period and that of the accounting period serve different purposes. The purpose of the first is to establish the average consumption of an undertaking, while allowing undertakings a certain freedom of choice in that respect, and the purpose of the second is to encourage undertakings to economize ferrous scrap.

5. The purpose of Article 65 (2) (b) of the ECSC Treaty is to prevent the authorization of agreements which are more restrictive than is necessary in order to achieve the result in consideration of which the authorization is granted in derogation of the general prohibition laid down by Article 65 (1). Therefore that provision cannot be relied upon where the proposition to be established is whether the contested decision is too restrictive as regards the undertakings to which it is applicable. Even if it were possible to find in Article 65 (2) (b) a general principle prohibiting the High Authority from taking measures more restrictive than is necessary for those purposes, the mechanism established by Decision No 2/57 of the High Authority would not infringe that principle.

6. The choice made by the High Authority, within the limits of the discretion conferred on it by the Treaty, as to what is expedient in a given system (in the present case the length of the accounting period and of the reference period) is only subject to review by the Court, where application is made to it under Article 33 of the ECSC Treaty, if the complaint is made, substantiated by relevant evidence, that the High Authority has committed a misuse of powers or has manifestly failed to observe the provisions of the Treaty.

7. If the conduct of the defendant has encouraged the applicant to make two applications, where one would have been sufficient to settle the question in dispute, it has caused him to incur costs unreasonably.

In Joined Cases 15 and 29/59

SOCIÉTÉ MÉTALLURGIQUE DE KNUTANGE, a limited liability company incorporated under French law, having its registered office in Paris, represented by its chairman and Managing Director, Jean Latourte, assisted by Jean-Pierre Aron, Advocate at the Cour d'Appel, Paris, with an address for service in Luxembourg at the office of the Chambre Syndicale de la Sidérurgie Française (French Steel Industry),

applicant,

v

HIGH AUTHORITY OF THE EUROPEAN COAL AND STEEL COMMUNITY, represented by its Legal Adviser, Professor Julio Pasetti, acting as Agent, with an address for service in Luxembourg at its offices, 2 place de Metz,

defendant,

Application for the annulment of the alleged decision of the High Authority notified to the applicant by letter of 27 February 1959, and of the decision of the High Authority of 22 April 1959, as based on Article 3 (2) of Decision No 2/57, which is void,

THE COURT

composed of: A. M. Donner, President, L. Delvaux, President of Chamber, O. Riese, Ch. L. Hammes and N. Catalano (Rapporteur), Judges,

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

gives the following

JUDGMENT

Issues of fact and of law

I — Conclusions of the parties

A — In the main proceedings

The applicant claims that the Court should:

In Case 15/59

'annul the decision of the High Authority notified to the applicant by letter of the High Authority of 27 February 1959, on the ground that it is based on the provisions of Decision No 2/57 which are void;

order the High Authority to pay the costs;'

In Case 29/59

'annul the decision of the High Authority of 22 April 1959, notified to the applicant by letter of 6 May 1959, on the ground that the said decision is based partly on inaccurate facts and partly on provisions of Decision No 2/57 which are void;

order the High Authority to pay the costs.'

The defendant contends that the Court should:

'dismiss the application contained in Case 29/59, which also includes the corresponding application in Case 15/59.'

B — In the interlocutory proceedings concerning Case 15/59

The High Authority claims that the Court should:

'in application of Article 69 of the Rules of Procedure of the Court of 4 March 1953 or of Article 91 of the Rules of Procedure of 3 March 1959, dismiss the application lodged on 25 March 1959 as inadmissible because it is not directed against a decision of the High Authority.'

The Société Métallurgique de Knutange contends that the Court should:

'hold that the letter of the High Authority of 27 February 1959, the subject-matter of the application, constitutes a decision of the High Authority;

accordingly reject the conclusions of the High Authority and declare the application admissible;

hold that all legal consequences follow, particularly as regards payment of fees, costs and such other expenses as may be.'

II — Facts

The facts may be summarized as follows:

(1) In November 1957 the applicant had to stop a blast-furnace which needed certain repairs and because of this was out of action for six months. During the three-month period from February to April 1958, the applicant, which usually does not buy any ferrous scrap as its own resources are sufficient to cover its needs and which even sells ferrous scrap to other undertakings, had to buy 4 523 metric tons of this material. According to the provisions of Decision No 2/57 of the High Authority, the result was that the applicant was required to pay, in addition to the basic contribution, the contribution at the additional rate for a tonnage of 1763 metric tons representing the excess of its consumption of bought scrap during its reference period.

