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ANNOUNCEMENT

Grant of financial assistance under Article 55, 2, *c* of the Treaty

After consultation with the Consultative Committee, and with the agreement of the Council of Ministers, the High Authority, at its session on September 12, 1956, decided, in accordance with Article 55, 2, *c* of the Treaty, to set aside four million E.P.U. units of account, derived from the levy (one million as a non-repayable grant-in-aid and three million as a loan), for the purpose of launching a second experimental workers' housing scheme.

General Organizational Regulations of the High Authority

(see Official Gazette, 3rd year, No. 21, of November 24, 1954)

By a decision of the High Authority dated June 21, 1956, Article 14 of the General Organizational Regulations of the High Authority is supplemented by a third paragraph to read as follows :

> " Finally, the Members of the High Authority may be empowered by the President to sign all records and documents relating to matters of finance."

COURT OF JUSTICE

JUDGMENTS

JUDGMENT OF THE COURT

IN THE CASE No. 8-55; THE FÉDÉRATION CHARBONNIÈRE DE BELGIQUE

***vs* THE HIGH AUTHORITY**

(TRANSLATION, the French text being authoritative)

In the case

the FEDERATION CHARBONNIERE DE BELGIQUE,

which has chosen as its address for service 6 rue Henri Heine, Luxemburg,

Plaintiff,

represented by Mr. Louis DEHASSE and Mr. Léon CANIVET, assisted by Mr. Paul TSCHOFFEN, Barrister at the Cour d'Appel of Liège,

and by Mr. Henri SIMONT, Barrister at the Cour de Cassation of Belgium, Professor at the Free University of Brussels.

vs

the HIGH AUTHORITY OF THE EUROPEAN COAL AND STEEL COMMUNITY,

which has chosen as its address for service its office, 2 Place de Metz, Luxemburg,

Defendant,

represented by its Legal Adviser, Mr. Walter MUCH, as Agent,

assisted by Mr. G. van HECKE, Barrister at the Cour d'Appel of Brussels, Professor at the University of Louvain,

concerning the Appeal for annulment lodged against Decision No. 22–55 of the High Authority of May 28, 1955, and against certain decisions of the High Authority following from the letter addressed by the High Authority on May 28, 1955, to the Government of the Kingdom of Belgium, pertaining to the reorganization of the compensation scheme (Official Gazette of the Community of May 31, 1955, fourth year, No. 12, pages 185–189),

THE COURT

composed of:

President PILOTTI,

President of the Chambers RUEFF and RIESE,

Judges SERRARENS, DELVAUX, HAMMES and VAN KLEFFENS,

Advocate General LAGRANGE,

Registrar VAN HOUTTE,

delivers the following

JUDGMENT

as regards the facts:

I.—*Procedure*

The Application φ lodged by the " Fédération Charbonnière de Belgique ", association sans but lucratif with registered offices in Brussels, is dated June 23, 1955, and was filed with the Registry of the Court on June 27, 1955, under No. 657. It was filed within the time-limit, in accordance with Article 33, paragraph 3 of the Treaty, in conjunction with Articles 84 and 85 of the Rules of the Court.

The powers of Plaintiff's representatives are regular and the authenticity of their signature was established.

Plaintiff's attorneys and the Agent and attorney of Defendant were designated in accordance with regulations.

The acts of procedure are formally regular; the Counter-Memorial, the Reply and the Rejoinder were filed within the fixed time-limits.

An Order of the President of the Court assigned the Appeal to the first Chamber for eventual legal inquiry. The President of the Court designated Judge Van Kleffens as Judge Rapporteur, and in pursuance of the last paragraph of Article 9 of the Rules of the Court, Mr. Lagrange as Advocate General.

At the end of the written procedure the Court, after consultation with the Advocate General and in accordance with the Preliminary Report presented by the Judge Rapporteur in pursuance of Article 34 of the Rules of the Court, decided to open the oral proceedings without judicial inquiry.

At the request of the parties the Court decided, at the beginning of the oral proceedings to discuss jointly the present case and case No. 9-55: Société des Charbonnages de Beeringen, Société des Charbonnages de Houthalen and Société des Charbonnages de Helchteren et Zolder vs the High Authority.

In the course of the oral proceedings which were held on May 2, 4, 5, 7 and 11, 1956, the Court heard the parties.

During the hearings of June 12, 1956, the Judge Rapporteur asked the parties certain questions concerning the level of the estimated costs of production in several hypotheses ; the parties answered these questions.

On the same day the Advocate General concluded that the Application should be rejected and Plaintiff condemned in the costs.

2.—*Conclusions of the parties*

In the Application *Plaintiff* requests that it may please the Court

(1) to annul Decision No. 22-55 of the High Authority of the European Coal and Steel Community, of May 28, 1955, and the price-list joined thereto in so far as it establishes lower prices for certain grades of coal ;

(2) to annul the decision contained in the letter addressed by the High Authority to the Belgian Government and in the table of compensation rates joined to this letter in so far as it:

(*a*) establishes a discrimination between the producers of identical grades of coal ;

(*b*) decides that the compensation payments will be or can be withdrawn from certain enterprises on the ground that they may not be carrying out the re-equipment schemes which are considered practicable and necessary, and from those refusing to surrender or exchange deposits deemed indispensable to a more satisfactory layout of the workings ;

(*c*) fixes compensation rates corresponding to the new price-list.

