles which it lays down do not apply without reservation and, in my opinion, this is where considerations of regional policy may be introduced. It is of course necessary to remember *a priori* that in this connexion the opportunities available are very limited.

Under Article 2 there is a duty to safeguard continuity of employment and to take care not to provoke fundamental and persistent disturbances. It follows very clearly from the provisions of the Treaty which provide for the payment of resettlement allowances to workers in case of the closure of an undertaking that the first reservation must not be understood in the strict sense of the words. Therefore it is impossible to deduce from this the duty to keep every undertaking in operation . This part of the provision accordingly cannot be considered as a justification of regional policy, since the Treaty in no way intends fully to exclude the closure of undertakings in conjunction with the resettlement of workers.

Only the requirement *to take care not to provoke economic disturbances* remains. The conditions of that reservation are of course so strict that it is possible to prevent only the closure of relocation of undertakings on a large scale but, on the other hand, impossible to find a justification for measures of support for individual undertakings the closure of which does not jeopardize the re-

gional policy of a State, even for such undertakings as remain viable even without support measures, although perhaps in a more difficult situation, and do not envisage relocation.

With regard to existing special rates and conditions a corresponding reservation is expressly repeated in the seventh paragraph of Article 10 of the Convention on the Transitional Provisions: time must be allowed for the modification of the rates and conditions in order to avoid serious economic disturbance. In comparing the wording of both provisions, it is even possible to say that the seventh paragraph of Article 10 is less strict than Article 2, since it only speaks of 'serious economic disturbance' and not of 'fundamental and persistent disturbances'.

In this connexion the seventh paragraph of Article 10 is not wholly consistent: on the one hand, it presupposes the need for modification of the special rates and conditions at a certain date, which follows from the setting of a time-limit; on the other hand, it speaks of the *avoidance* (that is, not the mitigation) of economic disturbances. However, I do not consider that the main stress must be laid on the word 'avoid'. Support tariffs which are incompatible with the Treaty must in any case be subject to a time-limit. If after the expiry of those periods it cannot be expected that the undertakings which benefit therefrom can exist in the common market by their own efforts they are no longer justified even from the point of view of a regional policy. In this connexion I agree with my colleague, Mr Lagrange, who restricts in that way the permissibility of a regional policy aided by support measures.

What do these principles show when applied to the case in question? The parties have put before the Court in their statements extensive statistical data, the applicants as evidence that the abolition of the rates and conditions compels them to close the undertakings or prevents them from setting competitive prices, and the High Authority in rebuttal of those statements. They have also discussed in detail during the oral procedure the financial effects of the tariff measures, however, I consider that the Court of Justice has no need to enter into an examination of those difficult calculations of the effect on the profitability of the undertakings.

It was stated during the oral procedure that the applicant Compagnie des Hauts Fourneaux et Fonderies de Givors fell into financial difficulties after lodging its application. However, the High Authority has in my opinion convincingly shown that the cause thereof cannot be the increase in the tariffs of the Société Nationale des Chemins de Fer Français following the decisions of the High Authority. As early as 1954 and 1955, according to the uncontested statements made by the High Authority, that undertaking suffered such considerable losses that its existence was already threatened even without those tariff measures, the effect of which are small in comparison with the figures for those losses.

With regard to the other applicants, I am aware that the figures which they put forward raise the question whether the continued operation of the mines in the Pyrenees is not jeopardized. On the other hand, however, it is necessary to bear in mind the fact that in the Coal and Steel Community support measures of a local nature and local effect are only justified in so far as they are necessary for the prevention of impending serious economic disturbances. However, it has not been shown that there is a grave threat of such serious economic disturbances. The High Authority also understandably reaches that conclusion from the fact that the Government of that Member State did not institute the procedure under Article 37 for the avoidance of fundamental and persistent disturbances. Therefore it seems obvious that that Government itself does not consider its regional policy to be so adversely affected by the tariff decisions that it is only possible to observe that policy according to the principles laid down in the Treaty.

(j) The principle of the retention of traffic

The applicants finally also put forward the argument that the special rates and condi-

tions in question were introduced in the interest of the railways themselves for the purpose of maintaining a certain volume of traffic and have justified their continued retention from that point of view. They allege that they should therefore not be included at all in the range of special rates and conditions covered by the fourth paragraph of Article 70 because they are not measures of support for individual undertakings.

This argument cannot be rejected in principle. For the fourth paragraph of Article 70 to be applied to special rates and conditions it is important to ascertain whether those special measures are also and mainly in the interests of the carrier. This involves criteria for the assessment of the special rates and conditions, the review of which raises considerable difficulties not only for the Court of Justice but also for the High Authority. In fact it is impossibe to deny that the demand for transport services on a particular route may decrease with the increase of the tariff beyond a certain limit or even cease completely because the price of transport would cause the user economic difficulties. For the carrier himself, who until then still made a profit on a particular route even when applying a lower tariff, this involves a loss of income which may call in question the profitability of that route for the undertaking.

This special situation, the understanding of which requires an appraisal of the economic position of both the user and the carrier, might therefore justify the retention of special rates and conditions.

However, the present cases do not seem to call for further inquiry into this problem since it is impossible to deduce from the conclusions of the applicants factual evidence in support of that argument, in any case in so far as the profitability of the carrier is at issue.

3. *Conclusion*

Thus in all three cases I reach the identical conclusion that there is no evidence that the High Authority contravened the Treaty in its examination of the special rates and conditions in question. The present proceedings have not shown that, contrary to the appraisal of the High Authority which gave rise to legitimate criticism on certain points, the French special rates and conditions were in accordance with the principles of the Treaty and that therefore it was impossible to require their modification.

4. *The periods allowed for modification of the special tariffs*

Only the objection of the applicants that the periods allowed by the High Authority for their abolition were too short remains. As far as I can see this objection was raised for the first time and without further observations in the reply. It could therefore be disregarded as being out of time. However it is defective in yet another way which precludes its examination by the Court.

In the decisions of the High Authority, apart from the wording of the seventh paragraph of Article 10, the only reason given for the fact that the periods are of different lengths in each particular case is that in setting those periods the different situations of the undertakings were taken into consideration. They contain no indication of the details or criteria which played a part in the High Authority's assessment.

However, I am of the opinion that this fact is irrelevant with regard to the ruling of the Court of Justice since in this case we are concerned with a decision which is based on 'the evaluation of the situation resulting from economic facts or circumstances'. Whether an economic disturbance must be expected and to what extent can only be stated on the basis of a general evaluation which includes the effects of all similar tariff decisions, not only those which are contested in this case. This part of the decisions can therefore only be contested if the objection of misuse of powers or manifest failure to observe the provisions of the Treaty under the second sentence of the first paragraph of Article 33 has been put forward in a reasoned statement. In this case nothing of the kind has happened so that there is no reason to examine that objection.

V – General conclusion

After assessing all the objections which were put forward in the application, I reach the following conclusion:

I suggest that the Court should:

dismiss the present applications as unfounded and order the applicants to pay the costs of the proceedings.

The applicants in Cases 27 and 28/58 must pay the costs of the proceedings in so far as they restricted their applications by means of a declaration during the oral procedure, since that is tantamount to a partial withdrawal of the application.