with the principles of the Treaty and therefore does not, in cases where the fourth paragraph of Article 70 applies, put the High Authority under an obligation based on Articles 2 and 3.

6. A protective rate is compatible with the Treaty only in exceptional cases, notably where the undertaking receiving assistance is experiencing disadvantages created by factors other than those of an economic nature; such a rate is legitimate only in so far as it is necessary in order to enable the undertaking to adapt itself to new conditions or to survive an accidental disadvantage.

7. In giving reasons for its decisions, the High Authority may confine itself to considering the concrete cases which are submitted to it and to explaining its interpretation of the Treaty in a positive manner. In no way is it required to reject or to criticize other possible interpretations, and its functions do not include the elaboration of general theories on the matters covered by the Treaty.

In Joined Cases

3/58, BARBARA ERZBERGBAU AG, Düsseldorf, represented by its Board of Directors,

intervener: LAND OF LOWER SAXONY, represented by the Minister for Economic Affairs and Transport,

4/58, GEWERKSCHAFT LOUISE, Merlau, represented by its Board of Directors,

5/58, HARZ-LAHN-ERZBERGBAU AG, Mathildenhütte, Bad Harzburg, represented by its Board of Directors,

intervener: LAND OF LOWER SAXONY, represented by the Minister for Economic Affairs and Transport,

6/58, MANNESMANN AG (formerly GEWERKSCHAFT MANNESMANN), Düsseldorf, represented by its Board of Directors,

intervener: LAND OF LOWER SAXONY, represented by the Minister for Economic Affairs and Transport,

7/58, ERZBERGBAU SIEGERLAND AG, Betzdorf, represented by its Board of Directors,

interveners: 1. LAND OF RHINE-PALATINATE, represented by the Minister-President,
2. LAND OF NORTH RHINE-WESTPHALIA, represented by the Minister for Economic Affairs and Transport,

8/58, ERZBERGBAU STAUFENSTOLLN GMBH, Oberhausen, represented by its managers,

intervener: LAND OF BADEN-WÜRTTEMBERG, represented by the Assistant Minister-President, Minister for Economic Affairs,

9/58, HESSISCHE BERG- UND HÜTTENWERKE AG, Wetzlar, represented by its Board of Directors,

intervener: LAND OF HESSE, represented by the Minister-President,

10/58, STAHLWERKE SÜDWESTFALEN AG, Geisweid, represented by its Board of Directors,

intervener: LAND OF NORTH RHINE-WESTPHALIA, represented by the Minister for Economic Affairs and Transport,

11/58, HÜTTENWERKE SIEGERLAND AG, Siegen, represented by its Board of Directors,

intervener: LAND OF NORTH RHINE-WESTPHALIA, represented by the Minister for Economic Affairs and Transport,

12/58, FRIEDRICHSHÜTTE AG, Herdorf/Sieg represented by its Board of Directors,

intervener: LAND OF RHINE-PALATINATE, represented by the Minister-President,

13/58, EISERFELDERHÜTTE GMBH, Siegen, represented by its manager,

intervener: LAND OF NORTH RHINE-WESTPHALIA, represented by the Minister for Economic Affairs and Transport,

14/58, NIEDERDREISBACHERHÜTTE GMBH, Niederdreisbach, represented by its managers,

intervener: LAND OF RHINE-PALATINATE, represented by the Minister-President,

15/58, GEWERKSCHAFT GRÜNEBACHER HÜTTE, Grünebach, represented by its Board of Directors,

intervener: LAND OF RHINE-PALATINATE, represented by the Minister-President,

16/58, BIRLENBACHER HÜTTE SCHLEIFENBAUM & CO. KG, Geisweid, represented by its responsible partner,

intervener: LAND OF NORTH RHINE-WESTPHALIA, represented by the Minister for Economic Affairs and Transport,

17/58, EISENWERK-GESELLSCHAFT MAXIMILIANSHÜTTE AG, Sulzbach-Rosenberg-Hütte, represented by its Board of Directors,

intervener: LAND OF BAVARIA, represented by the Minister-President,

18/58, HÜTTENWERKE ILSEDE-PEINE AG, Peine, represented by its Board of Directors,

intervener: LAND OF LOWER SAXONY, represented by the Minister for Economic Affairs and Transport,

25/58, HÜTTENWERK SALZGITTER AG, Salzgitter, represented by its Board of Directors,

intervener: LAND OF LOWER SAXONY, represented by the Minister for Economic Affairs and Transport,

26/58, LUITPOLDHÜTTE AG, Amberg/Opf., represented by its Board of Directors,

intervener: LAND OF BAVARIA, represented by the Minister-President,

applicants,

the applicants in Cases 3 to 8/58, 10/58, 13 to 16/58, 25 and 26/58 being assisted by Heinrich Lietzmann, Advocate at Essen;

the applicant in Case 9/58 by Mr Lietzmann and by Wilhelm Wengler, Professor at the Free University of Berlin;

the applicants in Cases 11 and 12/58 by Mr Lietzmann and by Wolfgang Küster, Advocate at Düsseldorf;

the applicant in Case 17/58 by Heinz Kühne, Advocate at Munich, and by M. B. Aubin, Professor at the University of Saarbrücken;

the applicant in Case 18/58 by Ludwig Raiser, Professor at the University of Tübingen;

the interveners being assisted as follows:

Land of Baden-Württemberg, Land of North Rhine-Westphalia and Land of Lower Saxony by Joseph H. Kaiser, Professor at the faculty of law at Freiburg;

Land of Rhine-Palatinate by Karl Weber, Advocate at Koblenz;

Land of Hesse by Ernst-Joachim Mestmäcker, Professor at the faculty of law at Saarbrücken;

Land of Bavaria by Hans Ziegelhoefer, Advocate at Munich;

the applicants and interveners adopted an address for service in Luxembourg at the Chambers of Willi Scheider, 2 rue du Fort-Élizabeth,

v

HIGH AUTHORITY OF THE EUROPEAN COAL AND STEEL COMMUNITY, represented by its Legal Adviser, Walter Much, acting as Agent, assisted by Hans Peter Ipsen, Professor at the University of Hamburg and Wolfgang Schneider, Advocate at Frankfurt, with an address for service in Luxembourg at its seat, 2 place de Metz,

defendant,

Application for the annulment of certain provisions of the decisions of the High Authority of 9 February 1958 concerning special rates and conditions applicable to the carriage by rail:

1. of mineral fuels destined for the iron and steel industry (T/10.203),
2. of ores (T/10.202) JO of 3. 3. 1958, p. 105/58 and p. 122/58),

THE COURT

composed of: A. M. Donner, President (Rapporteur), L. Delvaux and R. Rossi, Presidents of Chambers, O. Riese and Ch. L. Hammes, Judges

Advocate-General: M. Lagrange
Registrar: A. Van Houtte

gives the following

JUDGMENT

I — Conclusions of the parties

The applicants claim that the Court should:

In Cases 3/58, 4/58 and 8/58, annul Decision No T/10.202; in Cases 5 to 7/58 and 9 to 16/58, annul Decisions Nos T/10.202 and T/10.203;

In Case 17/58, annul Decision No T/10.203 in so far as it concerns special rate No 6 B 31 for the transport of mineral fuels;

In Case 18/58, annul Decision No T/10.203 in so far as it concerns Article 71 (b) of the scale of dues for navigation on the Mittellandkanal;

In Cases 25 and 26/58, annul Decision No T/10.203.