According to the Application the Appeal is based upon Articles 3, 4 and especially 4 *b*, 5, 33 and 57 of the Treaty of April 18, 1951, and upon Sections 24, 25 and 26 of the Convention containing the Transitional Provisions of the same date ; the Application invokes incompetence of the High Authority, violation of the Treaty and of the rules pertaining to its application, obvious disregard of the provisions of the Treaty and the fact that the contested decisions are vitiated by détournement de pouvoir.

Defendant requests the Court to reject the Application of the Fédération Charbonnière de Belgique filed on June 27, 1955, with all legal consequences, namely where it concerns the payment of the fees, costs and all other eventual expenses.

3.—*Summary of the facts*

In the Official Gazette of the Community No. 1-53 of February 10, 1953,[1] the High Authority published its first decision concerning the establishment of the compensation system (Decision No. 1-53 of February 7, 1953). This Decision fixed the method of assessment and collection of the levies which will constitute the funds necessary for the financing of the aid provided for in the Convention containing the Transitional Provisions for the above mentioned objective.

As the collection of the funds necessary to cover the charges of the compensation payments was not discussed in the course of the present dispute, there is no need to pursue the examination of the modifications which were later introduced in the rules prescribed for this matter by Decision No. 1-53.

Concerning the calculation of the amounts which must be paid to the Belgian enterprises, the High Authority took its first decision on March 8, 1953 (Decision No. 24-53, Official Gazette of the Community No. 4 of March 13, 1953)[1]. This Decision fixed, for the sale of Belgian coal, maximum prices specified in an Appendix.

On the same day the High Authority addressed to the Belgian Government a letter (reproduced in the Official Gazette of the Community No. 4 of March 13, 1953)[1] in which the High Authority indicated the modalities of the aid to the Belgian collieries which it intended to apply. In this letter the High Authority ascertained that preparatory work made it possible to establish the price-list provided for in section 26 of the Convention and to determine the grants which the application of this table made necessary, i.e. 29 francs per extracted ton, in addition to the so called conventional subsidies already granted to certain collieries by the Belgian Government. This result was obtained by calculating the difference between the prices of a " barème de compte " based on the receipts of the enterprises, and the prices of a " barème de vente " at which the enterprises should sell their production ; both tables were annexed to the letter. It should be noted that the selling-prices mentioned in the so called " selling "-price-list are identical to the " maximum prices " specified in the Appendix to Decision No. 24-53.

In order to realize the price adjustment deemed necessary by the High Authority, the table of selling-prices annexed to Decision No. 24-53 was modified by Decision No. 40-53 of October 20, 1953 ; consequently a new letter was sent to the Belgian Government on October 22, 1953 ; this letter contained the new " tableau de vente " and the new " barème de compte " (Decision and letter published in the Official Gazette of the Community No. 12 of October 27, 1953)[1].

Decision No. 41-53 and a letter of December 10, 1953, addressed to the Belgian Government brought a rectification to the above-mentioned tables (Decision and letter published in the Official Gazette of the Community No. 13 of December 15, 1953)[1].

[1] This reference applies to the German, French, Italian and Dutch editions of the Official Gazette of the European Coal and Steel Community, published in Luxemburg.

On March 19, 1954, the High Authority took a Decision (Decision No. 15–54, Official Gazette of the Community No. 3, of March 24, 1954)[1] which in its preamble referred neither to the provisions of the Treaty pertaining to maximum prices, nor to one or the other of the prior Decisions, but it compelled the enterprises situated in the Belgian coal fields " to comply " with the price-list annexed to said Decision, despite the fact that this table was identical to the one already in force.

This Decision was followed by a letter addressed to the Belgian Government on March 20, 1954 (Official Gazette of the Community No. 3 of March 24, 1954)[1], in which the High Authority informed the Belgian Government of its decision to prolong the application of the existing price-list.

After adding certain Belgian collieries to the list of collieries authorized by the Appendix to Decision No. 15–54 to bill a quality premium (Decision No. 27–54 of May 12, 1954, Official Gazette of the Community No. 10 of May 20, 1954)[1], the High Authority declared in its Decision No. 15–55 of April 28, 1955 (Official Gazette of the Community No. 10 of April 30, 1955), that Decisions No. 15–54 and 27–54 remained applicable " until a new decision pertaining to the establishment of price-lists of the Belgian enterprises comes into force ".

Shortly after, however, the table of " selling "-prices was modified by Decision No. 22–55 of May 28, 1955, and a letter addressed to the Belgian Government on May 28, 1955, replaced the " barème de compte " by a table annexed to this letter and which was called " Table of compensation rates per grades payable on Belgian coal " ; this table became effective on June 16, 1955.

This Decision and this letter (published in the Official Gazette of the Community No. 12 of May 31, 1955) form the object of the present dispute.

4.—*Summary of the grounds and arguments of the parties*

A.—*As for the admissibility of the Appeal*

Defendant admits that the letter of May 28, 1955, in so far as it reduces the compensation payments for three collieries, is of an individual nature ; on this point the admissibility of the Appeal is beyond dispute and this Decision can be contested on the basis of all the grounds for annulment.

On the contrary, Decision No. 22–55 is a general decision and liable to be contested only on the ground of détournement de pouvoir affecting Plaintiff.

As for the letter of May 28, 1955, in so far as it makes the compensation payments subordinate to an action of the Belgian Government—withdrawal of compensation payments from such enterprises as may not carry out the re-equipment schemes which are considered practicable and necessary—the above applies in the event the Court considers this part of the letter liable to become the object of an Appeal for annulment ; however this seems very dubious to Defendant.

