2. Orders the defendant to bear its own costs and one-third of the costs incurred by the applicant, and the applicant to bear the remaining two-thirds thereof.

Delvaux Strauß Trabucchi

Delivered in open court in Luxembourg on 13 July 1966.

A. Van Houtte
Registrar

L. Delvaux
President of the First Chamber

OPINION OF MR ADVOCATE-GENERAL GAND DELIVERED ON 16 JUNE 1966[1]

Mr President,
Members of the Court,

Mr Willame has requested you to interpret point 3 of the operative part of the judgment which you delivered on 8 July 1965 in the dispute between Euratom and himself.

You will remember the facts giving rise to this judgment. After the Establishment Board had issued an unfavourable opinion in respect of his integration, the applicant, who had been employed under contract since 18 August 1958, received notice of the termination of his contract. In Case 110/63 he argued that the decision to dismiss him taken by the Euratom Commission was not legal, his reasons being mainly that the Establishment Board did not carry out its duties properly.

You agreed with him that the procedure followed was indeed vitiated by a substantial defect, and accordingly you annulled the decision to dismiss him taken on 5 December 1963 and referred the case back to the Euratom Commission in order that the integration procedure be reopened. Such is the gist of points 1 and 2 of the operative part of your judgment, and as a result of these Mr Willame found himself once more in the position of a contractual servant and a candidate for integration.

His financial position remained to be decided. This was covered by point 3 of your judgment, and it is this which you are now asked to interpret.

Following upon your judgment, consultations took place between the applicant and the relevant Euratom departments with a view to settling the various aspects of his position: leave to which he was entitled—calculation of sums due—reopening of the integration procedure.

You are aware that this procedure led to the same result as before, and that on 20 December 1965 Mr Willame was again given notice terminating his employment. This decision forms the subject-matter of his Application 12/66, which is at present in the early stages of the written procedure.

At the same time a salary statement was sent to him showing the amounts due to him in execution of your judgment. This did not seem to him to accord with that judgment. Therefore he requests you not to annul or amend this statement, which does not appear to constitute a decision against which an application may be brought, but to interpret certain provisions of your judgment.

At the moment when the oral procedure began, it seemed that in reality there was little separating the parties. The observations exchanged at the hearing showed that this was absolutely not so. Therefore I must go over all the matters mentioned in the application one by one.

First and foremost, in terms of Community law what is the procedure which Mr Willame is now using?

Article 41 of the Statute of the Court of Justice of the EAEC—which is the same

1 — Translated from the French.

word for word as Articles 37 of the ECSC Statute and 40 of the EEC Statute—provides that: 'If the meaning or scope of a judgment is in doubt, the Court shall construe it on application by any party or any institution of the Community establishing an interest therein'.

Thus it is not necessary for a case to have been brought between the parties on the execution of the judgment, or even a 'dispute'. It is enough, as your judgment in Case 5/55, *Assider* (Rec. 1954, p. 278) states, that the parties in question give different meanings to the wording of that judgment.

The difficulty must concern a matter decided by the judgment. It follows from this that whilst the Court, in entertaining an application for the interpretation of one of its judgments, may not throw fresh doubt on what it has already decided, it cannot, upon hearing such an application, give judgment on matters which have not been decided. As one of the grounds of your abovementioned judgment in Case 5/55 states: 'The parties may not, by means of a request for interpretation, ask for a new decision on new disputes'.

Finally, it is of course necessary that the operative part of the judgment—or, where it is necessary to fall back on them, the grounds which are given for it—should really be obscure and that, because of an ambiguity in the terms used, the scope of the consequences of the judgment may be open to doubt. Otherwise there is nothing to be construed. Here it may be noted that the terms which the Court will use to confirm the 'clarity' of its previous judgment may sometimes given the parties useful indications as to how this judgment is to be executed.

Further facts about this kind of application are that no limitation period is prescribed for it, that the request must comply with Articles 37 and 38 of the Rules of Procedure and that in particular it must state the words which the Court is asked to construe. The contentious nature of the proceedings is apparent from the fact that the parties must be given the opportunity to submit their observations. However the exchange of pleadings, which is governed by Articles 40 and 41, does not take place.

Thus the procedure is a somewhat special one. It only exists in the law of certain Member States, and it is an exception to the rule according to which the court becomes *functus officio* in delivering its judgment. Doubtless this procedure makes it possible to avoid certain discussions and to prevent the occurrence of new disputes, but it cannot be used for solving all the difficulties to which the application of a judgment can sometimes give rise. The said procedure may only be used for difficulties appertaining to the interpretation of the judgment. The whole problem sometimes is to fix the limits of this method of recourse.

Let me now go over the conclusions which the applicant brings before you.

1. Point 3 (a) of your judgment orders Euratom to pay to Mr Willame the emoluments due under his contract concluded before the entry into force of the Staff Regulations, for the period between the termination of his employment by reason of the abovementioned decision and the notification to him of a new decision on the question of his integration.

