In Case 5/55,

ASSOCIAZIONE INDUSTRIE SIDERURGICHE ITALIANE (ASSIDER), a company whose registered office is in Milan, represented by its President, Dandolo Francesco Rebua, assisted by Cesare Grassetti, Professor at the University of Milan, of the Milan Bar and the Corte di Cassazione, Rome, with an address for service in Luxembourg care of Guido Rietti, 15 Boulevard Roosevelt,

applicant,

v

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

defendant,

APPLICATION for an interpretation of the judgment of the Court of Justice of 21 December 1954 in Case 2/54,

THE COURT

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

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

gives the following

JUDGMENT

Facts

1. On 22 March 1955 the Associazone Industrie Siderurgiche Italiane (ASSIDER) lodged at the Court Registry, in the form of an application against the High Authority of the European Coal and Steel Community, an application for an interpretation of the judgment of the Court of 21 December 1954 in Case 2/54, *Government of the Italian Republic* v *High Authority,* published in the Journal Officiel of 11 January 1955, pp. 560 et seq.

2. The application is based on the following facts:
In Case 2/54 the Italian Government, the applicant, contested *inter alia* the decision of the High Authority No 2/54 of 7 January 1954, alleging that Article 1 thereof

infringed Article 30 (2) of the Convention on the Transitional Provisions and thus amounted to an infringement of the Treaty within the meaning of the first paragraph of Article 33. This claim was based on the fact that the contested decision allowed non-Italian steel producers in the Community to make tenders on the Italian market and elsewhere, at prices below those in their price-lists, although Article 30 (2) of the Convention on the Transitional Provisions prevented the High Authority from allowing this without the agreement of the Italian Government. In answer the High Authority stated that the claim was unfounded. The article cited merely prohibited undertakings outside Italy from aligning their quotations for the sale of steel on the Italian market on those of Italian producers in accordance with Article 60 (2) (b) of the Treaty and further the existing protective duties and the necessity for sellers situated outside Italy to add the transport costs to their prices remained as theretofore an effective protection for Italian steel producers.

Before the Italian Government took this action, the French Government had likewise contested Article 1 of Decision No 2/54 but on other grounds. On the application of the French Government the Court annulled that article by judgment of 21 December 1954 in Case 1/54. In its judgment in Case 2/54 the Court declared the application brought by the Italian Government against the same article to be well founded; it based its decision on the fact *inter alia* that that article infringed Article 30 (2) of the Convention on the Transitional Provisions. On this issue the Court expressed itself as follows in Part A, Section II, point 11 of the grounds of judgment:

'The applicant seeks the annulment of Article 1. 2 and 3 of Decision No 2/54 on the grounds of infringement of Article 30 of the Convention on the Transitional Provisions. As regards Articles 2 and 3 of Decision No 2/54 this application must be rejected on the above-mentioned grounds. Although the provision of Article 3 of Decision No 2/54 reducing the period provided for the application of the new price-lists forces the Italian undertakings to react more quickly to any alterations in the price-lists of their competitors, it does not, however, seriously affect the special protection given to them.

On the other hand, as regards Article 1 of the decision the applicant's claim is justified for the following reasons:

Even if it is thought that Article 30 of the Transitional Provisions is particularly intended to prevent prices from being aligned on those of Italian undertakings it does not necessarily follow that this provision does not give other protection as well. To claim the contrary would really be begging the question, for in the absence of any clear and precise provision it is quite legitimate to accept that the Convention intended to give the Italian undertakings temporarily and by way of exception the unlimited advantage of the protection which it provides for these undertakings. The actual objective of this provision is therefore to prevent the non-Italian undertakings from competing with the Italian undertakings on the Italian market by undercutting their own price-lists.

The Court sees in Article 30 of the Transitional Provisions a prohibition on any sale in Italy below the prices provided for by the price-lists. This prohibition can have a meaning only if in the other countries of the Community sales below the prices in the price-lists are allowed by way of exception under special provisions.