As for the general nature of the Decision, Defendant maintains that a decision is general on account of its statutory nature and its scope of application ; it does not become individual by the fact that its effects are

[1] This reference applies to the German, French, Italian and Dutch editions of the Official Gazette of the European Coal and Steel Community, published in Luxemburg.

not identical for all those who are bound by the decision. As for détournement de pouvoir, Defendant admits that it was brought forward and motivated ; Defendant furthermore points out :

(*a*) that the words " affecting them " must be interpreted in the sense that the decision in question must be a disguised decision i.e. a decision which, although general in appearance, in reality only pertains to one or more enterprises ;

(*b*) that, if the Court does not share this opinion and deems that a détournement de pouvoir has been committed " affecting " an enterprise when it constitutes a direct encroachment upon the interests of this interprise, détournement de pouvoir still remains to be specified. Defendant states that détournement de pouvoir exists when an administrative act is objectively in accordance with the rule of law, but is subjectively vitiated because of the aim pursued by the administrative authority. It follows from this definition that détournement de pouvoir constitutes a specific ground for annulment, which is distinct from the three other grounds.

It is therefore necessary to specify which of the grounds brought forward in the Application are distinct from the ground détournement de pouvoir which is the only ground on which Plaintiff is entitled to base its Appeal.

Plaintiff points out that the price-list which is part of Decision No. 22–55 and the compensation rate which is part of the letter of May 28, 1955, constitute an indivisible entity : indeed, the obligation for the enterprises to establish a price-list in connection with the compensation payments, the obligation to have this price-list accepted by the High Authority, and finally the obligation to maintain this price-list unchanged, unless agreed to by the High Authority, find their legal ground in the payment of the compensation.

When, as in the present case and only for certain enterprises, the price-list is not accompanied by compensation payments or when it is accompanied by compensation payments which are different from those paid to the other enterprises, its effects are also different, and therefore, they are individual. On this point Decision No. 22–55 and the letter of May 28, 1955, are therefore of an individual nature and can be contested on the basis of all the grounds provided for in Article 33 of the Treaty.

But even if the individual nature is not admitted by the Court, the Appeal remains admissible in all its elements, in the first place because Plaintiff plans to prove that the Decision is vitiated by détournement de pouvoir and furthermore because the subsidiary character of détournement de pouvoir can be defended in the national administrative law, but not in a system like the one enforced by the Treaty under which the justiciable can only resort to an Appeal based on détournement de pouvoir. For this reason Plaintiff is of the opinion that an administrative act can be vitiated at the same time because of détournement de pouvoir and because of the other faults enumerated in Article 33 of the Treaty, this in spite of the fact that for the admissibility of the Appeal Plaintiff must bring forward and motivate a case of détournement de pouvoir.

Plaintiff brings forward détournement de pouvoir, incompetence and violation of the Treaty in order to prove that the contested acts are

vitiated in all their parts by détournement de pouvoir and furthermore that most of them are vitiated because of incompetence and violation of the Treaty.

Plaintiff is of the opinion that if the Court deems that those acts are general decisions, it should annul them because of détournement de pouvoir while the proof of the other faults sustains the proof of détournement de pouvoir.

B.—*As for the merits*

I. *Regarding Decision No. 22–55 of May 28, 1955*

—*Competence of the High Authority to fix price-lists*

(*a*) According to *Plaintiff*, the High Authority was not competent to fix unilaterally and impose a price-list for all or for some grades of coal. According to the Treaty the competence to fix this price-list obviously rests with others than the High Authority i.e. with the producers themselves, as it follows from the wording of section 26 of the Convention.

In the first place the compensation payments are destined to "make it possible" to bring the prices of Belgian coal as close as possible to the prices of the common market; it follows that the initiative rests with the producers.

Furthermore with the expression price-list "established on these bases" the Convention clearly indicates that the prices must be fixed as a result of joint study and in agreement with the High Authority.

Finally, the price-list cannot be changed "without agreement of the High Authority"; this excludes the competence of the High Authority to establish it.

By imposing a price-list, the High Authority transgressed the limits of its competence and acted in opposition with the Treaty; it has thus used section 26, No. 2 of the Convention for another purpose, i.e. in order to achieve structural changes in the Belgian coal industry.

Plaintiff agrees with Defendant that, in accordance with sections 25 and following, the normal powers of the High Authority have been markedly extended; this, however, does not result in an extension of the authoritative nature of its intervention since sections 25 and following tend to place the Belgian industry in a situation more favourable than the one which would result from the Treaty, namely from Article 61.

The High Authority contends that the objective of section 26 cannot be achieved by the free play of the economic forces, and without intervention of the High Authority; but this thesis was not proved right and has no basis in the Treaty,—the necessary assimilation can as well be achieved by an increase of the prices of coal not coming from Belgium as well as by a lowering of the prices of Belgian coal.

Defendant brings forward in the first place that Plaintiff bases its Appeal only upon grounds from which it would follow, if they were well-founded, that the High Authority has acted in opposition with the Treaty or beyond the limits of its competence; by pretending this Plaintiff made it *ipso facto* impossible to prove the existence of détournement de pouvoir (affecting Plaintiff).

This ground, therefore, is inadmissible.