By letters of 5 May 1958 and 3 March 1959, the applicant asked to be exonerated from the additional contribution, arguing that the purchases of ferrous scrap over the three-month period in question were of an exceptional nature and were counterbalanced by the fact that in general, and with the exception of that three-month period, it sold substantial quantities of ferrous scrap.

By letter of 27 February 1959, the High Authority stated that this request could not be entertained. It referred to the provisions of Decision No 2/57, Article 3 (2) of which limits the accounting period for determining the additional contribution to three consecutive months. This letter constitutes the subject-matter of case 15/59. Furthermore, on 22 April 1959, the High Authority took a formal decision which in substance reiterates the conclusions of the said letter. This decision was notified to the applicant by letter of 6 May 1959. The Knutange undertaking lodged a fresh application against that decision (Case 29/59).

(2) In a pleading lodged on 23 April 1959, the defendant entered an objection of inadmissibility as regards case 15/59. By Order of 13 June 1959, the Court, noting that Cases 15/59 and 29/59 were obviously interconnected and that it would in any event have to pass judgment on the legality of one or the other of the contested decisions, decided to join that preliminary objection to the substance.

(3) By order of the same date, the Court, after hearing the observations of the parties, noting that the two cases concerned a dispute on the same question and that the submissions made in both cases were practically identical, decided to join the two cases for the purposes of the written and oral procedures.

III — Submissions of the parties

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

A — Admissibility

(a) As regards Case 15/59, the defendant, in a pleading lodged on 23 April 1959, entered an objection of inadmissibility, based on Article 69 of the former or Article 91 of the present Rules of Procedure, alleging that at the date when the application was lodged the High Authority had not yet taken any decision on the request by the applicant undertaking to be exonerated. The applicant replied in a pleading lodged at the registry on 27 May 1959, in which it emphasized that the terms of the contested letter clearly showed that it was in the nature of a decision.

In its statement of defence, the defendant, admitting that both Case 15/59 and Case 29/59 are practically identical, states that the objection of inadmissibility raised against Case 15/59 can no longer be maintained, and declares that the High Authority is ready to bear the additional costs inherent in the bringing of two separate cases.

(b) No objection of inadmissibility concerning the application in Case 29/59 has been entered.

B — Substance

The *applicant* submits merely that the Treaty has been infringed, in particular Articles 2, 3, 4, 5, 53 and 65 therof. It is alleged that the said infringement arises from an inherent defect in Decision No 2/57, consisting

in a contradiction between its fundamental purpose and its operative provisions, in particular Article 3 (2). It is said that the High Authority, in adopting that provision, which limits the accounting period to three months, rendered the decision more restrictive than was required by its purpose, and thus 'failed to exercise balanced judgment and seriously failed to exercise due care'.

The applicant bases its arguments on two main points:

(a) Taking into account the purpose of the decision—which is allegedly contained in the recital which states that 'undertakings consuming ferrous scrap shall be required to pay, in addition to the contributions calculated heretofore, an additional contribution payable periodically in so far as their consumption of ferrous scrap exceeds their consumption during a reference period'—, the limit above which additional contributions are applicable ought to be taken as the *effective* consumption during the reference period, whereas, according to the system as introduced, even undertakings whose average consumption of ferrous scrap has remained unchanged, or is less than the average consumption over the reference period, can be subjected to the additional contribution.

(b) From this premise, the applicant deduces that the accounting period should have been of the same length as the reference period. For if it be necessary, as the High Authority asserts, to calculate an average consumption over a reference period of six months in order to prevent undertakings from taking advantage of a period of exceptional consumption in the past, one should also recognize the necessity of calculating an average consumption over an accounting period of six months so as to avoid penalizing undertakings for a short period of exceptional consumption.

In the present case the applicant considers that it would have been exonerated from payment, despite the technical problem mentioned above, if the length of the accounting period had been the same as that of the reference period.

The intention that the undertakings should not obtain undue advantage in calculating their consumption over the reference period should be counterbalanced by the intention not to penalize them unduly by fixing an accounting period shorter than the reference period. According to the applicant, the High Authority's assertion to the effect that a period of three months is sufficient in order to offset exceptional high points in consumption contradicts its assertion of the necessity of choosing 'an average which eliminates abnormal peaks in consumption' over a period of six months.