However the salary statement covers the period from 3 November 1963—the effective date of his first dismissal—to 31 July 1965, although notice of the new decision relating to his integration was given to him on 21 December 1965. The applicant requests you to interpret your judgment as meaning that the period described in point 3 (a) ends on 21 December 1965.

But your judgment is perfectly clear on the subject of Mr Willame's right to receive his previous emoluments up to the time of notification to him of the new decision. The date when notice of this decision is given is a pure question of fact which concerns not the interpretation but the execution of your judgment.

I would add that there is no problem between the parties on this. The Commission does not deny that your judgment requires it to pay Mr Willame his emoluments up to 21 December 1965. What makes this more than clear is that upon the applicant's requesting it to do so the Commission paid his emoluments monthly as from 1 August 1965. A salary statement drawn up on 21 December 1965 showing amounts due could only go up to 31 July 1965 because the

period subsequent thereto had already been settled.

2. Mr Willame then asks you to interpret this same point 3 (a) of the operative part of the judgment as meaning that the salary to which he is entitled for the period at issue must be calculated on the basis of Grade A 3 of the salary scale of the ECSC in force during the said period. This means, if I understand it aright, that any increase in basic salary which may have been granted to servants established in the grade of Head of Division during the period under consideration should be taken into account. As regards this, it will be noted that the statement given to him upon the expiry of his contract states that his remuneration has been calculated 'with reference to Grade A 3 of the salary scale of the ECSC'.

In fact the applicant maintains—and at the hearing the Commission agreed as to the accuracy of his assertion—that the salary statement calculates his *total* remuneration on the basis of 45 502 BF. He thinks that the starting point for the calculation should be a *basic* salary of 51 100 BF which, as the defendant informs us, corresponds to the fifth step of Grade A 3 *as from 1 January 1965*.

Here it can be accepted that this involves interpretation of the words of the operative part of your judgment which mention the emoluments 'due under his contract, concluded before the entry into force of the Staff Regulations'. But is there anything ambiguous in your judgment on this point? I should be inclined to reply that there is not if these words are read together first with the applicant's subsidiary conclusions and secondly with some of the stated grounds of your judgment. Mr Willame claimed that the Court should 'order the defendant to pay remuneration to the applicant appropriate to his duties, that is, 45 502 BF net per month from at least the date when he ceases to perform his duties until the defendant takes a valid decision concerning his position'. Furthermore you declared that as a result of the annulment of the contested decision Mr Willame was deemed to be still in the serivce of Euratom 'and subject to the conditions governing his contract of employment'. Your judgment also states that he is entitled to 'the emoluments due under his contract, concluded before the entry into force of the Staff Regulations'.

Therefore the truth is that, if there is any doubt, it concerns the *content of this contract*, concluded before the entry into force of the Staff Regulations. The said content was not discussed before you, and you were not called upon to say anything about it in your judgment. During the present proceedings the Commission has produced the letter offering employment addressed to Mr Willame in 1958. This letter fixed his basic remuneration at 31 700 BF, to which were added various allowances for residence, separation, or as head of household. The figure was capable of being fixed at that time with reference to the salary scale of the ECSC. Nevertheless the figure remains a contractual one, and as such the parties were bound by it.

After annulment of his dismissal, Mr Willame found himself again in the service of Euratom at a date when most of the staff had been integrated. However, he was still a contractual servant, and still governed by the position as it stood before the Staff Regulations came into force. So it would have been wrong to act contrary to the express terms of his contract and to grant him the benefit of measures taken in favour of established officials. If, instead of what actually happened, the second integration procedure had turned out in his favour, he would have been integrated retroactively to 1 January 1962 and would then have been entitled as from this latter date to the increases in salary granted to established officials. But this is an hypothesis which has nothing to do with the facts of this case. Thus it appears that the ambiguity, if there be one, concerns a matter which you did not decide in your judgment, namely the content of the contract. Therefore you cannot settle this point by means of an interpretative judgment. However, perhaps you will think it expedient to reason that, since you have referred to this contract in order to determine the applicant's rights, you can usefully state what you mean by 'emoluments due under his contract, concluded before the entry into force of the Staff Regulations'. The reply should then be sought, as the grounds of your judgment state, in

the terms governing the applicant's contract of employment. These terms include a sum of 31 700 BF, to which are added the allowances which I have mentioned. However they do not include *automatically* treating the applicant as on a par with a given grade of the salary scale of the ECSC, nor, therefore, do they include the right to increases in salary granted to established officials.

3. The third provision of your judgment which Mr Willame asks you to interpret calls for some explanatory remarks.

The emoluments which the Commission was ordered to pay to the applicant were to be reduced by the net remuneration received by him from employment outside the Community and by the sums which he received from the defendant by reason of his dismissal.

