In failing to indicate in what way the aims of the economic policy pursued by the Belgian Government are contrary to those which the High Authority was entitled to pursue the applicant has not given proof that the High Authority sacrificed the ligitimate interests of Belgian producers to the benefit of the policy of their Government
(Convention, Art. 26).

7. *Transitional period — Belgian coal — Selling prices — Compulsory fixing of prices without equalization*
The reduction or even withdrawal of equalization in only certain individual cases does not result in the types referred to in those exceptional cases being placed outside the price list, since there can be only one price list resulting from the application of Article 26 (2) for all consumers of Belgian coal
(Convention, Art. 26).

8. *Transitional period — Belgian coal — Reduction and withdrawal of equalization*
The payment of differing rates of equalization on the basis of physical conditions of production tends to ensure that comparable cases receive comparable benefit and, therefore, to avoid discrimination. Equalization need not necessarily cover the entire difference between the reduced selling prices and receipts at the beginning of the transitional period, since it is only a necessary protective measure to avoid hurried and dangerous shifts in production levels. The Convention does not provide for any guarantee that original levels of receipts will be maintained
(Convention, Art. 26).

9. *Transitional period — Belgian coal — Threat to withdraw equalization*
If certain undertakings were not carrying out the work of reorganization and re-equipment, such that they incurred liability, they would thus have deprived themselves by their own fault of the right to benefit from equalization
(Convention, Art. 26).

In Case 8/55

FÉDÉRATION CHARBONNIÈRE DE BELGIQUE, represented by Louis Dehasse, Léon Canivet, Pierre Delville and Henri Goudaillier, assisted by Paul Tschoffen, Advocate at the Cour d'Appel, Liège, and Henri Simont, Advocate at the Cour de Cassation of Belgium, Professor at the Université Libre of Brussels, with an address for service in Luxembourg at 6, Rue Henri Heine,

applicant,

v

HIGH AUTHORITY OF THE EUROPEAN COAL AND STEEL COMMUNITY, represented by its Legal Adviser, Walter Much, acting as Agent, assisted by G. van Hecke, Advocate at the Cour d'Appel, Brussels, Professor at the University of Louvain, with an address for service in Luxembourg at its offices, 2, Place de Metz,

defendant,

Application for the annulment of Decision No 22/55 of the High Authority of 28 May 1955 and of certain decisions of the High Authority resulting from its letter of 28 May 1955 to the Government of the Kingdom of Belgium concerning the adjustment of the equalization system *(Journal Officiel* of 31 May 1955, pp. 753–758),

THE COURT

composed of: M. Pilotti, President, J. Rueff and O. Riese (Presidents of Chambers), P. J. S. Serrarens, L. Delvaux, Ch. L. Hammes and A. van Kleffens, Judges,

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

gives the following

JUDGMENT

Facts

1. Procedure

In its judgment in the present case of 16 July 1956 the Court decided that the oral procedure would be reopened on 20 September 1956 and that it would be exclusively concerned with the level of estimated production costs for each type and category of Belgian coal at the end of the transitional period and their significance in relation to the prices fixed by Decision No 22/55. The parties were to lodge the additional information and details requested at the Court Registry on 1 September 1956. By order of 30 July 1956 the President of the Court postponed those dates at the request of the parties until 25 and 15 October 1956 respectively.
The parties submitted their observations on 15 October 1956.
The parties submitted oral argument during the hearing on 25 October 1956. At the same hearing the Advocate General reiterated his earlier opinion.

2. Summary of the information provided by the parties

The parties agree that it is not possible to establish separate estimated production costs for each type of coal within a category, since all the types within one category are extracted at the same time and under the same conditions. Furthermore, the parties agree that the coal should be grouped into the following four categories: fat coal B; fat coal A and ¾ fat; ½ fat; ¼ fat and anthracite.

The *applicant* considers that in its judgment of 16 July 1956 the Court decided that the parties must take the beginning of 1955 as the reference period. It also maintains that 850 kg must be taken as the foreseeable output in 1955, which is the figure accepted by the defendant in the joint reply to the questions raised by the Judge-Rapporteur in June 1956. As regards the grouping of the categories, the applicant

maintained at the hearing that it is necessary either to group together the categories fat coal A, fat coal B, ¾ fat and ½ fat, or all the categories, leaving out those types of coal to which the equalization arrangements no longer apply. However, neither of those groupings appears in the information provided by the applicant.

The applicant maintains that in assessing the estimated production costs the estimates of the subsidies which would be paid by the State to marginal mines in 1958 must not be taken into account, since the grant of the subsidies does not reduce production costs but simply results in making the State responsible for a part of them.