The *defendant* rejects the applicant's interpretation of the recital in the preamble to Decision No 2/57 , on which it bases its arguments. According to the defendant, the choice by each undertaking of its reference consumption has nothing to do with its *real* consumption over six months, but with *half the consumption over six months* chosen by the undertaking. For the said recital then states that the reference period shall be chosen according to 'objective limits', namely with regard to the criteria set out in Article 6 (1) (choice of half the consumption over six months in seven consecutive months from 1 January 1953 to 31 January 1957). The system thus envisaged is justified by the necessity of circumscribing the liberty given to the undertakings concerning the choice of the reference period by the obligation which has been imposed on them of choosing an average which eliminates periods of abnormal consumption. If the undertakings had been left completely free as regards this choice, they could have taken the maximum consumption as the reference and this could have been abnormally high because of exceptional circumstances. This in turn would have jeopardized the achievement of the fundamental purpose of Decision No 2/57, which, in the opinion of the defendant, is not to charge excessive consumption, but to encourage the economizing of ferrous scrap. In this connexion, the defendant mentions the following passage in the preamble to Decision No 2/57: 'Considering . . . that having regard to the increasing consumption of ferrous scrap, the system followed up to the present must be improved so as to *encourage the econom-*

izing of ferrous scrap . . .' Therefore in determining the length of the reference period, it was necessary to satisfy requirements other than those which had to be taken into account in determining the length of the accounting period. This is why the reference period was necessarily longer than the accounting period. In particular, the accounting period must be relatively short so as to prevent orders for excessive tonnages of ferrous scrap being placed over a short period, which would go against the fundamental purpose of Decision No 2/57. This is why it was necessary, according to the defendant, to refuse to accept an averaging out of the consumption in each accounting period, as was requested by the applicant in its letters of 5 May 1958 and 3 March 1959.

In addition to the arguments set out above, the defendant asserts that in reality the applicant's criticisms only refer to the question whether the general provision of Decision No 2/57, which is indirectly disputed, was expedient and not whether it was legal. The defendant argues that the fixing of the relationship between the length of the reference period and the length of the accounting period is in 'the discretion of the High Authority because it was incumbent upon the High Authority to assess the problems with which the decision was intended to deal'.

During the oral procedure, the defendant put forward this defence in more detail and stressed the limits of the jurisdiction of the Court under Article 33 of the Treaty.

Finally, in the rejoinder the defendant complains that in its reply the applicant has introduced a new cause of action *(causa petendi)* distinct from that set out in the application. In its application, the applicant confined itself, so the defendant claims, to alleging infringement of Articles 2, 3, 4, 5, 53 and 65 of the Treaty without offering any explanation, whereas in its reply it alleges that the High Authority made a mistake and committed a grave dereliction of duty consisting in a contradiction between the recitals in the preamble to and the provisions of Decision No 2/57.

The parties also put forward alternative arguments.

The applicant maintains that in its statement of defence (page 9, at foot, and page 10) the High Authority itself admitted the necessity of not subjecting exceptional excesses in the consumption of purchased ferrous scrap to the additional contributions. It also admitted therein that the unusually high consumption of ferrous scrap by the Knutange undertaking during the three-month period February to April 1958 was due to exceptional circumstances.

The defendant asserts that when a large number of blast-furnaces are in service, which is the position as regards the applicant undertaking, periodic servicing has practically no effect, as it generally follows a pre-established plan ensuring continuity of production. The defendant also argues that the stopping of a blast-furnace is usually foreseeable. Furthermore, the High Authority raises doubts as to the alleged relationship of cause and effect, the existence of which has not been proved, between taking the blast-furnace out of service and the increase in the consumption of ferrous scrap. The High Authority declares that it is in a position, if called upon so to do, to submit production figures which, it is said, run counter to that allegation, and that it is also in a position to show that during the period concerned there was even an increase, compared with the preceding period, in the production of pig iron intended in part for the foundries of the same undertaking.

The High Authority also stresses the liberal nature of Decision No 2/57 which provides:

(a) in Article 4 that, in calculation the consumption over the accounting period, the sales of ferrous scrap shall be deducted, whereas no analogous deduction need be made for the reference period;

(b) in Article 7 that increases in stocks of ferrous scrap during the accounting period need not be taken into account in calculating the chargeable consumption.