The applicants in Cases 3 to 16/58, and 25 and 26/58 set out the provisions of the contested decisions which in particular affect them adversely.

All the applicants also claim that the Court should order the defendant to bear the costs of the proceedings.

The interveners support the conclusions of their respective principal parties and claim that the Court should order the defendant to bear the costs.

The defendant contends that the Court should:

1. Dismiss the applications as unfounded, and
2. Order the applicants and interveners to bear the costs.

II — The facts

The facts may be summarized as follows:

After commencing its duties, the High Authority established a programme of work in preparation for a consideration of special rates and conditions in the field of transport, which constitutes one of its tasks under the provisions of the Treaty on transport, and the adoption of the measures necessary for putting those provisions into practice.

Those concerned were given the opportunity of putting forward their points of view at meetings which took place with representatives of the Federal Government and of the Länder. Documents were exchanged. The High Authority undertook an inquiry into the economic situation in general and into the situation of the iron and steel industry in particular in the regions concerned.

The High Authority states that it took the contested decisions at its meeting on 9 February 1958; it notified them to the Federal Government by letter of 12 February.

The contested parts of these decisions require the abolition or modification of special rates and conditions in favour of the applicants within fairly extended periods.

The High Authority bases its decisions in particular on two main reasons:

(a) The special rates and conditions constitute a discriminatory measure in favour of the undertakings compared with undertakings placed in comparable situations from the point of view of transport;

(b) The maintenance of the rates and conditons is not necessary for achieving the objectives set out in Articles 2 and 3 of the Treaty.

The High Authority also ordered that some of these rates and conditions, described by the Federal Government as competitive rates and conditions, be abolished, on the ground that it did not consider them justified by competition from another means of transport.

III — Submissions and arguments of the parties

The submissions and arguments of the parties may be summarized as follows:

A — Nature and admissibility of the applications

Each of the applicants asserts that the two decisions of 9 February 1958 are of an individual nature and that they concern them.

The High Authority agrees that the decisions are of an individual nature and accepts the proposition that they affect each of the applicants to a greater or lesser extent; it does not dispute the admissibility of the application.

B — The powers of the High Authority

According to the *applicants* the defendant did not have the necessary powers to take the contested decisions. The rates and conditions in question, which the High Authority has ordered to be abolished or

altered, are pre-existing rates and conditions, that is to say rates and conditions which were already in force when the Treaty was made. As regards such rates and conditions the High Authority could only take action pursuant to the seventh paragraph of Article 10 of the convention and allow 'such time for their modification as may be necessary to avoid any serious economic disturbance'.

At the time when the decisions of the High Authority became binding pursuant to the second paragraph of Article 15 of the Treaty by their notification to the Federal Government on 14 February 1958, Article 10 of the Convention on the Transitional Provisions was no longer applicable, by virtue of the last subparagraph of paragraph (1) thereof, for the transitional period ended on 10 February 1958. Yet the High Authority ordered the abolition or alteration of rates and conditons after that date. It thus took the contested decisions despite the fact that at that time it no longer had the power to do so.

Nor does the fourth paragraph of Article 70 of the Treaty give the High Authority the power to take the contested decisions. That provision can only apply to *new* rates and conditions, that is to say to rates and conditions the introduction of which is only envisaged after the conclusion of the Treaty. The fourth paragraph of Article 70 of the Treaty provides that the High Authority shall give its 'prior agreement' to the rates and conditions covered by that provision. Obviously, prior agreement cannot be given to rates and conditions already in existence.

Since the High Authority did not order that the rates and conditions be abolished or altered during the transitional period, it has lost the power which was expressly reserved to it for the duration of that period. Therefore it can no longer act in respect of pre-existing rates and conditions. Thus, as regards rates and conditions existing on 10 February 1958, the Member States have unlimited power in the sense that the maintenance of those rates and conditions is no longer subject to the the agreement of the High Authority.

The applicants argue that the High Authority, clearly acting *ultra vires* in adopting the contested decisions, has *manifestly* failed to observe the provisions of the Treaty and the rules of law relating to its application.

To these complaints the *defendant* replies that on 9 February 1958 it took the contested decisions in application of the seventh paragraph of Article 10 of the Convention. That provision gives it the power to take decisions concerning the special rates and conditions in force, referred to in the fourth paragraph of Article 70, and to allow such time for their modification (or abolition) as may be necessary to avoid any serious economic disturbance. The content of those decisions was settled on that same day and joined to the minutes of the High Authority as decisions formally adopted. They thus legally came into existence.

Taking the matter from a different angle, it clearly appears from the two letters sent to the Federal Government on 12 February 1958 that those letters did not constitute decisions but formal notice of the decisions to the addressee. That notice is an important factor as regards the applicability of the decisions; but the date of that formality does not affect the question of the exercise of a power conferred by the Treaty within due time.

Thus the power conferred by the seventh paragraph of Article 10 of the Convention had not yet expired at the time when the contested decisions were adopted. The question whether the High Authority could have directly applied the provisions of the fourth paragraph of Article 70 to existing rates and conditions after the expiry of the transitional period does not arise.

In any event, the opinion of the applicants, according to which the special rates and conditons in force fall once more within the jurisdiction of the governments upon the expiry of the transitional period, would appear to be incorrect. Supposing that the High Authority had not exercised a power conferred for that period, that fact could not divest the protective rates in force—in so far as they did not qualify for authorization pursuant to the provisions of the Treaty—of

their illegal nature for the purposes of the first paragraph of Article 70, taken together with Article 4 (b) of the Treaty. Furthermore, the question also arises whether those rates and conditons could not have been abolished as giving rise to a prohibited form of discrimination.

Whatever else may be said, the submission as to *ultra vires* is unfounded for the reasons indicated above. The same is true of the submission, put forward at the same time, that the Treaty has been infringed and manifestly disregarded.

In some cases, the defendant alleges in the alternative that the power conferred on it by the seventh paragraph of Article 10 of the Convention did not cease to exist when the Convention expired. According to the High Authority, the special rates and conditions were subject to an examination by it and the right to maintain them was thus rendered contingent at law. That state of uncertainty was not lifted either by the expiry of the transitional period or by the silence of the High Authority. What was required was, on the contrary, an express indication of the High Authority's intention.

As regards that alternative allegation, the applicant in Case 17/58 argues in favour of proposition that too long a period of uncertainty should be avoided in the interests of legal certainty and that the question of pre-existing special rates and conditions must be clarified definitively. However, the High Authority is mistaken in thinking that this clarification can only result from a declaration emanating from itself. The uncertainty can also come to an end automatically by the withdrawal of the relevant provisions, such that no prohibition could any longer be imposed.