This is the case with the right to align provided for by Article 60 (2) (b). The contested decisions create a new system applicable to the whole of the Common Market under which sale below the prices contained in the price-lists is lawful. This system remains subject to the prohibition provided for in Article 30, especially as that article does not expressly mention alignment but uses very general terms. Article 30 must therefore be interpreted as follows: even if the sale below the prices shown in the price-lists were by way of exception lawful, it would not be so on the Italian market. In the present case Article 30 prohibits variations from the price-lists from being extended to the Italian market. Since Decision No 2/54 disregards this prohibition it infringes a legal rule on the application of the Treaty.'

The applicant had also brought an action against the High Authority at the same time as the Italian Government. In so far as the incompatibility between Article 1 of Decision No 2/54 of the High Authority and Article 30 (2) of the Convention on the Transitional Provisions was at issue the applicant put forward basically the same arguments as the Italian Government, but alleging misuse of powers. In its defence the High Authority put forward to a large extent the same arguments as in Case 2/54. In the grounds of judgment in Case 3/54, Section 2, No 1, the Court stated that there was no need to give a decision on this issue for the following reasons:

'Since Article 1 of Decision No 2/54 of the High Authority was for all purposes annulled by judgment of 21 December 1954 in the case of the *French Government* v *The High Authority,* this application for annulment has on this point no longer any purpose.
In these circumstances it is not necessary to consider whether, on this point, the application is or is not well founded or to give an express ruling thereon in the judgment since a decision which has already been annulled or withdrawn in the meantime cannot compromise the rights or interests of the applicant. In consequence the present judgment must be confined to stating that no decision is called for on the application for annulment of Article 1 of Decision No 2/54 of the High Authority.'

3. On 28 February 1955 the High Authority wrote to the applicant:

'Previously the correct interpretation of Article 30 (2) of the Convention on the Transitional Provisions has given rise to various questions by the different groups concerned. In particular the question was raised whether under Article 30 (2) Italian undertakings were able to align their prices on the Italian market. It is to be observed in this respect that the judgment given by the Court in the above-mentioned case contains the following passages:

'The Court sees in Article 30 of the Transitional Provisions a prohibition on any sale in Italy below the prices provided for by the price-lists.' (Journal Officiel, 11 January 1955, final paragraph of p. 572)

and

'Article 30 must therefore be interpreted as follows:

even if sale below the prices shown in the price-lists were by way of exception lawful, it would not be so on the Italian market.' (*ibid.*, first paragraph of p. 573)

'These two passages permit only one conclusion: in the present circumstances the Italian steel undertakings are required on the Italian market to charge solely the prices in their respective price-lists unless they find themselves required to face competition from undertakings in third countries, in which case they may align their quotations on those of undertakings outside the Community.
The High Authority would like to draw the attention of your association to the importance of the foregoing. It asks you to be good enough to remind your members to ensure that in their methods of quoting the Treaty is observed.'

4. The applicant makes the following claims in the present action, namely that the Court interpret the judgment in Case 2/54 'as meaning that Article 30 (2) of the Convention on the Transitional Provisions prohibits alignment by non-Italian undertakings on the Italian market; and that, on the other hand, it does not prohibit within the Italian market alignment by Italian undertakings on the prices of other non-Italian but Community undertakings.'

The High Authority replies that:

'It is content to leave to the Court the question of the interpretation requested by ASSIDER'.