With this reserve, the High Authority specifies that the present dispute concerns exclusively the question who is entitled to fix prices in so far as necessary for the fulfilment of the objectives of section 26, No. 2, *a*; the High Authority in no way claims the right to interfere with the price-lists of the enterprises.

Being a public body, the High Authority maintains that it is responsible for the fulfilment of the objectives of the system provided for in section 26, No. 2, *a* and that, as such, it cannot share this responsibility with the private enterprises. Consequently, the High Authority is obliged to establish the bases for the functioning of the system of compensation payments, and the High Authority itself must decide what measures are indispensable to this end. The High Authority deemed that a price fixation is a necessary and indispensable means for the functioning of the system of compensation payments. Indeed, in the absence of such measures, the producers would have no incentive to proceed on their own initiative to a lowering of the prices deemed necessary; such a veto right could not be justified with regard to the consumers whose interests were the principal reason for the establishment of the whole system of compensation payments. Consequently the price fixation cannot be left to the producers.

On the basis of the idea that price fixation must be considered exclusively as a measure taken in the general framework of the compensation payments, Plaintiff's thesis, according to which this measure can be taken only under conditions more rigorous than those provided for by Article 61 of the Treaty for the establishment of maximum prices, must be rejected.

(*b*) In the second place, *Plaintiff* brings forward that the High Authority has exceeded its powers or committed a détournement de pouvoir—or both at the same time—resulting from the fact that, contrary to its obligations, it has not specified the motives which prompted rejection of the price-list proposed by the producers in a letter of May 17, 1955.

In *Defendant's* opinion there can be no question of a détournement de pouvoir because if the High Authority really neglected an obligation imposed upon it by the Treaty, the High Authority would have violated the Treaty and could not have committed a fault which constitutes a very specific example of détournement de pouvoir.

Subsidiarily the High Authority rejects the thesis according to which it is obliged to mention in the preamble of its decision opinions and propositions with which it is presented and which are not in accordance with this decision. Nowhere does the Treaty prescribe such an obligation, not even in those cases where the advice of the Consultative Committee or of the Council of Ministers must be sought.

Competence of the High Authority to fix prices at a lower level

According to *Plaintiff*, the High Authority violated section 26, No. 2 of the Convention and committed a détournement de pouvoir regarding the objectives of this section when, in the actual market situation, it took Decision No. 22–55 which prescribes lower prices for certain grades of coal. According to the preamble of this Decision and of the letter of May 28, 1955, this Decision pursues structural objectives; the pursuit of

these objectives has no legal basis in section 26, No. 2 of the Convention, as the structural transformation is the objective of a reorganization of production methods which would result in lower production costs.

In the letter of May 28, 1955, the High Authority justified the lowering of prices with the argument that the prices are too high, which is proved by the sale difficulties and by the application of compensation (*c*). Those sale difficulties do not exist and the Belgian producers had no recourse to compensation (*c*) since April, 1955, with the consequence that the Decision can not be based upon these motives as they are inexact in fact.

Plaintiff contests that the prices of the common market can be assimilated with those of the Ruhr. Until April 1, 1956, the prices of the Ruhr were kept artificially low by virtue of a decision of the High Authority and, after they were set free on the above date, an increase was limited by action of the German Government. The prices of the Ruhr are but one of the prices of industrial coal on the market and the prices of the coal basins Nord and Pas-de-Calais and Achen are similar to the Belgian prices and pertain to a production of equal importance. Furthermore, Plaintiff is of the opinion that the assimilation of prices has to be achieved through a progressive increase of the prices of the Ruhr. Finally the lowering of the Belgian prices can only make re-equipment more difficult because it includes a lowering of the receipts notwithstanding the compensation payments, as these are degressive.

Defendant points out that Plaintiff must prove that the contested Decision pursues an objective outside the scope of the Treaty. Decision No. 22–55 manifestly aims at realizing the assimilation of the prices, which is the objective of section 26, No. 2, irrespective of the method applied. Furthermore and subsidiarily, the High Authority denies that it violated section 26 of the Convention.

The assimilation of the prices of Belgian coal is a structural objective and one of the important elements of the system provided for by the Convention and pertaining to the progressive reorganization of the structure of the Belgian coal production. The question is not whether the Belgian coal can be sold at a higher price, but whether a higher price permits the complete integration of the Belgian coal in the common market, whatever the conjuncture may be. When Plaintiff says that the motives of the Decision are inexact in fact, Plaintiff considers the problem from a conjunctural standpoint, which is only valid at short term ; the High Authority, while respecting the spirit of the Convention, must consider the structural view-point ; the motives invoked in the letter, including the sale difficulties, must be understood in the same sense.

As for the influence of the Ruhr prices, the High Authority states that it never assimilated the Ruhr prices with those of the common market. However, for industrial coal, it is indeed the Ruhr which determines the market price, because the Ruhr possesses the largest exportable surplus susceptible to compete with foreign productions on their own markets, while the French market has always imported coal. It is the competition with the Ruhr which is felt most strongly on the Belgian market and it is indeed towards the prices of the Ruhr that the Belgian prices must tend.

The High Authority is not of the opinion that the development of the common market will result in an increase of the Ruhr prices, which will bring about the full assimilation of all prices. Whether the prices will be brought together by the free economic forces or whether this can only be achieved by an intervention imposing a lowering of the Belgian prices, is a question of economic policy. It concerns the appreciation of an economic situation which falls outside the competence of the Court. Whatever the case may be, the High Authority was of the opinion that the assimilation of prices was part of its responsibilities and that, therefore, it could not risk that this assimilation of prices shall not be sufficiently achieved by the end of the transition period.