In support of its point of view, the *defendant* puts forward additional arguments in Case 17/58 concerning the distinction between adopting and publishing a decision. It also refers to the legal systems of the Member States on this subject.

C — Infringement of the Treaty

(a) The *applicants* allege, first, that the abolition or modification of the special rates and conditions is of itself contrary to the Treaty if only because the High Authority has let the transitional period run out and has thus deprived the applicants of the right conferred by Article 23 of the Convention to make the applications for aid mentioned therein by way of compensation for loss caused by the abolition of the protective rates. In applying the Treaty, the High Authority must take into account the *general principle of the protection of acquired situations* according to which the administration, in the exercise of its powers, may only affect the *assets* of an individual in so far as the granting of assistance or of an indemnity ensures that the latter does not suffer any loss.

The *defendant* replies:

1. The High Authority's power to refuse authorization to a protective rate, the introduction of which is prohibited by the Treaty, does not depend on the possibility of granting the payments for which Article 23 makes provision.

Furthermore, the applicants have overlooked the fact that the period of validity of Article 23 does not expire at the end of the transitional period but continues for two years thereafter. (Article 23 (8) of the Convention).

2. As for the principle of the protection of acquired situations, which has been put forward in argument, the right approach is to take into consideration the fact that the establishment of the European common market in coal and steel, according to the second paragraph of Article 2, is only possible by progessively bringing about market conditions which ensure the most rational distribution of production together with the highest possible productivity. This fundamental objective of the Community cannot be achieved without altering the structure of industries grouped together at supranational level (Article 1 (1) of the Convention).

(b) In case the Court should reject the argument put forward under (a), the *applicants*

rely on the fact that the authorization for which Article 70 of the Treaty, read together with Article 10 of the Convention, makes provision, was not required.

The Treaty, which is only directed at partial integration, does not encroach upon the rights and duties of the Member States, on their side, to promote the prosperity of the general economy at national level. This is clear both from Article 2 (1) of the Treaty and from Article 67, which only gives the High Authority the power, in certain given circumstances, to rectify certain repercussions of national economic policies on the Common Market.

This also applies to the measures which the Member States take in the field of transport in the interests of their general economy. Where a Member State takes measures setting rates and conditions for the purpose of achieving objectives of interest to its overall economy, those measures are not subject to an agreement within the meaning of Article 70.

The *defendant* replies that the existence of a protective rate within the meaning of the fourth paragraph of Article 70 can only be based on the provisions of the Treaty and not on the system of charges of the German railways. But even in that system, general rates and special rates may be distinguished by the field to which they apply. The applicants cannot deny that the rates in question are not of general application but only concern movements between loading and unloading stations determined and set out in the scale of charges.

The error of law made by the applicants results from the fact that they base themselves on the objectives of a governmental measure and not on the measure itself.

As for the existence of discrimination concerning transport within the meaning of Article 4 (b) taken together with the first paragraph of Article 70, the *applicants* take the view that the High Authority is mistaken in that it has only taken into account the comparability of situations 'from the point of view of transport' and not from the point of view of all the other factors which count in the individual situation of an undertaking. First and foremost it has failed to take into account the effect of geographical and technical factors on each undertaking.

The *defendant* replies that where, as provided by the fourth paragraph of Article 70, the application of special internal rates and conditions to the advantage of one or more undertakings in the Community may be permissible, this involves rules making an exception, intended by the Treaty, to the prohibition on discrimination set out in Article 4 (b) and in the first paragraph of Article 70.

The special situations of Community undertakings, which are of an economic or social nature and go beyond the question of transport conditions looked at alone cannot therefore be included in the general concept of discrimination with which the first paragraph of Article 70 is concerned.

It is argued that the objectives and principles of the Treaty would be disregarded if one were to render the comparison in situation between the users of the railway infinitely flexible by taking into account, as the applicants request, the geographical situation and the nature of the business of an undertaking. According to the latter criteria, no Community undertaking would any longer be comparable with another undertaking.

The *intervener,* the Land of Hesse, puts forward its own arguments concerning the use made by the High Authority of the concept of comparability 'from the point of view of transport'.

For the purpose of interpreting Article 70 of the Treaty, the intervener refers to the prohibition on discrimination which appears in the Interstate Commerce Act of the United States. From the similarity between these legal provisions it may be assumed that use was made of the American law in drafting the ECSC Treaty.

The intervener cites Article 60 (2) which governs the calculation of prices on a 'base

point' such as was used in the Member States before the conclusion of the ECSC Treaty and such as is known in the United States under the name of Basing Point Pricing. Not only does the Treaty's system of price-formation accept the 'falsification of geography' so severely criticized by the defendant in the field of transport, but it also imposes it by positive requirements. This point of view should also be taken into account in applying Article 70. It is not equality of treatment from the point of view of transport that matters, but equality of treatment as regards consumers within the Common Market placed in comparable conditions.

The *defendant* replies that this attempt to justify the rates and conditions at issue must fail on grounds both of form and of substance.

The 'form given to the prohibition on discrimination concerning prices in Article 60 (2)', which the intervener sees in the authorization to choose the base point, allows the undertakings of the Community, as sellers, to fix their own base point freely within certain limits, and thus possibly to influence their own location. Transposed to Article 70, that authorization could at the most allow those offering transport services (carriers) to alter their own geographical situation artificially by means of their rates. Yet the intervener is demanding that the carrier —that is to say, the Federal Railways—should take the geographical difficulties of its customers into account in its scale of charges.

The other point is that the economic principle of the Treaty, such as it is expressed in particular in Article 60—and the expression 'for these purposes' clearly relates to the reference made at the beginning of the first paragraph thereof to Articles 2, 3 and 4 of the Treaty—certainly does not *a priori* forbid an undertaking from taking into account the competitive advantage or disadvantage of its own geographical situation by measures which it itself takes. All reductions in prices and in charges for carriage made simply on the grounds of the customer's disadvantage arising from his geographical location is strictly prohibited. The same must be true of the first paragraph of Article 70: the carrier does not have the right to grant special rates and conditions on the sole ground that certain users are at a geographical disadvantage.

In Case 9/58 the *applicant* also alleges that the first paragraph of Article 70 of the Treaty does not contain law which is directly applicable and that the only effect of the said provision is to establish a programme. It is argued that it is *a priori* impossible to believe that the first paragraph of Article 70, which consists of one short sentence, contains a prohibition which is perfectly defined and applicable in practice to a group of questions for which the provisions contained in the United States' Interstate Commerce Act cover several pages.