5. The applicant gives the following grounds for its claims:

The relevant part of the judgment in Case 2/54 has become by way of reference part

of the judgment in Case 3/54.
The interpretation which the High Authority gives to the judgment in its letter of 28 February 1955 is based on certain sentences taken out of context. It is, however, contrary to the letter and spirit of the judgment in Case 2/54, which states expressly that the sole objective of Article 30 (2) is 'the special protection given to them' (the Italian undertakings). This protection must be understood as operating against the undertakings of *other* States of the Community as clearly appears from the judgment and in particular from the sentence: 'The actual objective of this provision is therefore to prevent the non-Italian undertakings from competing with the Italian undertakings on the Italian market by undercutting their own price-lists.' The High Authority is therefore mistaken in refusing at present, contrary to its previous opinion, to allow Italian undertakings to align themselves, in their national market, on the prices of other undertakings of the Community, Italian or others.
This interpretation is confirmed by the fact that Article 30 (2) of the Convention on the Transitional Provisions provides for the intervention of the Italian Government where there is a special authorization of quotations lower than the price-lists. The only reason for such intervention is to protect the Italian industry against foreign competition.

6. To these arguments the High Authority answers that the admissibility of the application may be contested on several grounds.
The applicant was not a party to the action leading to the judgment in question. Further it may be asked whether the passage in question is the subject of a reference by the judgment in Case 3/54 to the judgment in Case 2/54. In the first action the applicant alleged misuse of powers whereas the Italian Government relied on infringement of the Treaty. Further, with regard to the compatibility of Article 1 of Decision No 2/54 with Article 30 (2) of the Convention on the Transitional Provisions, the Court stated that there was no need to give a decision. Finally, the application for an interpretation relates solely to an issue which was considered only incidentally in the judgment in Case 2/54.
The High Authority, however, does not wish to raise an objection of inadmissibility for it is itself interested in the interpretation requested.
The applicant's view is tenable, but the opposite interpretation has also arguments in its favour. The wording of Article 30 (2) does not show any distinction between the right of Italian undertakings and that of non-Italian undertakings to align. It cannot be ruled out that the draftsmen of the Treaty wished to grant the Italian steel industry complete protection within the Italian market, that is to say, even against their own national competitors.
It is true that in its judgment in Case 2/54 the Court did not have to give a ruling on this problem, but the grounds of judgment were such as to allow the High Authority to draw the conclusions which it set out in its letter of 28 February 1955. The following passages of the judgment must be considered (the parts in italics also appear in the statement of defence):

'Even if it is thought that Article 30 of the Transitional Provisions is *particularly* intended to prevent prices from being aligned on those of Italian undertakings it does not necessarily follow that this provision does not give other protection as well. To claim the contrary would really be begging the question, for *in the absence of any clear and precise provision* it is quite legitimate to accept that the Convention intended to give the Italian undertakings temporarily and by way of exception the *unlimited* advantage of the protection which it provides for these undertakings. The actual objective of this provision is therefore to prevent the non-Italian undertakings from competing with the Italian undertakings on the Italian market by undercutting their own price-lists.
The Court sees in Article 30 of the Transitional Provisions a prohibition on any sale in Italy *below* the prices provided for by the price-lists. This prohibition can have a meaning only if in the other countries of the Community sales below the prices in the price-lists are allowed by way of exception under special provisions.

This is the case with the right to align provided for by Article 60 (2) (b). The contested decisions create a new system applicable to the whole of the Common Market under which sale below the prices contained in the price-lists is lawful. This system remains subject to the prohibition provided for in Article 30, especially as that article does not expressly mention alignment but uses very general terms. Article 30 must therefore be interpreted as follows: even if sale below the prices shown in the price-lists were by way of exception lawful, *it would not be so on the Italian market.'*

7. The application, lodged in due form, was served on the High Authority on 24 March 1955 in accordance with Article 33 (2) of the Rules of Procedure of the Court. The statement of defence was lodged at the Court Registry within the period prescribed in Article 31 (1) of the Rules of Procedure of the Court and was duly served. No other documents have been served.

The Agent and the advocates of the parties have been duly appointed.

The written procedure was concluded when the statement of defence was lodged on 20 April 1955. In pursuance of the first paragraph of Article 34 of the Rules of Procedure of the Court the President of the Court appointed Judge O. Riese as Rapporteur.