— *Relation between selling prices and the estimated costs of production*

By bringing forward détournement de pouvoir and violation of the Treaty, *Plaintiff* states that the High Authority, in fixing the selling prices, exceeded its competence and did not take into account the estimated costs of production at the end of the transition period. In the Reply, Plaintiff specifies that, instead of taking as basis the development of the level of selling prices on the common market, the High Authority should have established once and for all, at the beginning of the transition period, an evaluation of the estimated costs of production by an objective method based upon the probable evolution of those costs. The difference between prices and costs of production must be progressively diminished by way of improving the production methods. In the course of the oral proceedings Plaintiff specified that the reduction of the production costs which normally were to follow from the real increases of productivity was more than counterbalanced by the increases of salaries and social charges, and of the prices of raw materials. In 1953 the estimates were made in agreement with the producers, on the basis that the salaries and other factors would not vary for 5 years ; but in 1955, when the estimation of the costs was revised, the High Authority should have taken into account those increases which occurred in the meantime.

Plaintiff concludes that the average of the actual prices is already below the estimated costs of production.

Defendant points out in the first place that section 26, No. 2, *a*, establishes a double limitation: the prices have to be brought close not only to the estimated costs of production at the end of the transition period but also to the prices of the common market, those being determined by the prices of the Ruhr, which showed before the Decision a difference of 80 to 100 Belgian francs for the fines à coke.

As for the estimated costs of production, they must enable the producers to withstand competition in the common market at the end of the transition period. On the basis of this principle the Belgian costs of production will therefore have to decrease ; for the individual costs of production the decrease will result from modernization efforts, and for the average costs of production of the Belgian coal industry as a whole the decrease will result from the elimination of marginal producers.

In the course of the oral proceedings *Defendant* specified that the estimates made in 1953 were always considered as provisory and susceptible of a later revision, taking into account the application of the programme concerning the

marginal mines. The High Authority has taken the salary increases into account by allowing a general price increase of 3 Belgian francs in 1955, but those increases which are unpredictable by nature do not enter into the calculation of the costs of production. These can only be estimated by taking as sole basis the improvements of productivity which can be expected in the course of the transition period, while the influence of the salaries, of the social charges and of the prices of raw material remains invariable. On those bases the figures provided by Plaintiff show that the costs of production have decreased between 1952 and 1955 by 43 Belgian francs, not taking into account the reorganization of the marginal mines ; the cumulative effect of the decreases imposed in 1953 and in 1955 of 39 Belgian francs remains therefore within the limits of the reduction of costs estimated at the moment of the contested Decisions, not taking into account the marginal mines.

— *Limitation of the intervention of the High Authority*

Plaintiff brings forward in the Application that the High Authority, by taking Decision No. 22–55, neglected to leave to the producers the benefit of the momentary conjunctural situation, and that the High Authority, therefore, violated Article 5 of the Treaty.

Defendant did not react directly against this argument and Plaintiff did not develop it further in the Rejoinder.

— *Intervention of the Belgian Government*

Plaintiff brings forward that Decision No. 22–55 was taken upon intervention of the Belgian Government and in view of objectives specific to the economic policy of the latter ; Plaintiff ascertains that those objectives fall outside the competence of the High Authority, or at least, outside the objectives of the Treaty. In the Reply Plaintiff elaborates on this argument and states among others that Decision No. 22–55 was taken eleven months after the date of the report of the " Commission Mixte ", and notwithstanding the fact that a radical alteration of the conjunctural situation occurred in the meantime.

Defendant replies that action was taken in accordance with prior agreement with the Belgian Government ; therefore détournement de pouvoir could not have been committed, as the objectives of that action are in accordance with those of the Convention.

— *Fixation of selling prices without compensation payments*

According to *Plaintiff*, Decision No. 22–55 is vitiated because of incompetence, violation of the Treaty, excess of power or détournement de pouvoir – or both at the same time—because it establishes or imposes a price-list for certain grades of coal, although no compensation payments are provided for those grades.

In the Rejoinder Plaintiff points out that the compensation payments are the cause for the price control exercised rightly or wrongly by the High Authority. Without compensation payments there is no legal basis for maintaining a price-list which becomes illegal in spite of the eventual possibility of renewed compensation payments ; this is the case for the grades " gras " of coal produced by the three collieries of the Campine.

Defendant admits that section 26 of the Convention does not empower it to fix prices for those grades of coal which it considers already integrated in the common market; this is the case with certain "charbon maigres, 1/4 gras and 1/2 gras". If no compensation payments are made for coal of the grades "gras non-classé", this is true only for the products of the collieries of the Campine. The exclusion from the benefit of compensation payments in the case of coal of grade "gras non-classé" of the Campine certainly does not imply that those grades are already sufficiently integrated in the common market so as to be placed outside the system of compensation payments. And it is possible that if a new decrease was to be imposed, the compensation payments would be renewed for the collieries of the Campine also.

II. *Concerning the letter of May 28, 1955*

—*Reduction or withdrawal of the compensation payments from certain enterprises*

Plaintiff brings forward that the new system of compensation payments misinterprets the system provided for in the Convention and constitutes a violation of the Treaty and of the Convention, and an excess of power or détournement de pouvoir.