To this the *defendant* replies that the applicant's proposition is refuted, first, by the unanimous opinion of the governments which negotiated the Treaty and signed it. According to the case-law of the Court, the rules contained in Article 4, and elaborated by Article 70 as regards transport, are directly applicable. Admittedly, the French text of the second paragraph of Article 70 provides that discrimination in matters of transport based on the country of origin or destination shall be prohibited 'in particular' (*notamment*), but that presupposes a general prohibition on discrimination in matters of transport.

(c) In case the Court should not accept the proposition that the special rates and conditions at issue are not covered by Article 70, the *applicants* allege that the High Authority wrongly refused to grant the authorization for which the fourth paragraph of Article 70 of the Treaty makes provision.

1. They stress that the second paragraph of Article 2 of the Treaty sets the Community the objective of progressively bringing about conditions which will of themselves ensure the most rational distribution of production at the highest possible level of productivity.

The most rational distribution of produc-

tion exists when reasonable economic considerations justify the initial introduction and the maintenance of production in given conditions.

The *defendant* replies that the applicants fail to understand the purpose stated in the second paragraph of Article 2. According to the Treaty the most rational distribution of production must be guaranteed by taking into consideration the conditions, such as they are, of the Common Market.

This 'economic principle' of the Treaty completely excludes the falsification of the geographical location and natural conditions affecting undertakings by manipulating transport rates and conditions.

2. According to the *applicants*, the High Authority did not have the right to refuse to give its agreement to the special rates and conditions because, in so refusing, it contradicted the first and second paragraphs of Article 2 and paragraphs (a), (b), (e) and (f) of Article 3.

That refusal means that either immediately or in the long-term it will be virtually impossible for the applicants to remain competitive, by reason of the heavier charges arising from the application of the general rates and conditions.

Since several undertakings in the same regions would all be affected in a similar way, grave and persistent disturbances could arise (last phrase of the second paragraph of Article 2).

The *defendant* is of the opinion that in adopting the contested decisions it took sufficiently into consideration all the objectives of Article 2. It points out that as regards certain undertakings situated near to the interzonal frontier it took their special circumstances into account and that, for that purpose, it either granted extensions of the period for the abolition of certain rates, or announced that an appropriate special rate was likely to be authorized at a later date.

On this point it should also be pointed out that the defendant expressly declares that the discretion which it exercised is not subject to review by the Court.

The evidential value of the 'general opinion' put forward by the applicants appears doubtful to the High Authority for simple reasons of principle. According to the fourth paragraph of Article 70 it is the duty of the High Authority to harmonize the principles of the Treaty. The requirement of being 'in accordance with the principles of this Treaty' is an imprecise legal concept. In every case, the High Authority has a margin of discretion within which not one but several decisions are legally possible.

3. The *applicants* also say that the High Authority bases itself on an erroneous assumption when it starts from the proposition that special rates and conditions are, by definition, discriminatory.

They point out that Article 70 distinguishes between two kinds of special internal rates and conditions, namely the rates and conditions mentioned in the second paragraph and those mentioned in the fourth paragraph. Under the first of these provisions, the rates and conditions which it covers must be considered as discriminatory. It has been unanimously accepted that a different set of rates and conditions *on the same line* would in any case be considered as discriminatory, but other rates and conditions have been subjected to an entirely different body of rules. This difference in treatment can only mean that the Treaty is not be taken as having decided *a priori* the question whether a set of 'special internal rates and conditions' is or is not discriminatory. According to the applicants, the High Authority is mistaken in treating special rates and conditions *a priori* in the same way as protective rates. They also allege that the fourth paragraph of Article 70 does not constitute an exceptional provision, which would mean that the authorization of a set of special rates and conditions would be legitimate only in special circumstances.

The *defendant* replies that protective rates in favour of coal and steel undertakings are by nature discriminatory. They are contrary

to a series of objectives and principles of the Treaty (second paragraph of Article 2; Article 4 (b), and also (c); first paragraph of Article 70). They also include certain prohibitions—notably the prohibition on discrimination—of an *absolute* character.

But this absolute prohibition on discrimination in the field of transport is only applicable, pursuant to Article 4, 'as provided in this Treaty'. One of the provisions of the Treaty to which reference must be made for present purposes is the fourth paragraph of Article 70. It empowers the High Authority to authorize special internal rates and conditions in the interest of certain coal-or steel-producing undertakings provided that the said rates and conditions are 'in accordance with the principles of this Treaty'.

The principle that discrimination is absolutely prohibited is thus tempered by the requirement that it must be adapted to the other objectives and principles of the Treaty in every individual case.

In such a confrontation the provisions ensuring general protection (the prohibition on discrimination) and the provisions ensuring individual protection (the exceptional grant of protective measures) will always be in mutual opposition to each other. This opposition must be resolved in a fair and rational way. The defendant thinks that it has resolved it, in the exercise of the discretion which it possesses for this purpose, by deciding that the prohibition on discrimination (and thus in so far as applicable the prohibition on subsidies) should be treated as a secondary consideration when the furtherance of certain equally important objectives and principles of the Treaty so require.

D — Misuse of powers

According to the *applicants,* the High Authority has used the powers which it possesses under the fourth paragraph of Article 70 and Article 10 of the Convention for the furtherance of objectives the achievement of which is not or is no longer provided for by the Treaty. On this basis, the applicants claim that the High Authority is guilty of a misuse of powers in respect of Articles 2, 3, 4, 67 and 70 of the Treaty and Articles 1, 10 and 23 of the Convention.

The *High Authority* takes the view that since the applicants have not alleged any new facts and in reality do no more than repeat their complaints that the Treaty has been infringed, there is no need for it to produce an answer on this point. It concludes that the complaint is unfounded.

E — Infringement of essential procedural requirements

The *applicants* are of the opinion that the High Authority, in failing to mention in the contested decisions the reasons which led it to make the comparison mentioned in the first paragraph of Article 70 only from the point of view of transport, has infringed essential procedural requirements (insufficient statement of reasons).

They put forward the same complaint in respect of the fact the High Authority, in its decisions, did not include a definition of the particular reasons which, in its opinion, would justify the maintenance of the special rates and conditions.

The *High Authority* is of the opinion that the first complaint is unfounded. Moreover, it takes the view that it was neither necessary nor possible to give an abstract definition of the 'special reasons' in order to justify individually the decisions concerning the applicants.

It is appropriate to summarize separately the arguments devoted to certain particular points in Cases 17/58, 18/58 and 26/58.

Cases 17/58 (Maximilianshütte) and 26/58 (Luitpoldhütte)

In its decision on the carriage of coal the High Authority deals with special rate 6 B 31 (III, B). It considers that that rate, in so far as it concerns the supply of coal and coke, is partly justified by the location of the undertakings concerned near the interzonal frontier. Taking into account the fact that before the war the two undertakings already enjoyed reductions in rates of 13% of

general rate 6 B 1 for the carriage of coal, the High Authority is of the opinion that that portion of the reduction ought to be removed from the present rate and considers it desirable and necessary to set the amount of the reduction in rates at 8% of the above-mentioned general rate.