Furthermore, the applicant assesses the 'amortization' factor in the production costs at an average of 65 francs per metric ton. That figure is 27 francs higher than that put forward by the High Authority. The applicant maintains that amortization must be calculated on the basis of the value of the installations and equipment in 1955 at the time of the assessment, in accordance, first, with the general concept of 'facts and circumstances known when the assessment is made' adopted by the Court in its judgment of 16 July 1956 and, secondly, with the 'Directives concerning the Calculation of Amortization' which are valid throughout the Community and were confirmed by the High Authority in a letter of 23 July 1954.

The applicant maintains that a comparison of estimated costs and average selling prices gives the following result:

	Fat coal B	Fat coal A and ¾ fat	½ Fat	Fat coal A and B, ¾ and ½ fat	Anthracite and ¼ fat	All categories
Estimated production costs for the reference period 1955, without deduction of estimated subsidies for 1958, output 850 kg.	637	741	777	721	815	744
Real average selling prices	622	655	691	668	822	707

That table shows that the real average selling price of all categories together is lower than the average estimated cost of production and that the real average selling price of each category is lower than the corresponding average estimated cost of production, except in the case of fat coal B and anthracite and ¼ fat coal.

The *defendant* maintains that the Court has not yet ruled on the question which reference period must form the basis of the assessment of the estimated production costs. It adheres to its earlier argument that 1952 must be taken as the base year. During the course of the hearing the defendant stated that the calculations must be based on the output of 819 kg assessed in 1952 and claims that it did not accept the figure of 850 kg for the reference period 1955, since that figure was inadequate. The defendant added that if the Court considers that 1955 must be taken as the basic reference period, the output figure must be raised to at least 900 kg, as it proposes to prove by means of a fresh investigation of the case on that point.

The defendant rejects the applicant's argument that 'amortization' must be calculat-

ed on the basis of the value of the installations and equipment at the time of the assessment. It cannot accept either the method used to calculate amortization or the resulting figures.

It considers that 38 francs, that is, the amount of the re-equipment grant fixed by the Belgian Government in 1947, must be regarded as the amortization figure. That figure is the minimum which the Belgian collieries were obliged to apply, by way or amortization, to the financing of investments. The 'Directives concerning the Calculation of Amortization' have only a limited aim, that is, the implementation of Article 2 (5) of the Convention in order to simplify and clarify the statistical information gathered by the High Authority. In order to show that the 'Directives' cannot apply in this instance the defendant points out that, for example, they enable the sum of 9 francs, representing depreciation of equipment which has already been entirely written off, to be included in the 'amortization' total.

The defendant considers that a comparison between estimated production costs and average selling prices produces the following result:

	Fat coal B	Fat coal A and ¾ fat	All types of fat coal	½ fat	¼ fat and anthracite	All categories
Estimated production costs, for the reference period 1952, with deduction of estimated subsidies for 1958, output 819 kg.	610	703	661	731	766	704
Notional average selling prices	686	680	683	718	853	734
Real average selling prices	662	655	658	691	822	707

In order to explain the above table the defendant makes certain additional observations. The fact that the prices for, on the one hand, ½ fat coal and, on the other hand, fat coal A and ¾ fat together, are lower than the corresponding production costs is explained as follows: in a list of selling prices the respective positions of the different categories must be established on the basis of the value of the coal in question to the consumer. It is for that reason that the difference between the selling prices of fat coal A and fat coal B in no way depends on the difference between their respective production costs. Before the opening of the common market there was no difference between those selling prices, and the differences established at the beginning of the transitional period have remained constant since then. Since Article 26 (2) (a) does not specify whether the prices fixed by the High Authority must be determined on the basis of the average estimated production costs for 'all categories' or by category, the defendant considers that it must be determined on the basis of the average costs for 'all categories'. At the hearing the defendant added that since the action concerns the price list fixed in 1955 it appears to be more justified to consider the categories fat coal A and B and ¾ fat as a whole, since the modification of the price list of 1952 concerns those categories alone.

LAW

A — As regards decision no 22/55 of 28 May 1955

I. *Power of the High Authority to fix the price list and to do so at a reduced level*

In accordance with Article 8 of the Convention, the equalization machinery provided for in Part Three of the Convention shall be set up before the common market is established. Thus, from the beginning, the Convention exposes the Belgian coal market to the effects of the common market only through the application of special measures, and in particular the introduction of the equalization scheme. The measures in question are explained by the existence of a difference between Belgium and the other States of the Community resulting from disadvantageous conditions of production.
During the oral procedure the defendant explained the causes of that disadvantage. That explanation has not been contradicted and it appears to the Court to be correct. In fact, in Belgium:

1. Geological conditions are generally less favourable for production than in the countries whose prices dominate the common market, as is shown by the existence of a certain number of so-called 'marginal' mines;

2. Mining techniques are not so advanced, since for several years it was impossible to make the necessary investments; and

3. The level of wages is higher than in the other producing countries.

For all those reasons production costs in Belgium are higher than elsewhere, with the result that prices are higher than in the other countries. In order to integrate the Belgian market into the common market and to bring prices into line the Treaty seeks to neutralize that difference by reducing the difference in production costs by means of equalization payments on the basis of the arrangement provided for in Article 26 of the Convention. In order to bring the prices of Belgian coal into line with the ruling common market prices that article provides for all consumers of that coal to benefit from a reduction in prices and indicates the conditions which undertakings must satisfy in order to benefit from equalization, the date from which prices must be brought into line and the extent to which they must be reduced. The interests of consumers thus acknowledged require that the reduction of Belgian prices to the approximate figure of the estimated production costs must become fully effective without regard to fluctuations on the Belgian market. If, as the applicant has suggested, the prices were brought into line by a rise in the ruling common market prices rather than by a reduction in Belgian prices the equalization payments would be transformed into a subsidy for which there is no reason or purpose.

Under the terms of Article 26 of the Convention the existence of a situation in which equalization is justified implies the need to lower the level of Belgian prices to a more or less fixed limit resulting from a general assessment based on estimated production costs in Belgium at the end of the transitional period. On the other hand, it must be noted that the wording of Article 26 contains no specific indication of how prices are to be brought into line within the limits provided for, that is, whether the alignment is to be carried out by the undertakings themselves or by the High Authority acting on its own authority.

The applicant has maintained that the Treaty establishes a market system in which prices are fixed by the undertakings and that in the absence of any contrary provision, it is therefore the undertakings themselves which fix prices in this instance which, where they receive equalization payments, they must do at the level of estimated production costs. Thus the applicant does not rule out all intervention by the High Authority in the fixing of prices but limits it to the cases expressly provided for in the Treaty and in particular in Article 61 thereof.

The reduction of Belgian prices required by the Convention is an operation of considerable importance whose purpose is to prepare, under conditions of particular difficulty, for the integration of Belgian coal into the common market and which is inspired by the general interest of the Community in the gradual standardization of the common market in coal.

According to that argument, during the transitional period all those aims are subject to or fall essentially within the area of discretion of the Belgian collieries themselves. Such a result cannot be accepted.

Furthermore, the normal operation of a market economy would result in the formation of market prices on the basis of supply and demand which would be subject to continual fluctuation. During the transitional period prices of Belgian coal must be fixed and must remain at approximately the level of estimated production costs. That limit, which is fixed by means of a general assessment based, *inter alia,* on estimated improvements in the output of the mines and the effects of plans for the closure of marginal mines, is not subject to market influences. If the prices of Belgian coal were subject to the effect of supply and demand in the market, their reduction could not be guaranteed.

Finally, Article 61 of the Treaty is not applicable here. That provision provides for intervention only in cases of necessity to deal with temporary difficulties caused by excessive rises brought about by the normal operation of the market economy. To make use of that article to maintain prices permanently at an artificial level resulting from the assessment of estimated production costs at the end of the transitional period would be to use it otherwise than for its true objective. Furthermore, the awkward nature of the procedure under Article 61 does not fit in easily with the fixing of prices which are subject to revision as a result of modifications in the assessments of estimated production costs which are made as the transitional period comes to an end and as the plans are already being partly implemented.

Moreover, a fact which shows clearly that Article 61 was not intended to apply

to a case of this nature is that it requires preliminary consultation with the Consultative Committee and the Council 'as to the advisability of so doing and the price level to be so determined', that is, as to considerations of economic expediency. This case concerns quie another matter, that is, the assessment of future production costs in the light of expected improvements in output as a result of the implementation of plans for re-equipment and modernization, which is a purely technical matter. As regards the amount of the reduction, that is not open to discussion since it has already been determined by the Convention.

However, the applicant observed during the oral procedure that in so far as the undertakings do not perform the obligation to reduce their prices within the limits laid down in the Convention the High Authority possesses indirect methods of ensuring that the aim of Article 26 is realized, that is, it has the means of withdrawing equalization payments from undertakings which fail in their duties. As that method is sufficiently effective, the fixing of prices by the High Authority on its own authority need not be accepted as being indispensable.

The Court cannot accept that argument since in accordance with a generally-accepted rule of law such an indirect reaction by the High Authority to illegal action on the part of the undertakings must be in proportion to the scale of that action. For that reaon the High Authority can be empowered only to reduce equalization payments to the extent to which the undertakings have not reduced their prices within the stated limits. In that case, undertakings always have a clear interest in risking such a reduction in equalization and in preferring profits from prices which are too high in relative terms to higher equalization payments corresponding to any reduction in prices which they might have made, particularly since the funds available for equalization are on a sliding scale.