In pursuance of Article 45 (2) of the Rules of Procedure the President of the Court fixed the hearing for 2 June 1955. At this hearing, which took place on the day appointed, the parties referred to the observations which they had previously made in the written procedure.

In pursuance of Article 11 and the last paragraph of Article 21 of the Protocol on the Statute of the Court of Justice the Advocate General delivered his opinion that the application should be dismissed.

In accordance with Article 50 (2) of the Rules of Procedure the President of the Court declared that the oral procedure was concluded with this hearing.

Law

1. Admissibility

I. The application, for the bringing of which no time-limit is prescribed, complies with the requirements of Article 77 of the Rules of Procedure of the Court.

II. Article 37 of the Protocol on the Statute of the Court of Justice 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.

Are these conditions fulfilled in the present case?

1. *Has the applicant established an interest in the interpretation?*

In its letter of 28 February 1955 to the applicant the High Authority referred expressly to the judgment given in Case 2/54 to justify its interpretation of Article 30 of the Convention on the Transitional Provisions, claiming that Italian undertakings within the Italian market may apply only their own price-list and may not align their prices either on the prices of other undertakings in the Community or even on the prices of their national competitors.

The applicant considers that the High Authority wrongly drew these conclusions from the judgment in Case 2/54 since the judgment was concerned only with the protection of Italian undertakings against competition from non-Italian undertakings in the Community.
The question which of these two interpretation accords with the judgment in Case 2/54 directly concerns the undertakings which belong to the applicant association. The answer to this question can be given only by way of interpretation of the judgment and the applicant has no other means of ascertaining the correct interpretation.
The applicant has thus established its interest in asking for an interpretation of the judgment in question.

2. *Was the applicant a 'party' to Case 2/54 of the judgment in which it seeks interpretation?*

Apart from the institutions of the Community the parties to an action have the right to request an interpretation of the judgment which decides the action.
The applicant was a 'party' in Case 3/54 against the High Authority but it is not an interpretation of the judgment given in that action which is sought.
The applicant is seeking an interpretation of the judgment given in Case 2/54 (*Government of the Italian Republic* v *High Authority*), an action in which the applicant was not a party but the judgment in which is alleged by the applicant to have become an integral part of the judgment given in Case 3/54 which terminated its action.
This claim by the applicant is not valid. The judgment in Case 3/54 (Section 2 (1) of the grounds of judgment) refers solely to the judgment given in Case 1/54 (*French Government* v *High Authority*): it states with reference to Article 1 of Decision No 2/54 of the High Authority that no decision was called for because the judgment in Case 1/54 had already annulled that article for all purposes. The judgment in Case 3/54 refers to case 2/54, *Italian Government* v *High Authority,* only in Section 2, Nos 3 and 4 of the grounds of judgment, but this reference does not relate to the grounds contained in the judgment in Case 2/54 in Section II, No 11 of the grounds of judgment on the nullity of Article 1 of Decision No 2/54 of the High Authority by reason of infringement of Article 30 of the Convention on the Transitional Provisions. The judgment in Case 3/54 therefore does not refer to these grounds, the interpretation of which is alone in question here.
The Court however concurs in principle with the opinion of the Advocate General and recognizes that the applicant is entitled to ask for an interpretation of the judgment in Case 2/54 *Italian Government* v *High Authority* for the following reasons:

Where several actions are brought against the same decision of the High Authority and where, as the result of one of those actions, the decision is annulled, the applicants in the other actions may be regarded as 'parties' to the action with-

in the meaning of Article 37 of the Protocol on the Statute of the Court, subject expressly to the condition that the applicant has cited in his previous application the same ground on which the judgment to be interpreted has annulled the decision or as in the present case has declared the application well founded. Each of these parties is thus entitled to ask for the interpretation of the judgment which annuls the decision or declares one of the other actions well founded.