The applicant objects that those provisions remain outside the dispute and that, since

they only apply in certain circumstances, they cannot be considered as a remedy for the imbalance which is in any event created by the combined effect of Articles 6 (1) and 3 (2).

Finally, in case 29/59, the applicant complains that the High Authority is inaccurate in one of the recitals in the preamble to the contested decision of 22 April 1959. It asserts, on this point, that the need to renew one blast-furnace completely did not become apparent as early as November 1957, but much later on.

The defendant denies that such an inaccuracy exists and states that in any event it has no connexion with the question at issue.

Grounds of judgment

I — Admissibility

1. Admissibility of Case 15/59

As regards case 15/59 the defendant has raised the objection of inadmissibility arguing that at the date of the application the High Authority had not taken a decision on the request for exoneration submitted by the applicant undertaking.

In the letter of 27 February 1959, signed by an official of the High Authority and contested in Application 15/59, it is stated that 'after inquiry, the High Authority has found that the terms of the above-mentioned decisions do not allow such exoneration to be granted to you'. Thus, that letter constituted notification of a decision which had apparently been taken by the High Authority.

On 22 April 1959 the High Authority took a formal decision confirming the contents of that letter, and gave notice of it to the applicant by letter of 6 May 1959.

Although the notification of 27 February was premature, because on that date the High Authority had not yet adopted its position, such notification was confirmed by its later decision.

In any event, as from 23 April, that is to say, after the adoption of a formal decision which reiterates in substance the conclusions of the contested letter, the defendant was no longer in a position to deny the existence of the decision contested by Application 15/59.

In these circumstances, Application 15/59 cannot be declared inadmissible on the grounds indicated.

2. Admissibility of Application 29/59

The admissibility of this application has not been contested and no objection may

be raised by the Court of its own motion on this point. Therefore the application is admissible.

II — Substance

The parties disagree, first, on how much the applicant produced during the period from February to April 1958 compared with how much it produced previously, secondly, on the existence of a relationship of cause and effect between the closing of the blast-furnace and the increase in the consumption of ferrous scrap by the applicant and, finally, on the existence of an inaccuracy in one of the recitals in the preamble to the decision of 22 April 1959 concerning the date on which the need for a complete renewal of a blast-furnace became apparent.

However, these differences cannot influence the decision to be taken in the present case, as the subject-matter of the dispute is the legality of Article 3 (2) of Decision No 2/57.

Therefore it is not necessary to examine the disputed facts.

The main purpose of Decision No 2/57 was to encourage undertakings to economize ferrous scrap, and the additional charge on consumption exceeding certain levels was only a means to achieving that end.

With that aim in view, a system was established whereby any consumption of bought scrap bears a basic rate, and consumption in excess of a certain limit bears an additonal rate.

For the purposes of applying the additional rate, the High Authority, in exercise of the discretion conferred on it by the Treaty, deemed it expedient to take an accounting period of three months into consideration.

Having fixed the accounting period, the High Authority also had to fix a reference period in order to subject the consumption of bought scrap exceeding the level of the consumption over the reference period to payment of the additional contribution.

In order to determine the consumption over the reference period, the High Authority adopted the principle of leaving the undertakings free to choose, within certain set limits, the period which suited them best, and did so in the obvious interests of the undertakings themselves.

However, in order to prevent undertakings from choosing exceptional peaks in consumption, which would have gone against the purpose of Decision No 2/57, the High Authority deemed it expedient to circumscribe the undertaking's free-

dom of choice by providing for an average, that is to say, half the consumption during the period of six months or, in other words, the average consumption over a three-month period taken from a half-yearly period chosen by the undertaking.

In these circumstances, the system established by decision No 2/57 involves a comparison between the consumption during the accounting period (three months) and the consumption during the reference period, which is not the consumption over six months, but the average consumption for three months taken from a period of six months chosen by each undertaking.

The want of substance in the applicant's main complaint is thus made clear.

Having regard to the nature of the mechanism described above, it could happen, as in the present case, that an undertaking found itself liable to pay the contribution at the additional rate for an accounting period of three months, although its effective consumption of bought scrap over six months comprising this period of three months did not exceed—or was less even than—the consumption over the reference period.

However, taking into account the abovementioned fundamental purpose of Decision No 2/57, this result does not reveal any illegality.