It results from the foregoing that indirect action on the part of the High Authority such as a reduction in equalization payments is insufficient to attain the objective of Article 26 (2) (a) of the Convention.

In those circumstances, it must be accepted that only direct action by the High Authority can guarantee the immediate reduction in prices which must necessarily accompany equalization.

During the oral procedure the applicant maintained that the absence from the Treaty of any provision expressly enabling fixed prices to be imposed precludes recognition of such a power by means of an interpretation which it regards as being wide and unacceptable in law. The Court does not share that opinion in so far as, as it has just observed, the power involved in this instance is one without which equalization cannot operate as provided for in Article 26 of the Convention, that is, on the basis of an immediate and guaranteed reduction in prices.

The Court considers that without having recourse to a wide interpretation it is possible to apply a rule of interpretation generally accepted in both international and national law, according to which the rules laid down by an international treaty or a law presuppose the rules without which that treaty or law would have no meaning or could not be reasonably and usefully applied. Furthermore, under the terms of Article 8 of the Treaty it shall be the duty of the High Authority

to ensure that the objectives set out in that Treaty are attained in accordance with the provisions thereof. It must be concluded from that provision, which is the guiding principle for the powers of the High Authority defined in Chapter I of the Treaty, that it enjoys a certain independence in determining the implementing measures necessary for the attainment of the objectives referred to in the Treaty or in the Convention which forms an integral part thereof. As, in this instance, it is necessary to achieve the aim of Article 26 of the Convention, the High Authority has the power, if not the duty, to adopt—within the limits laid down by that provision—measures to reduce the prices of Belgian coal.

The result is that the accomplishment of its task in this instance assumes a power to fix prices on the part of the High Authority. It must be acknowledged, however, that that power extends only to the aim of ensuring that all consumers of Belgian coal benefit from a reduction in the price of that product from the beginning of the transitional period and within the limits laid down in Article 26 of the Convention.

The applicant has further denied that the High Authority has the power to fix prices by maintaining that the sentence in Article 26 (2) (a) which states that 'The price list so fixed shall not be changed without the agreement of the High Authority' must be interpreted as prohibiting the High Authority from drawing up a table showing the level to which the prices of Belgian coal must be reduced in pursuance of Article 26 of the Convention. However, no such prohibition appears in the aforementioned provision; it is deduced therefrom by the applicant indirectly and *a contrario*. Such an argument is, in fact, acceptable only in the last resort when no other interpretation appears to be adequate or compatible with the text, the context and their objectives. That does not apply in this instance, however, since the wording of the text is explained by a desire to make any subsequent modification dependent upon the approval of the High Authority in cases in which the undertakings have reduced their prices on their own initiative and it has not therefore been required to intervene.

Although it emerges from the foregoing considerations that in this instance the action taken by the High Authority was clearly within the limits of its powers, it is still necessary to consider whether it misused its powers in relation to the applicant, as the latter alleges, by pursuing structural aims and by basing its action on the desire to reduce prices in view of certain difficulties affecting the marketing of coal when the contested decision was adopted.

The reduction in prices as a consequence of equalization is required by Article 26 of the Convention, which also lays down the extent of that reduction. There can therefore be no question of any misuse of powers since the only measure which the High Authority could take in order to pursue the objective of Article 26 was precisely that which consisted in reducing the prices of Belgian coal. In the absence of proof that the level of prices fixed by the High Authority when it adopted Decision No 22/55 was different from that which results from a proper fixing of prices within the meaning of Article 26 (2) (a) of the Convention, the aforementioned decison cannot be vitiated by misuse of powers. In fact, even

if it were proved—which it is not—that the High Authority was inspired by the desire to bring about certain structural changes or to obviate marketing difficulties by means of a reduction in prices, it merely sought to achieve a result which would in any event have been the inevitable consequence of the pursuit of the lawful aim of its action. Furthermore, the defendant cannot be criticized for having attempted, between 1952 and 1955, to perfect its rough assessments of the estimated production costs for 1958 nor for having obtained to that end, as it did, documents providing clarification in that respect. It emerges from the report of the Joint Committee responsible for examining equalization for the Belgian collieries, as well as from the High Authority's detailed calculations concerning the assessment of the level of estimated production costs that one of the aims of the High Authority was to reduce the prices of Belgian coal within the context of the scheme envisaged in Article 26 of the Convention and, in particular, within the limits imposed by that provision. Even if one unjustified reason were included among those which justify the action of the High Authority, the decision would not for that reason involve a misuse of powers, in so far as it does not adversely affect the basic aim of Article 26 of the Convention.
For the reasons set out above the first and second complaints in the application must be dismissed.