The *applicants* make the following objections to this part of the decision:

(a) The High Authority has not stated the reasons which led it to cut down the amount of the reduction in rates to 8% of the aforementioned general rate.

(b) The decision is also erroneous in substance. The High Authority was wrong in evaluating the two factors which jointly make up the amount of the reduction in rate of 21% at 13% and 8% respectively: (a) 13%—protective measures and (b) 8%—compensation for losses arising from the establishment of the interzonal frontier.

(c) The High Authority, having accepted the proposition that a special rate was justified by reason of the location near the interzonal frontier, should, in application of the fifth paragraph of Article 70, have left the decision as to the desirability and necessity of any reduction in rates to the national authorities, and in particular to the Federal Railways.

The *defendant* refers to the text of the decision itself in order to show that it took all the circumstances affecting the matter into account, and that the reasons which it gave on this point are not so cursory as the applicants would have it.

It admits that the quantifying of each of the two partial percentages mentioned above can give rise to differences of opinion, For its part, the High Authority took the view that the most reliable and the most suitable method was to be found in the history of the introduction and development of the rate in question. It was precisely because it realized that future experience might show its assessment to have been inaccurate that it made provision for the possibility of postponing the last 4% increase to be made in the rate (decision on coal, III, B, 3, fourth paragraph).

Furthermore, Article 70 of the Treaty does not provide any support for the applicants' proposition according to which the Federal Railways alone have power to take decisions concerning their own reductions in rates.

The *applicants* stress the curious nature of the difference between Nos 1 and 2 of Chapter III, B, of the decision.

The decision states that the reduction in rates granted for the transport of brown coal briquettes is in accordance with the Treaty because the transport thereof is necessary for political reasons.

Yet as regards the supply of coal and coke, the decision cuts down the accepted reduction in rates to 8% of the general rate.

Thus, in the applicants' opinion, it is perfectly clear that as regards coal the High Authority has not accepted the reduction in rate that it completely accepted in the case of brown coal, for the sole reason that the applicants were granted a reduction in the rate before the beginning of the political difficulties which, as the High Authority accepts, give rise to a right to compensation. the High Authority has refused to accept the possibility of compensation for 'political damages' as a factor in the amount of the reduction in rate.

Case 18/58 (Ilsede-Peine)

A — Infringement of essential procedural requirements

The *applicant* alleges, first, that the High Authority has infringed essential procedural requirements in Chapter II and Chapter III, C, 2 and 3, of its Decision of 9 February 1958 on the carriage of mineral fuels.

After setting out, in the first paragraph of Chapter III, C, 2, the facts relating to Article 71 (b) of the scale of dues for navigation on the Mittellandkanal, the High Authority, in assessing this situation from the legal point

of view, limits itself to declaring in the second paragraph that the reduction granted to the undertakings at Peine and Salzgitter constitutes a discriminatory measure in relation to undertakings placed in comparable conditions from the point of view of transport. Thus, the High Authority does no more than repeat or describe in somewhat different terms that which Article 4 (b) or the first paragraph of Article 70 of the Treaty define as discrimination. The *defendant* replies that the reasons given for the contested decisions are conclusive.

If the applicant finds the criterion 'from the point of view of transport' which is found therein inaccurate in law, it cannot complain that the reasons put forward by the High Authority are insufficient. The most it can do is allege that the Treaty has been infringed. The allegation of infringement of procedural requirements is based on a confusion between the formal statement of reasons and the question whether the reasoning is well-founded.

B — On the question of *ultra vires*

It should be noted that the *applicant* does not raise the question whether, on 9 February 1958, the High Authority still had the power to take the contested decisions. However, it alleges that:

(a) Article 71 (b) of the scale of dues for navigation on the Mittellandkanal concerns toll charges appertaining to public law levied in connexion with the use of the canal, and the High Authority does not have the right to encroach upon the fiscal sovereignty of the Member States.

(b) Even if it were admitted that these payments were within Article 70 of the Treaty, the High Authority ought to have examined all the fiscal systems of the Member States in so far as they bear upon transport by inland waterway.

(c) The applicant adds that in any event Article 70 does not apply to the existing rate, because it is applied to all the undertakings situated in a given region, such that it cannot be of a discriminatory nature.

The *High Authority* replies:

On point (a):

It is not taxes which are involved here, but payments for the use of certain services. Article 70 covers all the elements of the price of transport by canal, whether they be transport costs in the narrow sense, towing charges (for the movement of barges) or navigation dues for the use of the canal.

On point (b):

This complaint is extraneous to the present case. An examination of the special internal rates and conditions of a Member State pursuant to the fourth paragraph of Article 70 is not subject to the condition that identical examinations must be undertaken in other Member States. Nor is the complaint based on fact. Starting in 1953, the Committee of Experts on transport matters has studied all the rates charged on the canals of the Community. The purpose of the study has been the elimination of any discrimination pursuant to the second paragraph of Article 70.

On point (c):

It clearly appears from the official text of the scale of charges for the Mittellandkanal and the canals of West Germany, as regards Article 71 (b) of the scale, that the said provision only has a *limited field of application*, both in respect of the despatch and the receipt of goods.

C — Infringement of the Treaty

In case the Court should accept the proposition that the rate at issue falls within Article 70, the *applicant* alleges that the refusal to grant an authorization constitutes an infringement of the fourth paragraph of the said article.

It stresses in particular:

(a) The rate at issue is intended to counteract competition from another means of transport. This rate was introduced in 1950 with a view to re-establishing competitive parity in respect of rates for

carriage by rail, which had been reduced in 1949 by special rate 6 B 33.

(b) In view of the fact that the High Authority applied the fourth paragraph of Article 70 to certain undertakings in the region of the Upper Palatinate located near the interzonal frontier, it no longer has the right to refuse to apply the said provision to other undertakings situated near the aforesaid zone.

The *defendant* replies:

On point (a):

Article 71 (b) of the scale of dues for navigation on the Mittellandkanal and special rate 6 B 33 are both special rates; they grant reductions on the corresponding normal rates. However, one special rate cannot be explained at law with reference to another for reasons of competition.

On point (b):

It is not denied that in principle it is possible for the applicant to receive aid in accordance with the fourth paragraph of Article 70. However, upon completing its inquiries, the High Authority was not convinced that the applicant was in need of aid.

The *applicant* takes the view that the distinction between being eligible for aid and the need to be aided puts an unacceptable restriction on the scope of the fourth paragraph of Article 70.

It asserts that it has suffered serious loss by reason of its location near the interzonal frontier. This fact has diminished its profitability and increased its vulnerability when any crisis arises. It may therefore, although not requiring aid, expect to receive compensation from the State in the form of measures of economic policy designed to strengthen its competitive position.

On this point, the *defendant* replies that by requiring, in addition to the condition—accepted by the applicant—of eligibility to receive aid, a specific need for aid, it does not thereby 'illegally' restrict in any way 'the scope of the fourth paragraph of Article 70'. The necessity for a protective measure can hardly exist when undertakings, as is the case with the applicant, have no need of tangible aid in the form of a reduction in rates, taking into account their economic and financial situation. The reduction of 7/10 in Article 71 (b) can at the most improve the financial situation of the applicant. But it is *not necessary* for ensuring that the objectives and principles of the Treaty are realized.

