

JUDGMENT OF THE COURT
1 JUNE 1961¹

Gabriel Simon
v Court of Justice of the European Communities

Case 15/60

S u m m a r y

1. *Officials – Staff Regulations of the ECSC – Interpretation and application – Competence of the President of the Court as head of the administration.*
2. *Decision conferring personal rights or similar benefits – Wrong interpretation of a provision – Cancellation*
3. *Decision conferring personal rights or similar benefits – Cancellation – Effect of annulment*
4. *Officials – Separation allowance – Cancellation of an implementing decision – Refusal of allowance by way of compensation
(Staff Regulations of the ECSC, Articles 60 (2) and 47)*
5. *Interpretation – Substitution of one wording for another – Difference in drafting – Difference in scope – Presumption*
6. *Officials – Separation allowance – Distance between the place of residence and the place of the institution – Concept
(Staff Regulations of the ECSC, Article 47)*
7. *Interpretation – Lack of working documents – Literal and logical interpretation.*

1. The President of the Court cannot be denied the competence and duty to interpret the Staff Regulations which he is called upon to apply subject to review by the Court of the correctness of this interpretation.
2. If the administrative authority becomes aware that a certain allowance has been granted as a result of a wrong interpretation it has the power to amend its previous decision.
3. Cancellation on the grounds of unlawfulness of a decision conferring personal rights and similar benefits, even if in certain cases it does not involve, because of vested rights, annulment *ex tunc* always has this effect *ex nunc*.²
4. Article 60 (2) of the Staff Regulations of the ECSC contains a transitional provision which took account solely of the situations existing before the Staff Regulations entered into force and could therefore be applied solely to govern those situations.
Even if this provision could apply in the case of an isolated amendment of Article 47 (3) it cannot be applied in the case of the reversal of a decision applying this article if the reversal is due to a finding that that decision had been taken as a result of a wrong interpretation of the article.
5. Where one wording is replaced by another it must be assumed in the

1 – Language of the Case: French.

2 – See paragraph 2, summary, Judgment in Joined Cases 7/56 and 3 to 7/57 (Rec. 1957, p. 85) and paragraph 10, summary, Judgment in Joined Cases 42 and 49/59.

- absence of evidence to the contrary that any difference in wording involves a difference in scope if the new wording leads to a different interpretation.
6. the fact that the word 'radius' contained in Article 16 (b) of the Provisional Staff Regulations has been replaced in Article 47 (3) of the Staff Regulations of the ECSC by the word 'distance' clearly shows that the authors of the Regulations wished to reject the concept of 'as the crow flies'.
 7. In the absence of working documents clearly expressing the intention of the draftsmen of a provision, the Court can base itself only on the scope of the wording as it is and give it a meaning based on a literal and logical interpretation.

In Case 15/60

GABRIEL SIMON, an official of the Court of Justice of the European Communities, represented by **Pierre Fincoeur**, Advocate of the Arlon (Belgium) Bar, with an address for service in Luxembourg at 12 Avenue Pasteur,

applicant,

v

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES, 12 rue de la Côte-d'Eich, Luxembourg.

defendant,

represented by its Registrar, **Albert Van Houtte**, acting as Agent,

Application for the annulment of the decision of the President of the Court of Justice dated 21 September 1960 withdrawing the separation allowance from the applicant as a result of the decision taken by the Committee of Presidents on 9 May 1959,

THE COURT

composed of: **N. Catalano** (Rapporteur), President, **O. Riese**, **L. Delvaux**, **J. Rueff** and **R. Rossi**, Judges,

Advocate-General: **K. Roemer**

Registrar: **H. J. Eversen**, Deputy-Registrar

gives the following