The ground invoked by the High Authority in its letter to justify the discrimination affecting the collieries of the Campine, i.e. the fact that those mines enjoy a particularly favourable situation, can never be brought to bear on the application of the system of compensation payments, because the particular needs of individual enterprises and their special difficulties are dealt with in other provisions such as Article 5, paragraph 4 of the Treaty and section 26, No. 4 of the Convention. In the Reply Plaintiff invokes, among others, section 24 which underlines, in paragraph "(*b*)", the distinction existing between compensation schemes and compensation payments.

The global nature of the compensation payments for the consumers as a whole finds a confirmation in the text of section 26, No. 2; this text, by the use of the words "Belgian coal" and not "Belgian collieries", must also be interpreted in a global sense where the producers are concerned. This interpretation is also confirmed by the global nature of the levy provided for in section 25 of the Convention for the establishment of the funds. The compensation payments (*a*) are not different on this point from the compensation payments (*b*) and (*c*) whose global nature cannot be contested.

Prior to Decision No. 22–55 there existed uniformity, because the compensation payments only differed according to grades of coal, but were the same for all coal of a like grade in a like category. As the criterion was the same for all the collieries, the principle of selectivity according to enterprises did not exist.

Plaintiff is of the opinion that the objective of the compensation payments is to maintain the receipts, and this for all the Belgian collieries. The system established by the contested Decision introduces an arbitrary repartition of the compensation payments because it does not take into account the upkeep of the receipts of certain collieries; on these grounds

the Decision is contrary to section 24 of the Convention, while every discrimination among producers is prohibited by Article 4 *b* of the Treaty.

Defendant rejects Plaintiff's thesis according to which the new method constitutes a discrimination prohibited by the Treaty. In order to render possible a more efficacious repartition, the selectivity according to enterprises was already the basis for the system of 1953, although in a less developed form. The objective of the compensation payments is to permit the producers to adapt to the conditions of the common market and also to assimilate prices; it is not to grant a compensation on the basis of the unavoidable lowering of prices. This implies that the compensation payments must be distributed according to the individual needs of the beneficiaries, as is indicated by the words " to permit ".

According to the High Authority, section 26, No. 2 does not prescribe a uniform method for the compensation payments (*a*), (*b*) and (*c*). The compensation payments (*a*) are general in their scope, and their application does not depend upon the needs of the producers, while the two other forms are special cases which do not directly pertain to the integration in the common market but which permit a compensation of the additional price reductions for certain sales.

The High Authority does not agree that the principle of selectivity is contrary to section 24. Instead of guaranteeing a certain level of receipts, the meaning of this section is rather to limit the closing down of certain collieries. The level of receipts is certainly not guaranteed by the Treaty, this would indeed be impossible, because the total amount of the compensation payments must diminish gradually.

—*The menace to withdraw the compensation payments*

According to *Plaintiff*, the Decision contained in the letter of May 28, 1955, is vitiated because of détournement de pouvoir in so far as it permits the Belgian Government to withdraw, in agreement with the High Authority, the benefit of the compensation payments from such enterprises as may not carry out the re-equipment schemes which are considered practicable and necessary. The objective of the compensation payments is nothing else but to maintain the receipts.

Defendant points out that there can be no question of a détournement de pouvoir in this matter. The authority that grants the compensation payments has the right to request that the objective of the compensation payments, i.e. the reorganization of the Belgian collieries, be carried out indeed. And the menace to withdraw the compensation payments from such enterprises that do not accomplish the necessary efforts, is a particularly efficacious measure to that end. The aim of this menace is to ensure that the compensation payments fulfill the function provided by the Convention.

As Regards the Law

A.—*Concerning the admissibility of the Appeal*

The Appeal aims at the annulment of:

(1) Decision No. 22–55 of the High Authority of May 28, 1955, and of the price-list annexed thereto, published in the Official Gazette of the Community of May 31, 1955, in so far as lower prices for certain grades of coal are fixed;

(2) the decisions contained in the letter addressed to the Belgian Government by the High Authority on May 28, 1955, and in the table of compensation rates joined thereto:

(*a*) in so far as a discrimination among producers of identical grades of coal is established by the withdrawal or the reduction of the compensation payments in the case of certain collieries,

(*b*) in so far as according to said letter, the compensation payments will be or can be withdrawn from certain enterprises on the basis of the fact that they do not carry out the re-equipment schemes judged practicable or necessary or from those refusing to surrender or exchange deposits deemed indispensable to a more satisfactory layout of the workings.

As for Decision No. 22–55, Plaintiff states that this is an individual decision ; Defendant on the other side maintains that it is a general decision. Plaintiff deduces the individual nature of the Decision from the fact that, owing to the indissoluble link between the compensation payments and the price fixation, the effects of the price-list are different for the three collieries of the Campine and for the other Belgian coal mines in so far as the compensation payments accorded to the three collieries are not the same as those received by the other mines.

The Court agrees that the effects of the price-list shall vary in so far as the compensation payments vary, but the Court rejects Plaintiff's thesis according to which those variations of the effects of the price-list determine the nature of Decision No. 22–55. Indeed this Decision was taken within the scope of a special regime provided for by section 26 of the Convention for the Belgian situation, for the duration of the transition period and applicable to all enterprises and to all the transactions falling under the said regime, following concrete modalities, however detailed and varied they might be.