IV — Procedure

The applications were lodged within due time and the parties observed the prescribed formalities.

In their replies the applicants in Cases 3/58, 4/58, 12/58, 14/58 and 18/58 withdrew their conclusions concerning the provisions of the contested decisions relating to special rates 7 U 6, 7 B 35, 7 U 4, 7 B 3, and 6 B 33.

The Court, by decisions of 17 March, 17 April, 21 April, 23 April, 5 May and 11 May 1959 accepted requests to intervene from the following legal persons:

Land of Lower Saxony,
Land of Bavaria,
Land of Rhine-Palatinate,
Land of North Rhine-Westphalia,
Land of Baden-Württemberg,
Land of Hesse.

At the hearing on 2 December 1959 the Court—acceding to the applicant's request—called upon the High authority to produce a certified true copy of the minutes of the meeting of the High Authority of 9 February 1958 and of the annexes relating to the contested decisions.

The High Authority complied with this request on 3 December 1958.

The applicant in Case 18/58 asked for permission to amend its conclusions so that they be read as covering also Article 65 of the scale of dues for navigation on the Mittellandkanal, by reason of the fact that since the date of the lodging of the application,

tion, Article 71 (b) of the said scale had been incorporated in the new text of Article 65.

The defendant declared that it was not opposed to this request.

In its decision of 8 December 1959 the Court, in answer to the applicants' request of 4 December 1959 that measures of inquiry be undertaken, decided that no purpose was to be served by proceeding to such inquiries.

At the hearing on 9 December 1959 the advocate of the applicant in Case 17/58 asked the Court to require the defendant to produce the reports prepared by the experts of the transport division of the High Authority concerning the economic situation of the applicant and the effects of a possible increase in the special rate which it was being charged.

At the same hearing the defendant invited the Court to reject this request.

Apart from the matters set out above, the procedure followed its normal course.

Grounds of judgment

Jurisdiction

1. The applicants, pointing out that the power conferred on the High Authority by the seventh paragraph of Article 10 of the Convention expired on 9 February 1958. deny that the High Authority had the power to take the decisions notified by letter of 12 February 1958.

It appears from the oral arguments and from the explanations furnished at the hearing that those decisions (communicated by letter of 12 February) were adopted on the evening of 9 February 1958 and that all the details of those decisions were fixed on that date, as is proved by the production of the drafts discussed at that meeting and by the minutes thereof.

It also appears from information produced by the parties that the fact that those decisions were adopted only on the last possible date of 9 February is to be explained by a last-minute approach by the Federal Government asking the High Authority to reconsider its position, which was already well known, and by the desire on the part of the High Authority not to fail in its duties in respect of that government, which led it to postpone the formal adoption of those decisions so as to be able to deliberate upon them afresh.

In order to enter into force, those decisions had to be notified to the Federal Government and, in accordance with the rules of good administration, notified as quickly as possible—which was done. Nevertheless, that does not in any way alter the fact that in this case the decisions were adopted during the transitional period.

Thus there is no doubt that the contested decisions were taken within due time.

2. In Case 18/58 the applicant has also argued that the High Authority had no power to take a decision concerning Article 71 (b) of the scale of dues for navigation on the Mittellandkanal because that scale lays down toll charges governed by public law and, therefore, covers a matter attributable to the fiscal sovereignty of the Member States.

This argument must be rejected in view of the fact that what is involved is payment for the use of public means of transport and that the payment constitutes one of the components of the cost of transport by waterway. Thus the High Authority did not exceed its powers when it took the view that the reduction of that payment constituted the establishment of a special rate for transport within the meaning of the fourth paragraph of Article 60.

The same applicant also alleges that the High Authority ought not to have decided a question relating to transport by waterway incidentally in a decision which otherwise only covers rates and conditions of carriage by rail. Before adopting any decision, the High Authority ought, it is argued, to have examined all the fiscal systems of the Member States in so far as they concern transport by inland waterway.

This argument must also be rejected.

In view of the direct influence of the aforementioned Article 71 (b) on special rate 6 B 33 the High Authority rightly examined the legality of the said article. It was particularly justified in so doing because it appeared from its investigations on this point that no similar case existed.

Finally, as regards the necessity for a preliminary examination suggested by the applicant, it should be noted that the Treaty nowhere lays down any such requirement.

The submission as to infringement of the Treaty

1. The applicants allege that by reason of the economic and social consequences which may follow from the abolition of the special internal rates and conditions, the interested parties are entitled to claim the grant of the aids provided for in Article 23 of the Convention on the Transitional Provisions.

Since the abolition of the rates at issue was decided upon after expiry of the transitional period or on the eve of the expiry thereof, the High Authority is said to have deprived the applicants of the possibility of claiming those aids.

The applicants' complaint cannot be accepted because at the time when the abolition of the rates at issue was decided upon the applicants were not deprived of the right or of the means of claiming the grant of the abovementioned aids.

In fact the last paragraph of Article 23 of the Convention provides that aid may be granted by decision of the High Authority with the assent of the Council during the two years following the end of the transitional period.

If no loss has been incurred during those two years, this situation is partly due to the fact that the Federal Government has not carried out the contested decisions.

Therefore the complaint can hardly be levelled against the High Authority that this failure to carry out the decisions prevented the undertakings from claiming the aid provided for by Article 23 of the Convention within due time.

2. The applicants allege that the High Authority, in applying the seventh paragraph of Article 10 of the Convention, has misinterpreted Article 70 of the Treaty to which that article refers.

(a) As regards this matter, the Court intends to examine first an argument put forward separately by the applicant in Case 9/58.

The latter has alleged that the first paragraph of Article 70 does not contain law which is directly applicable and only establishes a programme.

This interpretation does not accord with the expressions employed in that article, which states in the second paragraph that 'Any discrimination . . . shall be prohibited', in the third paragraph that 'The scales etc. *shall be* published or brought to the knowledge of the High Authority' and especially in the fourth paragraph of that article which states that 'The application of special internal rates and conditions . . . shall require the prior agreement of the High Authority, which shall verify etc.', which agreement may be temporary or conditional.

It appears from the context set out above that the first paragraph imposes—both on the States and on the High Authority—a substantive and binding rule requiring the application of the provisions of Article 70.

Moreover, that rule follows directly from Article 4 which formally provides that 'The following . . . . shall . . . be abolished and prohibited . . . (b) measures or practices which discriminate . . . in . . . transport rates'.

(b) Secondly, the applicants challenge the interpretation put by the High Authority upon the first paragraph of Article 70, which provides that comparable rates and conditions are to be offered to comparably placed consumers. They allege—contrary to the point of view of the High Authority, which only considered the criterion of comparability 'from the point of view of transport'—that comparison between undertakings must take into account all the circumstances in which they are placed, in particular the place of production, the profitability of the deposits worked and the fact of being located in a less favoured region.