II. *Relationship between selling prices and estimated production costs*

The applicant has maintained that the High Authority misused its powers by fixing prices without taking account of estimated production costs at the end of the transitional period, with the result that the average price shown in the table published for that purpose is lower than estimated production costs.
Article 26 of the Convention determines the extent to which Belgian prices must be brought into line with those of the common market, on the understanding that if the ruling common market prices exceeded the level of estimated production costs in Belgium there would be no need to lower Belgian prices to the approximate level of estimated production costs since in that case the aim of bringing prices into line would already have been achieved.
Before examining the question whether the High Authority fixed prices at the level provided for it is necessary to consider whether it is true that—as the applicant alleges—the High Authority substituted Ruhr prices for those ruling in the common market without taking into account the artificially low level of Ruhr prices and the higher level of prices in certain other coalfields.
The defendant maintains that it wished to reduce the difference between Belgian prices and Ruhr prices within the limits fixed, since the fact that it has available the largest exportable samples of the types of coal covered by the equalization scheme means that the Ruhr exercises a 'price leadership' in the common market.
As regards that difference of opinion, the Court finds that by reducing the dif-

ference between Belgian prices and Ruhr prices and basing its action on the ruling Ruhr prices, that is, without taking account of their possibly artificial nature, the High Authority allowed a certain margin to remain between those two price levels. As regards the possibly artificial nature of the Ruhr prices the High Authority was entitled not to take that factor into account, since the question whether the ruling common market prices are determined by prices in the Ruhr is a question of fact which does not depend on the possibly artificial nature of the latter. As the High Authority did not fix Belgian prices at the level of prices in the Ruhr, it must be found that the applicant has shown that the prices fixed by the High Authority were, in a few exceptional cases, lower than those applying to certain other coalfields, in particular in the Aix-la-Chapelle, Nord and Pas-de-Calais fields. Only in those few cases has it been alleged that the High Authority exceeded the level of common market prices. However, the applicant has not referred to any fact or circumstance which would demonstrate that in the aforementioned cases the level of prices in the coalfields in question determined the level in the common market. In those circumstances it cannot be accepted that, in the present case, the prices fixed by the High Authority were lower than those in the common market.

The first question which arises is, therefore, whether or not in taking action to bring prices into line by fixing Belgian prices at a lower level than that previously in force the High Authority misused the estimate of production costs in 1958 which it was bound to make, since under Article 26 the level of those costs formed the limit of any reduction in prices which could be justified by the equalization scheme.

In fact, the aim of fully and finally integrating Belgian coal into the common market no doubt falls within the general ambit of the Treaty, but it exceeds the scope of the provisions of Article 26 (2) (a) of the Convention, which provide for integration only in so far as Belgian production costs permit at the end of the transitional period. During that period the provisions of Article 26 (2) (a) provide for a scheme of equalization which is limited in time. Equalization is thus linked to the trend in estimated production costs in order to ensure a corresponding trend in prices. It is possible that at the end of the transitional period a greater reduction in production costs will be necessary in order to bring about the final integration of Belgian coal into the common market; the achievement of that new objective will depend on the means available at that time, but that question does not concern Article 26 (2) (a) of the Convention and the system laid down therein. If, as the applicant alleges, the High Authority fixed the prices solely in order to bring them into line with those in the common market and had neglected the level of estimated production costs at the end of the transitional period, its decision would involve a misuse of powers and would have to be annulled. However, that is not the case here.

The applicant has failed to discharge its burden of proof to the effect that the defendant fixed selling prices contrary to the provisions of the Treaty, to the objective facts and to the interests of the Belgian collieries and that it assessed the

estimated costs of production for the coal in question in 1958 solely, or at least chiefly, in order to reduce the prices without taking account of the limit imposed by Article 26 (2) (a) of the Convention.

The different views held by the parties during the hearings as to the assessment of the costs of production for Belgian coal at the end of the transitional period relate solely to factors of a statistical nature, the evaluation of which for accounting purposes alone cannot prejudice the lawful nature of the contested measure, provided that that assessment does not show that in adopting that measure the High Authority pursued an aim other than that defined by Article 26 (2) (a) of the Convention.

Even if the defendant has committed certain errors in selecting the basis for its calculations, as is the case with regard to selection of the reference year and perhaps also with regard to amortization and the grouping of categories of coal, it is not to be held that its errors constitute *ipso facto* proof of misuse of powers unless it has also been established objectively that the High Authority pursued in this case, through a serious lack of care or attention amounting to a disregard for the lawful aim, purposes other than those for which the powers provided for in Article 26 (2) (a) were conferred.