With the exception of one point which I will consider later, Mr Willame accepts this deduction. But the Commission has added interest at the rate of 4.5% to the sums thus deductible, and the applicant asks you to interpret your judgment as meaning that he is not required to pay interest on the two kinds of deductible sums.

In its written observations the Commission admits that a mistake has found its way into the salary statement, but it adds that this was set right by the payment of a sum of 239 BF which, it says, has removed the basis of the request.

At the hearing the applicant contested this opinion saying that the payment in question only accounted for the interest on the remuneration from employment outside the Community (C-3 of the statement) and that the same solution should be adopted as regards the emoluments received by reason of dismissal (C-2 of the statement). To this latter point the Commission objects that a new request is being made.

This is certainly not so. From the outset the conclusions of the applicant claimed that your judgment should be interpreted as meaning that no interest was payable on any of the sums to be deducted.

On the other hand a reading of your judgment shows that there is nothing obscure about it. It orders the defendant to pay to the applicant annual interest at a rate of 4.5% on the net amount of the payments due up to the date when it was delivered and defines the period over which this interest is to be paid for each month's remuneration. But it does not make the slightest allusion to interest which would increase the sums to be deducted and would thus, contrary to the interest just mentioned, fail to be borne by the applicant. It is so obvious that your judgment does not state that the sums to be deducted carry interest that no interpretation is needed. But it is equally obvious that Euratom has incorrectly applied your judgment and that an application brought by Mr Willame against a settlement on the basis thus incorrectly taken would be admissible and well founded.

4. The above are the only three conclusions contained in the application which is before you. However I must add that in the course of arguing his case the applicant has criticized the fact that Euratom has attempted to have him pay back a sum of 30 591 BF which he received at his first dismissal in respect of leave not taken. It seems that Euratom took this decision on the ground that the applicant in fact did take this leave after the judgment annulling the first dismissal.

It must be noted that this point is not mentioned in the conclusions of the application for interpretation nor can it by implication be read into any of these, particularly the one dealing with the calculation of the emoluments arising under the contract concluded before the Staff Regulations came into force. Learned counsel for the applicant told you at the hearing that this was a slip of the pen. That may well be. Yet, although no limitation period is prescribed for an application for interpretation of a judgment, the general principles of procedure remain applicable to it. The Court may only rule on conclusions expressly set down in the document initiating the proceedings, and these conclusions may not be given an extended meaning later on, after the application has been served on the other parties. In any event Article 102 of the Rules of Procedure, which applies here, refers to Article 38, paragraph (d) of which provides that the application must contain the conclusions. Accordingly I suggest that you hold that the arguments presented at the hearing concerning the repayment of

the allowance for untaken leave are not admissible.

Should this reasoning seem excessively rigorous to you, and should you decide that a request for interpretation has been properly brought before you on this point, you would then have to enquire whether this is not a question which falls outside your judgment and which the latter cannot have settled even by implication. Mr Willame tells you that at the end of each year an allowance is paid for leave not taken during that year (the administration disputes this, and rightly so it seems). He also says that the allowance thus received by him for leave to which he was entitled prior to 3 November 1963 was thus paid independently of his dismissal. The Commission on the other hand justifies the repayment of this by the fact that in agreement with the administration the applicant in fact took the leave at issue after your judgment and before reoccupying his post. The Commission adds that no allowance for untaken leave is given so long as the servant has not definitely left its service, and that it was only on account of his dismissal that this allowance was granted to Mr Willame.

Rather than a difficulty concerning your judgment, this problem seems to me to consist of weighing up just what the parties did agree amongst themselves after the judgment was delivered, and whether or not they agreed that the sum in question was to be repaid. In any event such a problem is outside the scope of an application for interpretation.

In short and for various reasons I do not think that the conclusions requesting an interpretation of your judgment can be entertained.

— Those which deal with the date until which the applicant is entitled to receive his emoluments concern the execution of your judgment and not its interpretation.

— Whilst admittedly an ambiguity exists as to the concept of emoluments due under the contract concluded before the entry into force of the Staff Regulations, it is a matter which depends on the content of the contract. This means that it depends on something which you did not decide and which you therefore cannot deal with in an interpretative judgment.

— There is nothing obscure in your judgment concerning the sums which do or do not carry interest.

— Finally the arguments calling for an interpretation concerning the repayment of the allowance for untaken leave are not admissible because no conclusions to this effect were set down in the application.

The normal consequence which would follow would be to leave Mr Willame to bear the costs which he has incurred. I would point out however that the application has enabled a mistake made by the defendant and admitted by it to be corrected. Therefore I do not see why you should not use the discretion which the Rules of Procedure give you, and put the burden of half the costs incurred by the applicant on Euratom.

I am therefore of the opinion:

— that Mr Willame's application should be dismissed;

— and that costs should be awarded in the proportions which I have just mentioned.