However, this argument must be rejected.

First of all, the abovementioned provision appears in the chapter headed 'transport'. It is therefore necessary to interpret the phrase 'comparably placed' as referring, at least in principle, to the comparability of situations from the point of view of transport.

Moreover, the opinion that any comparison between several undertakings must take into account all the circumstances in which they are placed would lead to the result that an undertaking is only comparable with itself, and thus the concept 'comparably placed' and, therefore, that of 'discrimination' would become devoid of all meaning.

It appears from Article 4 of the Treaty that in Article 70 the intention of the authors of the Treaty was to eliminate distortions in the Common Market by the harmonization of transport rates and conditions and thus to ensure that the Common Market would function according to the principles established by the Treaty.

In giving expression to that intention, they cannot have been unaware that the transport industry constitutes a branch of industry which is independent of that of the production of coal and steel and that it has its own problems, needs and procedures. Nor can they have failed to understand that so long as that industry has not been integrated into the Common Market its distinct nature must be respected and that measures taken must be confined to those necessary to prevent it from jeopardizing the objectives of the Treaty by its actions.

Therefore, as regards international transport, Article 70, whilst envisaging the future harmonization of national rates and conditions, leaves tariff policy uncontrolled and confines itself to the requirement that within each national system any discrimination based on the point of departure or destination must be abolished.

Similarly—as is shown by the fifth paragraph—in respect of internal transport, Member States are free to practise their own commercial policy, subject to the provisions of the Treaty.

There can be no doubt that the States or transport undertakings would come into conflict with those provisions if, in setting their rates and conditions, they took into account the advantages and disadvantages of the location of undertakings producing coal and steel or the quality of the deposits worked.

The Treaty requires rather that in drawing up their tariff provisions the States should consider transport conditions alone and, therefore, the comparability of the different routes and locations from the point of view of transport.

(c) The intervener, the Land of Hesse, has also defended the argument that Ar-

ticle 70, in speaking of comparable conditions, does not mean comparability from the point of view of transport, but the creation of comparable situations in the Common Market, such that differences in situation between the undertakings are to be compensated by the rates set.

This interpretation must be rejected simply because the Treaty only provides for a very partial integration of transport.

This argument presupposes a much more complete integration of the transport markets of the different Member States and a more active intervention on the part of the High Authority than is provided for by the fourth and fifth paragraphs of Article 70.

For those same reasons, any attempt to treat the application of Article 70 as analogous to the practice of the United States Interstate Commerce Act is clearly inadequate. The Interstate Commerce Act is directed, first, at a total and much more wide-ranging control of transport rates and, secondly, at a true federal transport policy. The High Authority has no such power. Its task is limited simply to protecting the common market in coal and steel from encroachments and distortions by the States or the transport industry.

3. The applicants have also argued that the High Authority is mistaken in seeing discrimination in every special rate.

On the contrary, they say, discrimination only exists where the application of special rates directly causes third parties to suffer loss.

The concept of discrimination does not imply, by definition, the fact that direct damage is caused. The meaning of this concept is primarily that unequal conditions are laid down for comparable cases.

The application of such unequal conditions may, it is true, bring about damage, which can then be considered as the consequence by which that discrimination may be detected.

However it would be arbitrary to reduce the concept of discrimination solely to those cases of unequal treatment in which the interested parties in fact suffer damage.

Thus proof that a special internal rate does or does not set other undertakings at a disadvantage cannot be decisive, for an exact comparison is only possible between transport carried out on the territory of one and the same State.

Accordingly, it is appropriate to reject the applicant's proposition according to

which the said rates are covered by the fourth paragraph of Article 70 only when it has been proved that they cause immediate and direct loss to third parties.

4. The fourth paragraph of Article 70 provides that the application of special internal rates and conditions in the interest of one or more coal- or steel-producing undertakings shall require the prior agreement of the High Authority.

Contrary to various opinions put forward during the course of the procedure, it is to be noted that the wording of the abovementioned provision covers not only rates specially adopted in the interest of certain undertakings (a subjective criterion), but also all special rates which, whatever the reason for their introduction, are advantageous to one or more undertakings (an objective criterion). Thus the fact that a special rate has been adopted for reasons which are entirely foreign to the interests of the undertaking deriving an advantage cannot in any way exclude or restrict the application of the fourth paragraph.

Where the special rates and conditions are in accordance with the principles of the Treaty the High Authority cannot withhold its agreement.

Such conformity must, as the High Authority has correctly understood, be presumed in each case in so far as the special rate is justified by specific conditions relating to the transport market.

5. The applicants complain that the High Authority did not also take into account considerations of general economic policy such as whether it was expedient to approve protective measures which might appear desirable in favour of critical areas and underprivileged regions. In support of their argument they point to the provisions of the second paragraph of Article 2 and Article 3 (a), (d), (e) and (g).

The fifth paragraph of Article 70 does indeed ensure respect for the sovereignty of the Member States as regards their general policy on transport. However, the provisions of Article 4 and also the other paragraphs of Article 70 run directly counter to the idea that the Member States are free to include the coal and steel industry in any policy for the siting of industries, or to continue the practice of subsidies in the form of the grant of special rates and conditions to undertakings producing coal and steel. For if this power remained available to the six Member States it could prevent the establishment of the Common Market, particularly since the principles of general transport policy adopted in the six countries are different.

The applicants have also referred to Article 2 of the Treaty which provides that 'The Community shall progressively bring about conditions which will of themselves ensure the most rational distribution of production at the highest possible level of productivity, while safeguarding continuity of employment and taking

care not to provoke fundamental and persistent disturbances in the economies of Member States'.

This provision, while expressing two reservations, clearly states the essential objective of the Common Market, according to which the general policy of the High Authority must be to promote—and this also applies in the application of Article 70—the progressive establishment of conditions which will of themselves ensure the most rational distribution of production.

The authors of the Treaty realized that this policy could have the result that certain undertakings might be forced to cease or change their activity. This appears in particular from the Convention on the Transitional Provisions, of which the seventh paragraph of Article 10 has been applied in the present case.

The Convention makes provision both for establishing the common market by putting an end to situations which are incompatible with the principles of that market and are of such a nature as to jeopardize the achievement of the objectives defined notably in Articles 2 and 3, and for remedying the disadvantageous consequences which the establishment of the Common Market could have in certain cases.

It expressly provides, in Article 23 in particular, for measures of readaptation, which can even take the form of the setting up of new undertakings not subject to the Treaty, and for assistance both to undertakings and to workers.

The fact that the contested decisions might result in a temporary reduction in employment and in the closure of some undertakings cannot render these decisions illegal on grounds of infringement of Articles 2 and 3. It could even be argued that, on the contrary, such measures are necessary in order to enable the Common Market to achieve its stated objectives, since the disappearance of undertakings which could not continue to exist by their own unaided efforts, but only with the help of constant and massive subsidies, would strengthen its resistance to crises.