In fact, as regards the establishment of the level of estimated production costs in 1958, it seems clear that—as regards the choice, *caeteris paribus,* of 1952 as the reference year rather than 1955, when the decisions in question were adopted—factors which were unforeseeable in 1952 and earlier were or could become foreseeable in 1955. It must also be observed that the defendant nevertheless mitigated or at least attempted to mitigate these errors by increasing either the selling price of coal or the amount of the equalization payments in the light of the increase in wages and of certain less important factors. The same applies to the fact that the defendant took account of estimates made in 1955 concerning the reorganization of the marginal mines (see the Report of the Joint Committee for Mines) and of certain subsidies and certain expenses for the renewal of plant by way of amortization without, however, accepting the rates of amortization entered in the undertakings' accounts. Whether those facts are considered together or individually they are characteristic of the justified desire and will of the defendant to make an ever more accurate assessment of the estimated production costs at the end of the transitional period.

As regards the division or 'grouping' of the coal according to type and category, the parties agree that a division according to category is alone possible. Before the judgment of 16 July 1956 was given and despite certain reservations on each side the parties put forward by common agreement a figure representing the average which results from grouping all categories together; in the light of those reservations they have now put forward and pleaded figures based on new groupings which are so different that it is difficult, if not impossible, to compare them. However, without going into the respective intrinsic merits of the different methods of grouping, it must be found that a detailed examination of them does not show that the method chosen by the defendant led it to disregard the limit formed

by the approximate figure for the estimated production costs for 1958 and to arrive at a result which conflicts with the alignment of coal prices in Belgium upon those in the common market.
For the reasons set out above the submission of misuse of powers is not well founded as regards the level of selling prices and the relationship between that level and the level of estimated production costs at the end of the transitional period.

III. *Intervention by the Belgian Government*

The applicant maintains that Decision No 22/55 reduced selling prices in order to serve the aims of the economic policy pursued by the Belgian Government and on the intervention of that Government, but it has failed to indicate in what way those aims are contrary to and have been substituted for those which the High Authority was entitled to pursue. The applicant has not given proof that when it adopted Decision No 22/55 the High Authority sacrificed the legitimate interests of Belgian producers to the benefit of the policy of their Government. It is, furthermore, quite normal that discussions and consultations should take place in such a matter. The undisputed fact that the High Authority fixed selling prices at a level higher than that proposed by the Belgian Government indicates rather that the High Authority retained its unfettered power of decision.
The present complaint is therefore unfounded.

IV. *Fixing of selling prices in certain cases without provision for equalization*

The defendant alleges that the exclusion from the benefit of equalization of unclassified bituminous coals from the Campine in no way implies that those types are already sufficiently integrated into the common market to be placed outside the system of equalization. It considers that account must be taken of the fact that it may be necessary to make a further reduction in Belgian prices and, where appropriate, to recommence payment of equalization to the collieries in the Campine as well.
In fact, the letter of 28 May 1955 leaves unchanged the type of coal in question within the equalization system in spite of the modifications which it makes to the rules which determine the amount of the equalization payments to certain undertakings. The system laid down in Article 26 (2) (a) of the Convention is therefore applicable to those types, in particular as regards the need to ensure that that system takes full effect through the fixing of prices.
As has already been established, the fixing of prices is a general measure which is necessary to the application of the exceptional system laid down in Article 26 (2) for the entire Belgian coal production.
The question whether that system enables equalization to be reduced or even withdrawn on the basis of the conditions of production of certain individual un-

dertakings forms the subject of the complaint relating to the application of the principle of selectivity in the implementation of Article 26. The question whether such selectivity is lawful will be examined below in relation to all the provisions of the letter of 28 May 1955 from the High Authority to the Belgian Government. However, without regard to the decision to be taken on that principle it may be stated now that it is impossible to conceive either of the existence of several price lists applying to consumers of Belgian coal or of the coexistence of both liberalized and fixed prices for coals of the same type.
It follows that in the foregoing case the reduction or even withdrawal of equalization in respect of certain types and in certain individual cases does not result in those types being placed outside the price list, since there can be only one price list resulting from the application of Article 26 (2) for all consumers of Belgian coal.
The contested decision is therefore to be explained by the normal application of the system referred to in Article 26 and the normal exercise of a power which is necessary for the implementation of that system. The submission of misuse of powers is therefore unfounded.