The determination of the reference period and that of the accounting period serve different purposes. The purpose of the first is to establish the average consumption of an undertaking, while allowing undertakings a certain freedom of choice in that respect, and the purpose of the second is to encourage undertakings to economize ferrous scrap.

The applicant also argues that there has been an infringement of Article 65 (2) (b) to which Article 53 (a) refers.

The applicant fails to understand the scope of this provision, the purpose of which is to prevent the authorization of agreements which are more restrictive than is necessary in order to achieve the result in consideration of which the authorization is granted in derogation of the general prohibition laid down by Article 65 (1).

Therefore that provision may not be relied upon in the present case because the applicant does not argue that the High Authority has authorized an agreement which is too restrictive, but that the decision is too restrictive as regards the undertakings liable to payment of equalization charges.

Moreover, even if the applicant had argued that it was possible to find in Article 65 (2) (b) a general principle prohibiting the High Authority from taking measures more restrictive than is necessary for those purposes, that principle is not infringed

by the contested mechanism, first, because, as has already been shown, the comparison between the accounting period and the reference period does not set up a relationship between unequal terms and, secondly, because the High Authority was free to determine, according to considerations of expediency, the length of both the accounting period and the reference period.

The criticisms made by the applicant of the criteria followed by the High Authority in determining the length of the accounting period only concern the question whether the contested decision is expedient.

Examination by the court may not include an inquiry into the expediency of the mechanism, as set up by the High Authority, for achieving the objectives of that decision, because such examination would go beyond the limits of the power to review questions of legality which the court may exercise by virtue of the Treaty.

Such an examination would necessarily comprise an assessment of the complex situation on the market which gave rise to General Decision No 2/57, an assessment which, according to Article 33 of the Treaty, the Court may not make save where the High Authority is alleged to have misused its powers or to have manifestly failed to observe the provisions of the Treaty.

The applicant has not alleged that there has been a misuse of powers or a manifest failure to observe the Treaty.

Moreover—as appears from the foregoing—the complaints put forward by the applicant are unfounded.

III – Costs

The two applications made by the applicant must be dismissed.

However, under the terms of the second subparagraph of Article 69 (3) of the Rules of Procedure of the Court of Justice of the European Communities, the Court may order even a successful party to pay costs which the Court considers that party to have unreasonably caused the opposite party to incur.

The applicant was induced by the conduct of the defendant to lodge two applications although, had the premature letter of 27 February 1959 not been sent, one application alone would have been sufficient.

Therefore the costs incurred by the applicant in respect of Application 15/59 are costs which the defendant has unreasonably caused the applicant to incur. Moreover the defendant itself admits this because it has stated that it is willing to bear these costs.

On those grounds,

Upon reading the pleadings,
Upon hearing the parties;
Upon hearing the opinion of the Advocate-General;
Having regard to articles 2, 3, 4, 5, 33, 53 and 65 of the ECSC Treaty;
Having regard to the Protocol on the Statute of the Court of Justice;
Having regard to the Rules of Procedure;

THE COURT

hereby:

1. **Dismisses the applications brought by the applicant as unfounded;**

2. **Orders the defendant to bear the costs of Case 15/59;**

3. **Orders the applicant to bear the costs of Case 29/59.**

Delivered in open court in Luxembourg on 12 February 1960.

Donner Delvaux

Riese Hammes Catalano

A. Van Houtte A. M. Donner

Registrar President

OPINION OF MR ADVOCATE-GENERAL LAGRANGE DELIVERED ON 17 DECEMBER 1959[1]

Mr President,
Members of the Court,

The applicant undertaking, Société Métallurgique de Knutange, produces pig iron in nine blast-furnaces (50 to 100 000 metric tons per month) and basic Bessemer steel (50 to 100 000 metric tons per month) in six converters. It also makes heavy sections and merchant steel. But instead of using the ferrous scrap so found (the 'own arisings' which we have heard about so often) in a Martin steel mill or an electric steel mill, as is often the case, it prefers to sell it. As it itself states in its letter of 3 March 1959, these arisings consist of heavy scrap which is 'highly sought after'.

However, the undertaking needs to use light scrap in order to enrich the smelting beds of its blast-furnaces, and this it has to buy. Even so, sales are usually greater than purchases, and although the undertaking has been assessed at the basic rate for payment of the equalization contribution on imported ferrous scrap, it was not, prior to the first three months of 1958, assessed at the additional rate, which only applies, as

1 — Translated from the French.