Within the scope of this regime, the Decision refers to the enterprises on the sole basis that they produce coal and not on any other requirement. If a new coal deposit were discovered in Belgium, the operator would be bound to sell at the prices fixed by the Decision. On the other hand the territorial limitation does not imply any individual specification and is justified by the fact that the Belgian industry needs the compensation payments.

The fact that Decision No. 22–55 contains detailed and concrete rules applicable to different situations is not in contradiction with the general nature of the Decision. Indeed the Treaty, in Article 50, section 2, provides that the method of assessment and collection of the levies shall be fixed by a general decision of the High Authority, which proves that the detailed and varied concrete consequences of a general decision are not detrimental to the general nature thereof.

The fact that Plaintiff is an association including all the enterprises referred to in the Decision—and only those—does not lead to a different result. Because if it were otherwise, the general nature should be denied even to a decision applicable to all the enterprises of the community in the eventuality of a single association including all those enterprises. The

individual or general nature of a decision must be established on the basis of objective criteria, so that it becomes impossible to make distinctions according to whether Plaintiff is an association or an enterprise.

As for the decisions contained in the letter of May 28, 1955, the parties are of the opinion that the first, pertaining to the reduction or withdrawal of the compensation payments, is of an individual nature, and that the second, pertaining to the menace to withdraw the compensation payments, is of a general nature ; on this point the Court agrees with the parties.

In the course of the oral proceedings Defendant asked the question whether it is permissible to consider the latter as a decision susceptible to form the object of an Appeal for annulment in accordance with Article 33 of the Treaty. In its letter of May 28, 1955, the High Authority admitted that the compensation payments must be accompanied by a series of measures to be taken by the Belgian Government ; the High Authority considers furthermore that the Belgian Government should take four measures specified in paragraphs (*a*), (*b*), (*c*) and (*d*). The measures provided under (*d*) are therefore included in the series of measures which the Belgian Government must take, if necessary. In this way the High Authority determined unequivocally what its attitude shall be in case the conditions provided for in paragraph 2, sub (*d*), of the letter were to be fulfilled. In other words, the High Authority established a rule which can be applied if necessary. It must therefore be considered as a decision in the sense of Article 14 of the Treaty.

The Court having determined the individual or general nature of the Decisions, Plaintiff is entitled to request the annulment of the reduction or withdrawal of the compensation payments—individual Decision contained in the letter of May 28, 1955—on the basis of all the grounds provided for in Article 33 of the Treaty ; Plaintiff is entitled to lodge an Appeal for annulment of the two other Decisions in so far as Plaintiff deems that these Decisions are vitiated because of détournement de pouvoir affecting Plaintiff, as these Decisions are general decisions.

For the admissibility of an Appeal for annulment of a general decision it suffices that Plaintiff brings forward formally a détournement de pouvoir affecting it, while indicating with some evidence the grounds on which, in Plaintiff's opinion, this détournement de pouvoir is based.

The above mentioned conditions are fulfilled in the present Appeal, which is therefore admissible.

However parties disagree regarding the exact scope of Article 33 of the Treaty concerning the admissibility of certain grounds brought forward by Plaintiff against the general Decisions.

Defendant states that an enterprise can only invoke the ground of détournement de pouvoir affecting it when the High Authority has disguised an individual decision concerning that enterprise under the form of a general and reglementary measure.

This thesis must be rejected ; indeed, a disguised individual decision remains an individual decision, as the nature of a decision does not depend upon its form, but upon its scope. Furthermore such an interpretation of Article 33 and particularly of the words " affecting them " can not be accepted, as the expression " affecting them " has no other meaning than the one of

the words that express it, i.e. that it concerns an enterprise which is the object or at least the victim of the détournement de pouvoir which it brings forward. The Court is of the opinion that Article 33 clearly says that associations and enterprises can contest not only the individual decisions but also the general decisions in the real sense of the word.

Subsidiarily, Defendant states that the grounds which Plaintiff may bring forward are limited to the sole ground of détournement de pouvoir, as all the others have to be put aside. Plaintiff, on the other hand, is of the opinion that it may not only invoke all the grounds for annulment provided it brings forward a détournement de pouvoir, but also that it may prove the other faults in order to sustain the détournement de pouvoir ; Plaintiff is of the opinion that the Treaty creates a legal system in which the private enterprises have at their disposal in order to be admissible only the ground of détournement de pouvoir affecting them ; it would be illogical therefore to give this ground an exceptional and subsidiary nature.

This thesis must be rejected ; if the Treaty provides that private enterprises have a right to request annulment of a general decision because of détournement de pouvoir affecting them, it is because the right to appeal on other grounds has not been attributed to them.

If Plaintiff's thesis were exact, the enterprises would have a right to appeal as complete as the one of the States and of the Council, and it would be unexplainable why Article 33, instead of simply assimilating the Appeals of enterprises to those of State or of the Council, has introduced a very clear distinction between the individual decisions and the general decisions, while limiting, where enterprises are concerned, the annulment of general decisions to the ground of détournement de pouvoir affecting those enterprises. The insertion " under the same conditions " can not be interpreted as meaning that the enterprises, after having established a détournement de pouvoir affecting them, have the right to invoke also the other grounds for annulment, because, when a détournement de pouvoir affecting them has been established, the annulment of the contested decision is acquired and does not have to be pronounced on other grounds.