B — As regards the letter of 28 May 1955

I. *Reduction or withdrawal of equalization as regards certain undertakings*

The applicant maintains, first, that the introduction into the equalization scheme of a selective criterion, that is, the adjustment of the equalization payments to the individual situation of the undertakings, constitutes discrimination which is prohibited by the Treaty.
That argument must be rejected. As a result of the decision contained in the letter of 28 May 1955 the disadvantages resulting from less favourable geological conditions, which are indeed one of the premises of the special provisions applying to the Belgian coal industry, no longer exist. It follows therefrom that the payment of differing rates of equalization on the basis of physical conditions of production is evidence of a desire to acknowledge differences which actually exist, so as to ensure that comparable cases receive comparable benefit and, therefore, to avoid discrimination. The applicant's argument would be convincing only if the High Authority had not applied an objective and uniform criterion in order to check whether the individual situation of the undertakings satisfied the conditions fixed for the award of equalization. The decision contained in the letter in fact laid down such a criterion and it has not been disputed that the situation of the three collieries is in accordance therewith.
Secondly, the applicant considers that as Article 26 (2) (a) refers to 'Belgian coal' and the equalization payments provided for under subparagraphs (b) and (c) are general in nature, the equalization provided for under subparagraph (a) must also be general.

That argument is not conclusive, since the equalization payments provided for under subparagraphs (b) and (c) are clearly intended to put both the Belgian iron and steel industry and exporters of coal in a position to meet competition in the common market if the limit represented by the estimated production costs is too far above the level of the ruling common market prices. For those reasons the aims pursued by the equalization payments under subparagraphs (b) and (c) are different from that pursued by equalization under subparagraph (a). Furthermore, subparagraphs (b) and (c) contain a number of provisions which are intended to govern the distribution of the equalization payments made under subparagraph (a). In the light of those differences between subparagraphs (a), (b) and (c) and of the fact that the phrase 'Belgian coal' admits of either interpretation, it cannot be concluded on the basis of the text of Article 26 alone that the equalization provided for under subparagraph (a) must be general in nature. On the assumption that equalization payments made under subparagraph (a) were the same for all undertakings without regard to differences in their conditions of production, equalization would become discriminatory and its existence unjustified since, in so far as it was awarded to undertakings whose conditions of production do not suffer the disadvantages which are the very requirements of the award, it would become a subsidy. It follows that equalization must necessarily take account of the individual position of the undertakings as regards their conditions of production.

In support of its argument the defendant again refers to the existence of a guarantee to maintain previous levels of receipts.

Despite the fact that the Convention does not refer to the existence, where appropriate, of a relationship between equalization and receipts, the latter being mentioned only in Article 25 in relation to the basis of assessment of the levy, such an interpretation would be admissible only if equalization had necessarily and in all circumstances to cover the entire difference between the reduced selling prices and receipts at the beginning of the transitional period. That is not the case, since equalization is only a necessary protective measure to avoid hurried and dangerous shifts in production levels. In accordance with Article 24 of the Convention the special system established for that purpose must take account of situations existing when the common market is established. However, it is not possible to interpret that provision widely, as guaranteeing the maintenance of the original level of receipts. The introduction of a special system, such as the equalization scheme, is to be explained by the existence in Belgium of certain conditions of production which are inherently different from those in other countries participating in the common market. Equalization must, therefore, not exceed the limits of what is strictly necessary in order to neutralize to a certain extent the effects of the disadvantage resulting from those differences, which does not imply a guarantee that the original level of receipts will be maintained. The question of the extent to which the total of selling prices and equalizaton payments—which determines the receipts of the undertakings—must vary during the transitional period is a question which the High Authority must examine

in the light of the progress of the programmes for the re-equipment and reorganization of the Belgian mines.
Furthermore, if the purpose of equalization was to guarantee the maintenance of original levels of receipts, it would be in contradiction with the principle of the decrease of the equalization levy laid down in Article 25 of the Convention.
In addition, Article 1 of the Convention refers to production being progressively adapted to the new conditions resulting from the establishment of the common market and not to the new conditions being adapted to the maintenance of situations existing at the beginning of the transitional period.
Moreover, if, as the applicant maintains, equalization was intended to ensure that the collieries have the financial resources available which are regarded as indispensable to the implementation of their re-equipment programmes, the aim of the equalization scheme would greatly exceed the reasons for its establishment and would transform it into a measure intended to contribute actively and directly to the reorganization of the Belgian mines, which would be contrary to the rather passive nature of a protective measure.
Finally, the applicant maintains that equalization payments must be the same for all collieries since the Treaty and the Convention provide, in particular in the fourth paragraph of Article 5 and Article 62 of the Treaty and in Articles 24 (b) and 26 (4) of the Convention, for special measures intended to iron out the differences existing between the collieries considered individually.
That argument is not valid, since although the aforementioned provisions provide for measures other than equalization in order to bring to an end differences existing between the collieries, that does not in any way prevent equalization also taking individual differences into account in the case of Belgium, in so far as the equalization scheme established for that country permits.
The present complaint is therefore unfounded.

