

## Judgment of the Court of Justice, Italian Republic v High Authority, Case 2/54 (20 December 1954)

**Caption:** It emerges from this judgment that the absence of consultation of the Economic and Social Committee, in cases where it is compulsory, constitutes an infringement of the Treaty or of an essential procedural requirement which, even if it hasn't been invoked by the applicant, could entail the annulment by the Court of its own motion.

**Source:** Reports of Cases before the Court. 1954 to 1956. [s.l.].

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**Judgment of the Court of 21 December 19541**  
**Government of the Italian Republic v High Authority of the European Coal and Steel Community**

**Case 2/54**

[...]

In case 2/54

GOVERNMENT OF THE ITALIAN REPUBLIC

represented by Professor Riccardo Monaco, Legal Adviser to the Italian Ministry for Foreign Affairs, acting as Agent, assisted by Cesare Arias, Sostituto Avvocato Generale dello Stato, Rome, with an address for service in Luxembourg at the Italian Legation,

applicant,

v

HIGH AUTHORITY OF THE EUROPEAN COAL AND STEEL COMMUNITY, represented by its Legal Adviser, Nicola Catalano, acting as Agent, assisted by Jean Coutard, Advocate at the Conseil d'Etat and the Cour de Cassation, Paris, with an address for service in Luxembourg at its offices, 2 Place de Metz,

defendant,

APPLICATION for the annulment of Decisions No 1/54, 2/54 and 3/54 of the High Authority of 7 January 1954,

THE COURT

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

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

gives the following

**JUDGMENT**

[...]

**Law**

The Court's judgment in the present case has taken the following considerations into account:

[...]

**2. The substance of the case**

The applicant contests Decisions Nos 1/54, 2/54 and 3/54 on the grounds of infringement of the Treaty and misuse of powers.

## A. The submission of infringement of the Treaty

[...]

## II. Decision No 2/54

The Court holds that Article 1 of Decision no 2/54 is inconsistent with the Treaty in so far as it allows undertakings to make a mean variation upward or downward between actual market prices and published prices without prior publication of amendments to price-lists. The grounds for regarding this as amounting to an infringement of the Treaty are as follows:

[...]

The applicant has further made the following submissions:

### 7. Submission that the Consultative Committee has not been consulted in accordance with legal requirements:

The defendant asks the Court to declare this submission inadmissible on the ground that it is not contained in the application. The Court considers that it is right to consider this submission of its own motion in view of the fact that if it were well-founded the Court would be justified in annulling the decision of its own motion on the ground of infringement of the Treaty or of an essential procedural requirement.

The minutes of the Consultative Committee, forwarded to the Court in pursuance of the order of 6 November 1954, show that the Consultative Committee has been duly consulted, that it has given an opinion on certain amendments which were to be made to Decisions Nos 30/53 and 31/53 and that the only issues on which the consultation has not been concluded, namely the definition and the exemption from publication in price-lists of long-term contracts and open tenders do not come into question in examining the legality of the contested decisions.

The minutes reflect a collection of opinions which the High Authority, together with the Consultative Committee, could rightly consider as an opinion.

On this issue the Court concurs with the opinion of the Advocate General.

[...]

On those grounds,  
Upon reading the pleadings;  
Upon hearing the parties;  
Upon hearing the opinion of the Advocate General;  
Having regard to Article 31, 33, 34 and 60 of the Treaty;  
Having regard to the Protocol on the Statute of the Court of Justice;  
Having regard to the Rules of Procedure of the Court including those regarding costs;

THE COURT

hereby:

**Declares the action for annulment of article 1 of Decision No 2/54 well-founded as regards the infringement of the Treaty and the Convention on the Transitional Provisions and refers the matter back to the High Authority for the necessary action;**

**Dismisses the application for the annulment of Decisions No 1/54 and 3/54 and of Articles 2 and 3 of**

**Decision No 2/54;**

**Orders the defendant to bear its own costs and half the costs of the applicant.**

Pilotti  
Serrarens  
Hammes  
Riese  
Delvaux  
Rueff  
van Kleffens

Delivered in open court in Luxembourg on 21 December 1954.

M. Pilotti  
President

O. Riese  
Judge-Rapporteur

A. Van Houtte  
Registrar

1 – Language of the Case: Italian