These considerations are clearly in opposition with Plaintiff's illogicality according to which the interpretation of the Treaty must be subordinate to the desire to open for the private enterprises a right to appeal practically identical to the one of the States and the Council. Such a desire is understandable, but there are no indications in the Treaty that permit the conclusion that such a right of control of the " constitutionality " of general decisions, i.e. their conformity with the Treaty, was attributed to the enterprises, as those decisions are quasi-legislative acts originating from a public authority and with a normative effect " erga omnes ".

It is true that Article 33 admits a right of appeal for annulment of a general decision on the ground of détournement de pouvoir affecting an enterprise ; but this constitutes an exception explained by the fact that in this case it is still the individual element that prevails.

Plaintiff is therefore only admissible in so far as it invokes against general decisions the ground of détournement de pouvoir affecting Plaintiff : as for the individual decisions, as the parties agree on this qualification, Plaintiff is admissible to base its Appeal on all the grounds mentioned in the first paragraph of Article 33.

B.—*Regarding the merits*

Before examining the questions relating to Decision No. 22–55, among others whether the High Authority is empowered to fix selling prices, and also the claims relating to the letter of May 28, 1955, it is necessary to analyse in the first place the fixation of the level of the estimated costs of production.

As for the evaluation of this level, Plaintiff stated in the first place that the High Authority is not empowered to modify the initial evaluation of the estimated costs of production, because it concerns the fixation of a " palier d'attente ", to be fixed at the beginning of the transition period and to remain invariable, except for rectifications established in mutual agreement.

Plaintiff's thesis must be rejected because section 26 of the Convention provides that the measure of the unavoidable lowering of the Belgian prices is determined by the level of the estimated costs of production at the end of the transition period. It follows that in case of a modification of the estimated level of the costs of production, it is necessary to make a new evaluation that takes this modification into account.

In the second place the parties disagree as to the method to be followed for the evaluation of the level of the estimated costs of production. The Court is of the opinion that before taking a decision, the level which reasonably constitutes " les environs des coûts de production prévisibles à la fin de la période de transition ", must be established on the basis of the forecasts for each of the grades and categories of coal, on account of the facts and circumstances known at the moment of evaluation.

The answers given by the parties to the questions asked by the Judge Rapporteur do not suffice for this purpose.

The parties declared in their answers that such a specification could not be submitted to the Court within the set time-limit ; it is necessary, therefore, to fix a new time-limit for this purpose.

Having considered the Pleadings ;

Having heard the parties :

Having heard the conclusions of the Advocate General ;

Having regard to Articles 2, 3 *c*, 4, 8, 14, 33, 34, 36, 50, 60 and 61 of the Treaty and to sections 1, 8, 24, 25 and 26 of the Convention ;

Having regard to the Protocol on the Statute of the Court of Justice ;

Having regard to the Rules of the Court of Justice and to the Rules of the Court of Justice concerning the costs ;

THE COURT

rejecting all further submissions and submissions to the contrary,

holds and decides :

1. The Appeal is admissible ;

2. The oral proceedings are reopened. They shall concern exclusively the level, per grade and category, of the estimated costs of production of the Belgian coal at the end of the transition period, and the position of these costs relative to the prices fixed by Decision No. 22–55 ;

3. September 1, 1956, is the time-limit fixed for the parties to file with the Registry of the Court the information and supplementary specifications indicated in the present judgment; and the oral proceedings will take place on September 20, 1956, at 10.30 hrs.;

4. A decision regarding the costs shall be given later.

Thus done and judged by the Court in Luxemburg, on July 16, 1956.

PILOTTI, RUEFF, RIESE, SERRARENS, DELVAUX, HAMMES, VAN KLEFFENS.

Read in a public session in Luxemburg, on July 17, 1956.

The President, M. PILOTTI

The Judge Rapporteur, A. VAN KLEFFENS

The Registrar, A. VAN HOUTTE

OFFICIAL NOTICES

Appeal filed by the Government of the French Republic against the High Authority, on August 17, 1956

(Case No. 5–56)

The Government of the French Republic, represented by Mr. Pierre Saffroy, Ambassador of France in Luxemburg, filed on August 17, 1956, with the Registry of the Court, an Appeal against the High Authority of the European Coal and Steel Community and chose as its address for service the office of the embassy of France, Luxemburg.

The French Government requests the annulment of the Decision of the High Authority of June 22, 1956, concerning the signature by A.T.I.C. (Association Technique de l'Importation Charbonnière) of the purchase-contracts in France for coal from the other countries of the Community.

Appeal filed by the Company Officine Elettromeccaniche Ing. A. Merlini against the High Authority, on August 31, 1956

(Case No. 6–56)

On August 31, 1956, the Società a r. l. Officine Elettromeccaniche Ing. A. Merlini, with registered offices in Turin, acting through its managing director, Mr. Alfredo Merlini, represented by Mr. Andrea Cravera, Barrister in Turin and at the Corte di Cassazione, Rome, filed with the Registry of the Court, an Appeal against the High Authority of the European Coal and Steel Community, and chose as its address for service the office of Mr. Thomas Valerio, 171 avenue du 10 septembre, Luxemburg.

Plaintiff requests annulment of the Decision of July 18, 1956, imposing upon the company a payment in favour of the Caisse de peréquation des férailles importées; Plaintiff concludes that it may please the Court:

". . . .

to annul, in accordance with Article 33 of the Treaty, Decision GRI 84/56 of July 18, 1956, which concerns Plaintiff;

To condemn Defendant in the costs."

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