II. *Threat to withdraw equalization*

Since equalization is a protective measure enabling Belgian coal to be integrated into the common market from the beginning of the transitional period during which the process of reorganization and re-equipment must be implemented, it is not intended to make any direct and active contribution to that process. It is clear that equalization is granted on the assumption that the reorganization and re-equipment of the Belgian collieries may be achieved to a sufficient degree to enable the final integration of Belgian coal into the common market at the end of the transitional period.
The aim of the equalization scheme is not to finance the re-equipment and reorganization of the collieries. Furthermore, if it were to appear that certain undertakings were not carrying out the work of reorganization and re-equipment, such that they incurred liability, it would have to be acknowledged that there was no longer any basis or justification for equalization. Those undertakings

would thus have deprived themselves by their own fault of the right to benefit from equalization.
The High Authority must take such a possibility into account. It did so conditionally at point 2 (d) of its letter of 28 May 1955, when it authorized the Belgian Government to withdraw equalization where appropriate, subject to the prior agreement of the High Authority. It cannot be concluded from the wording of the letter that the High Authority would have made its agreement dependent upon non-objective criteria which are not justified by the facts. The High Authority is not therefore guilty of a misuse of powers and the application is without foundation on that point.

C – Costs

Under the terms of Article 60 of the Rules of Procedure of the Court the unsuccessful party shall be ordered to pay the costs. The applicant must therefore be ordered to bear the costs of the action.

Upon reading the pleadings;
Having regard to the judgment of the Court of 16 July 1956 in the present case;
Upon hearing the parties;
Upon hearing the opinion of the Advocate General;
Having regard to Articles 2, 3 (c), 4, 5, 8, 14, 33, 34, 36, 50, 60, 61 and 62 of the Treaty and Articles 1, 8, 24, 25 and 26 of the Convention;
Having regard to the Protocol of the Statute of the Court of Justice;
Having regard to the Rules of Procedure of the Court and to the rules of the Court concerning costs,

THE COURT

hereby:

1. **Dismisses the application for the annulment of Decision No 22/55 of the High Authority of 28 May 1955 and of certain decisions of the High Authority resulting from its letter of 28 May 1955 to the Government of the Kingdom of Belgium concerning the adjustment of the equalization system;**

2. **Orders the applicant to bear the costs of the action.**

Pilotti Rueff Riese

Serrarens Delvaux Hammes van Kleffens

Delivered in open court in Luxembourg on 29 November 1956.

M. Pilotti
President

A. van Kleffens
Judge Rapporteur

A. Van Houtte
Registrar

OPINION OF MR ADVOCATE GENERAL LAGRANGE DELIVERED ON 25 OCTOBER 1956[2]

Mr President,
Members of the Court,

In its judgment of 16 July 1956 the Court accepted that Decision No 22/55—which concerns the fixing of prices and is, in my opinion, the only one at issue in this case—was general in nature not only—as I had myself accepted—as regards the three collieries considered individually, but even as regards the Fédération des Charbonnages de Belgique, and it concluded logically therefrom that against that general decision the applicant may only plead misuse of powers affecting it.

The whole debate appears to me to have borne solely upon the question whether or not the contested decision was contrary to the terms of Article 26 (2) (a) of the Convention in that—and this was the only point which the discussion could and had to concern—it fixed prices below the level of estimated production costs at the end of the transitional period. That entire discussion was in the nature of a reply to the operative part of the Court's interim judgment, and the applicants maintained that the prices fixed by the contested decisions were lower than the estimated production costs and that the High Authority had therefore infringed the provisions of Article 26 when it adopted that decision. We were told that four times and then a fifth time by Counsel for the applicant in his summing-up.

In those circumstances I do not see—and I say it quite frankly—I do not see the relevance of that discussion to the possibility of a misuse of powers affecting the applicants. It is of course conceivable that a thorough examination of that question from a purely factual and legal point of view might reveal certain factors which could demonstrate the existence of a misuse of powers or, at least, constitute *prima facie* evidence of it. Let me confess, however, that on that point the hearings which have taken place appear to me to have demonstrated, on the contrary, that the study of the estimated costs for 1958 was undertaken jointly by the parties with all requisite seriousness and even in mutual agreement, at least until October 1956. For myself, I do not see in the extremely serious and thorough but purely legal and technical discussion which has taken place the least indication of the existence of a misuse of powers by the High Authority affecting the applicants.

For that reason I believe that I need not deal with all the questions which have been discussed in such depth today and I can only adhere to my earlier opinion.