However, the figures and calculations submitted to the Court do not provide sufficient evidence at law for the proposition that full employment and the profitability of the undertakings are seriously threatened by the contested decisions. Moreover, nothing in those decisions stands in the way of a new request based directly on the fourth paragraph of Article 70 if, before the expiry of the periods laid down, the circumstances justify a new special rate.

It would in any case be contrary to the meaning of the Treaty to authorize existing special rates on the sole ground that it would be difficult or impossible for the undertakings concerned to adapt themselves to the Common Market.

If such were indeed the position, it would at the most have been open to the High Authority to lay down longer periods, but the applicants do not even set out any reasons for a complaint that the contested decisions set periods which were too short.

Therefore, neither Article 2 nor Article 3 of the Treaty may be relied on in support of the proposition that, in applying the fourth paragraph of Article 70, the High Authority is required, as a general rule, to authorize special rates when the profitability of an undertaking might be adversely affected if such rates did not exist.

6. On the contrary, when economic conditions in the transport sector do not require or justify special rates (which is the case notably when competition from another means of transport must be counteracted), it is only in exceptional cases that a special rate can be considered to be in accordance with the principles of the Treaty.

The High Authority has recognized the existence of such an exceptional case as regards certain undertakings situated near the interzonal frontier.

In that case, the disadvantages are created by factors which are not of an economic nature and in particular by political contingencies which have separated these undertakings from their natural market, with the result that they require support either to be able to adjust themselves to the new conditions or to be able to overcome this accidental disadvantage.

However, the High Authority was right, in view of the exceptional nature of that assistance, to have examined closely, prior to giving its approval to those special rates, the question whether in that case the undertakings concerned did or did not need support and to have based its decisions on the results of that examination.

Therefore it is necessary to reject the offer made by the applicants to produce evidence establishing that the damage suffered in particular by the Maximilianshütte and Luitpoldhütte undertakings since the establishment of the interzonal frontier greatly outweighs the advantage received from the reductions in rates granted until the present and therefore exceeds by an even greater margin the advantage of the reduction granted to those undertakings by the contested decision.

For that offer to produce evidence is based on the belief that compensation should be forthcoming for the whole of the loss occasioned by the establishment of the interzonal frontier.

As has been explained above, that belief is erroneous because it fails to understand the exceptional character of the assistance which may be granted under the fourth paragraph of Article 70.

The applicants also allege that the decisions taken in respect of the two undertakings mentioned above constitute an arbitrary measure in that the High Authority deducted from the 21% reduction previously granted the 13% reduction already in force before the last World War, which undeniably constituted a protective measure.

The Court is not of the opinion that this approach is irregular, in view of the facts, first, that other undertakings located in the same regions enjoy a reduction of about 8% and, secondly, that in its decisions the High Authority has made provision for a corrective margin of 4%.

The Court must also reject an argument put forward by the applicant Ilsede Peine (Case 18/58) that special transport rates may be authorized once it is established that the undertaking concerned is placed in conditions which justify a subsidy.

According to that argument, since it has been recognized that such conditions exist in the region situated near to the interzonal frontier, the applicant is entitled to claim the grant of a protective rate, even independently of the question whether it does or does not need a subsidy.

Since, in principle, the fundamental rules of the Treaty prohibit all subsidies and all protective rates, a special rate for transport could be granted to an undertaking situated near the aforesaid frontier only where the survival of the said undertaking depended on it.

The applicant has not alleged that it is in such a position.

The submission concerning infringement of essential procedural requirements

1. The applicants allege that insufficient reasons are given for the decisions because they do not state the reasons for which, in applying the principle of comparability within the meaning of Article 70, the criterion of comparability 'from the point of view of transport' was alone taken into account, and also because those decisions do not set out in detail the reasons which, in the opinion of the High Authority, would have justified the retention of the special rates.

The Court accepts the defendant's argument according to which the High Authority was entitled to confine itself to setting out its interpretation of the first paragraph of Article 70 in a positive manner and that it was not in any way required to reject or to criticize other possible interpretations.

The Court rejects the applicants' allegation that the High Authority was obliged to enumerate exhaustively the reasons which, in application of the fourth para-

graph of Article 70, could have justified the retention of special rates. On the contrary, it must be accepted that the High Authority could confine itself to assessing the concrete cases which were submitted to it.

It should also be noted that the High Authority was scarcely justified in undertaking the development of a general theory on the subject-matter of the fourth paragraph of Article 70.

2. The applicants in Cases 17/58 and 26/58 allege that the High Authority has not given sufficient reasons for that part of the contested decision which involves the increase of tariff 6 B 31—in so far as it affects the carriage of coal—as the result of the cutting of the previous 21% reduction to 8%.

The Court takes the view that sufficient reasons are given for the decision on this point in that reference is made to a comparison established between the rates in force before and after the war.

3. The applicant in Case 18/58 also complains that the High Authority did not state the reasons for which it considered that Article 71 (b) of the scale of dues for navigation on the Mittellandkanal is discriminatory.

In reality this complaint merely expresses the fact, already examined, that special transport rates are not discriminatory by definition.

As has already been said, this complaint, in so far as it is put forward in support of the submission that the Treaty has been infringed, must be rejected.

Essentially, the said complaint does not concern the infringement of essential procedural requirements and therefore it cannot be accepted under this head.

The submission as to misuse of powers

Finally, the applicants argue that the High Authority has used the powers vested in it under the fourth paragraph of Article 70 and Article 10 of the Convention on the Transitional Provisions to ends for which the Treaty does not provide or for which it no longer makes provision, and on this account they assert that there has been a misuse of powers.

In putting forward this assertion, the applicants rely on facts already advanced in support of the submission as to the infringement of the Treaty.

This submission has been put forward in a vague and imprecise manner. The Court must therefore confine itself to a finding that the existence of a misuse of powers in relation to the applicants does not appear to it to be established by the facts such as they have been presented.

The submission concerning a misuse of powers must be rejected.

Costs

The applicants and the interveners have failed in all their submissions and must therefore bear all the costs.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the oral observations of the parties;
Upon hearing the opinion of the Advocate-General;
Having regard to Articles 2, 3, 4, 15, 33, 37, 60, 67, 70 and 88 of the Treaty establishing the European Coal and Steel Community, and to Articles 1, 10 and 23 of the Convention on the Transitional Provisions annexed to that Treaty;
Having regard to the Protocol on the Statute of the Court of Justice of the European Coal and Steel Community;
Having regard to the Rules of Procedure of the Court of Justice of the European Coal and Steel Community, and to the rules of that Court on costs,

THE COURT

hereby:

1. **Dismisses the applications as unfounded;**
2. **Orders the applicants and the interveners to bear the costs.**

Delivered in open court in Luxembourg on 10 May 1960.

Donner Delvaux Rossi
Riese Hammes

A. Van Houtte
Registrar

A. M. Donner
President