Case 2/54, *Italian Government* v *High Authority*, was declared well founded as far as Article 1 of Decision No 2/54 of the High Authority was concerned because that article infringed Article 30 (2) of the Convention on the Transitional Provisions. The applicant made the same claim in Case 3/54, an application for annulment which it had previously brought. In its judgment in Case 3/54 the Court accepted the admissibility of the application without considering or deciding upon the validity of the claim of misuse of powers relied on by the applicant or, moreover, the question whether the applicant was entitled to rely on an infringement of the law. The fact that the Court did not resolve these questions cannot prejudice the right of the applicant to make its application for an interpretation.

The applicant may therefore be regarded as being a party to the judgment in question.

3. *Is the meaning or scope of the judgment 'in doubt'?*

According to Article 37 of the Protocol on the Statute of the Court of Justice, an application for interpretation of a judgment assumes that the meaning or scope of a judgment is in doubt. The term 'in doubt' is general; it is less narrow than the term 'contestation' in the French version of Article 60 of the Statute of the International Court of Justice. For an application for interpretation to be admissible it is enough that the parties in question give different meanings to the wording of that judgment. This is the position in the present case.

4. *Which are the parts of the text of a judgment which may be the subject of interpretation?*

It is necessary to define the parts of the text of a judgment which may be the subject of interpretation. Obviously they can only be those which express the decision of the Court on the matter submitted to it: the operative part and such of the grounds as determine it and are essential for that purpose; those are the parts of the judgment which constitute the actual decision. On the other hand, the Court is not called upon to interpret ancillary matter which supplements or explains those basic grounds.
In the present case all the grounds stated in Section II, No 11, of the grounds of judgment in Case 2/54 must be regarded as being essential and on this account capable of forming the subject of an interpretation.

For all these reasons the application is admissible.

2. Substance

The Court concours with the opinion of the Advocate General in finding that the grounds of judgment in question contain no obscurities and that accordingly there is in principle nothing to be interpreted.
It appears from the facts set out in the judgment in Case 2/54 and reproduced above that the parties submitted to the Court only the question whether Article 1 of Decision No 2/54 of the High Authority infringed Article 30 of the Convention on the Transitional Provisions because it allowed non-Italian Community steel producers to grant discounts on their price-lists on the Italian market. It follows that the Court had before it only the question whether non-Italian steel producers in the Community were not only prevented under Article 30 of the Convention on the Transitional Provisions from aligning their prices on those of Italian producers but were prevented generally from selling on the Italian market at prices lower than those set out in their price-lists.
The third paragraph of No 11 of the grounds of judgment, in Section II, explains the objective pursued by Article 30 of the Convention on the Transitional Provisions: according to that paragraph non-Italian undertakings must be prevented from competing with Italian undertakings on the Italian market by quoting prices lower than those in their price-lists. The following and last paragraph of No 11 of the grounds of judgment, which gives reasons for this interpretation according to its content and states that not only alignment but generally speaking any quotation lower than the prices contained in the price-lists is unlawful, refers only to the protection of the Italian market against competition by non-Italian undertakings in the Community: there is a close link between that paragraph of the grounds of judgment and the explanations given in the third paragraph. The High Authority is therefore wrong in thinking that it can find in the judgment in Case 2/54 any justification for its position on the question whether Article 30 (2) of the Convention on the Transitional Provisions also prohibits alignment by the Italian undertakings *inter se* or alignment by Italian undertakings on the prices of non-Italian undertakings in the Community. The Court did not have this question before it in Case 2/54 and it did not give a decision on this issue. The judgment in Case 2/54 did not declare that such alignments were allowed; nor did it declare that they were prohibited. This question cannot therefore be answered by means of interpretation. For these same reasons the Court cannot accept the second part of the request by the applicant to interpret the judgment in Case 2/54 as meaning that Article 30 (2) of the Convention on the Transitional Provisions does not prevent alignment within the Italian market by the Italian undertakings on the prices of other Italian undertakings or alignment by the Italian undertakings on the prices of other non-Italian undertakings in the Community.
In a judgment giving an interpretation the Court can only define the meaning

and scope of a previous judgment; it cannot give judgment on matters which have not been decided by that judgment. The parties may not, by means of a request for interpretation, ask for a new decision on new disputes.
Nevertheless, since both parties have expressly stated that they would like an interpretation of the judgment to which they attach different meanings, the Court considers it appropriate to set out in the operative part below the scope of its judgment in Case 2/54.

Costs

Neither of the parties has asked for costs but nevertheless the Court must adjudicate in this respect under Article 32 of the Protocol on the Statute.
On the one hand, by its letter of 28 February 1955 which wrongly relies on the judgment in Case 2/54, the High Authority has caused the present application for an interpretation. It wrongly based its interpretation of Article 30 of the Convention on the Transitional Provisions on the judgment in question. On the other hand, the application is not well founded in seeking from the Court a decision on the lawful or unlawful nature of alignment by Italian undertakings.

Applying Article 60 (2) of the Rules of Procedure of the Court it is right that the parties be ordered to bear their own costs.

Upon reading the pleadings;
Having regard to the fact that the parties have not put forward oral observations;
Upon hearing the opinion of the Advocate General;
Having regard to Article 37 of the Protocol on the Statute of the Court;
Having regard to the Rules of Procedure of the Court including those relating to costs,

THE COURT

hereby:

Declares that the scope of the judgment in Case 2/54 is defined in the judgment itself in the third paragraph of No 11 of Part II of the grounds of judgment by the words: 'The actual objective of this provision [of the Convention] is therefore to prevent the non-Italian undertakings from competing with the Italian undertakings on the Italian market by undercutting their own price-lists' and that the next paragraph of the judgment refers solely to sales made in Italy by non-Italian undertakings referred to in the said definition, whereas the question of alignment by Italian undertakings on the prices of other Italian undertakings and alignment by Italian undertakings on the prices of other non-Italian undertakings in the Community is not decided by the judgment in Case 2/54;

Orders the parties to bear their own costs;

Orders, in accordance with Article 78 of the Rules of Procedure, that the original of this judgment be annexed in the files to the original of the judgment interpreted (Case 2/54) and that a note of the interpreting judgment be made in the margin of the original of the judgment interpreted.

Judge Rueff took part in the deliberations in the Deliberation Room during which the decision was arrived at. At the end of the deliberations on 6 June 1955 he signed the operative part of the judgment which was put in the file of the case at the conclusion of the deliberations.

He was prevented from signing the judgment by reason of his justified absence when the judgment was read in open court.

M. Pilotti Delvaux van Kleffens
Serrarens O. Riese Hammes

Delivered in open court in Luxembourg on 28 June 1955

M. Pilotti
President

O. Riese
President

A. Van Houtte
Registrar

OPINION OF MR ADVOCATE GENERAL LAGRANGE[1]

Mr President,
Members of the Court.

The Court has before it an application by the Associazione Industrie Siderurgiche Italiane (ASSIDER) for the interpretation of point 11 in Section II of Part A of the grounds under the heading 'Law' of the judgment in Case 2/54 (judgment given in an application by the Italian Government) 'to the whole of which' passage, it is alleged, 'the judgment in Case 3/54 refers' (that is to say, the judgment in the action brought by ASSIDER itself).
The part of the judgment in Case 2/54 which the Court is asked to interpret is that where it was held that the claim by the Italian Government of infringement, by Article 1 of Decision No 2/54, of Article 30 of the Convention on the Transitional Provisions was well founded.
After setting out its point of view, the applicant association concludes as follows:

'We are confident that the Court will interpret the judgment referred to *above as meaning that Article 30 (2) of the Convention on the Transitional Provisions prohibits alignment by non-Italian undertakings on the Italian market; and that, on the other hand, it does not prohibit within the Italian market alignment by Italian undertakings on the prices of other Italian undertakings or alignment by Italian undertakings on the prices of other non-Italian but Community undertakings.'*

1 — Translated from the French