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

JUDGMENT

Issues of fact and of law

I – Statement of the facts

The facts may be summarised as follows:

1. The applicant was engaged by the Court as a stencil typist by letter of engagement dated 9 July 1953 and signed by him on 13 July 1953. By decision of the Court dated 17 July 1956 the provisions of the Staff Regulations of the Community were applied to him as an established official 'within the meaning of Article 2 (2) of the Staff Regulations'.

Article 47 (3) of the said Regulations provides that a separation allowance shall be granted 'to officials who before they took up their duties have lived continuously for more than six months in a place more than 25 km from the place of employment'. This provision replaced that of Article 16 (b) of the Provisional Staff Regulations which entered into force on 1 July 1953, according to which the said allowance was granted to officials . . . 'who during the last three months preceding their taking up duties did not live permanently in Luxembourg or within a radius of 25 km thereof or who did not work there'.

On 6 March 1958 the applicant applied to the administration of the Court for the grant of the separation allowance provided for in Article 47 (3) of the Staff Regulations. For this purpose he stated that he was ready to prove that he had lived 'continuously and without interruption for 26 years at Arlon, a town 26 km distant from Luxembourg by road and 29 km by railway'.

This allowance was granted to the applicant on 11 March 1958 by a decision of the President of the Court without retroactive effect and with effect from 15 March 1958 since the applicant had stated in a memorandum of 13 March 1958 that his application related only to the future.

2. In his report relating to the sixth financial period the auditor, having observed that the High Authority had, as opposed to the Court of Justice, decided to calculate the distance prescribed in Article 47 (3) of the Staff Regulations as the crow flies, drew the attention of the institutions concerned to the necessity of removing any lack of harmony in the matter and of choosing a criterion for uniform calculation.

On 22 January 1959 the Registrar of the Court informed the auditor that since the Committee of Common Interests had adopted a common interpretation for the future, new officials living at Arlon would be regarded as resident.

With the general principle decided, the question arose whether the separation allowance already granted to certain officials on the basis of the legal distance calculated by road or railway ought to be maintained in favour of those benefiting. At its meeting on 20 October 1959 the Committee of Presidents decided to submit the question to the Committee of Common Interests. The latter considered the case of the two officials of the Court, including the applicant, in respect of which the problem arose, and on 16 March 1960 expressed the opinion to the Committee of Presidents that 'this question was settled by adopting the distance as the crow flies while respecting the vested rights of the two persons concerned'.

To this end the Committee decided on 25 April 1960 to propose to the Committee of Presidents that the separation allowance which the two officials were receiving 'should be absorbed by the advance in grade and step, but that past benefits should be retained'.

3. This proposal was adopted by the Committee of Presidents at its meeting on 9 May 1960 and the Registrar of the Court informed the applicant by letter dated 8 July 1960 of the conditions on which his separation allowance would be absorbed. In reply to this notification the applicant sent a letter dated 22 July 1960 to the President of the Court in which he contested the legality of the decision taken with regard to him and

asked that the matter be dealt with equitably.

By letter dated 21 September 1960 the President of the Court confirmed to the applicant the decision taken by the Committee of Presidents with regard to him. The decision contained in the letter of the President of the Court is the subject of the present application which was lodged at the Registry on 19 October 1960.

II — Conclusions of the parties

The *applicant* claims that the Court should:

'declare the present application admissible;

declare that the present application is well founded;

accordingly, annul the decision of the President of the Court of Justice of the European Communities withdrawing the separation allowance from the applicant.'

The *defendant* claims that the Court should:

'dismiss the application brought by Gabriel Simon as unfounded in law;

order the applicant to pay the costs.'

III — Submissions and arguments of the parties

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

1. *Admissibility*

The *defendant* has not contested the admissibility of the application.

2. *Substance*

The *applicant* maintains that the decision contained in the letter from the President of the Court dated 21 September 1960 is unlawful since the decision of 9 May 1960 of the Committee of Presidents which it confirms is contrary to Article 62 of the Staff Regulations of the Community. To prove the validity of this complaint the applicant maintains that Article 47 (3) must be interpreted as follows:

Having regard to the general structure and spirit of the law, the concept of the separation allowance is linked with the concept of the journey between the seat of the Community and the place where its official lives and which the official must actually make to return home or go to work.

Moreover, a comparison of Articles 47 (3) of the Staff Regulations and Article 16 (b) of the Provisional Staff Regulations in force before the Staff Regulations were adopted shows that the Provisional Regulations regarded as non-residents entitled to the separation allowance officials not living 'within a radius' of 25 km from the seat whereas Article 47 (3) of the Staff Regulations regards as non-residents those who do not live 'at a distance' less than 25 km from the seat. The omission of the word 'radius' which obviously refers to the distance as the crow flies shows that the Staff Regulations did not wish to retain this concept and that they adopted the criterion of the distance which the servant actually had to go.

It is alleged that far from being a correct interpretation of Article 47 (3) of the Staff Regulations, the solution adopted by the Committee of Presidents distorts the logical content of this article. This is all the more so since the previous interpretation of the Court was never regarded as wrong. The Registrar himself had stated in his letter of 22 January 1959 sent to the auditor that 'the method of calculating the distance provided for in Article 47 (3) is not specified in the Staff Regulations and General Regulations and therefore the interpretation given by the Court of the legal distance was just as valid as the High Authority's method of calculation' (that is, as the crow flies).

Moreover, in his report relating to the sixth financial period of the Community, the auditor never regarded the method of calculating by road or railway adopted at the time by the Court as an irregular application of Article 47 (3) of the Staff Regulations. He simply limited himself to wishing that a uniform criterion could be adopted in the matter for the future.

In view of the fact that the solution to the problem raised by Article 47 (3) of the Staff

Regulations, such as is confirmed by the decision of 9 May 1960 of the Committee of Presidents, does not respect the content and scope of this provision and thus involves the abolition of the applicant's right to receive the separation allowance, the applicant claims that this solution constitutes in fact an amendment or alteration of the said article. Under the terms of Article 62 of the Staff Regulations any amendment of the Staff Regulations must be made by the Committee of Presidents on a proposal from one of the institutions and after consulting the other institutions including the Staff Committee of each institution and where appropriate after receiving the opinion of the Committee on the General Regulations provided for in Article 46. Because the procedure provided for in this article has not been followed in the present case, since the required consultations have not taken place, the decision of 9 May 1960 of the Committee of Presidents, as a decision amending the Staff Regulations, infringes the aforementioned Article 62. As a result the decision of 21 September 1960 of the President of the Court is likewise irregular in that it is aimed at applying in respect of the applicant a decision, that of the Committee of Presidents, which is incompatible with Article 62 of the Staff Regulations.

The *defendant* first of all analyses the position of the Committee of Presidents:

in respect of the auditor's report;
in respect of the application of the Staff Regulations and the General Regulations for staff.

On the first point, the defendant observes that the irregularities or diffulties which may arise in the accounting or financial activity of the Community are brought by the auditor to the knowledge of the Committee of Presidents. The Treaty does not indicate the competent authority for deciding questions raised by the auditor's report, but the Commission has inferred from the fact that it has to ensure administrative harmony between the different institutions of the ECSC that it is the only competent body to accept or reject the observations of the auditor.

As for the second point, the defendant stresses that the Committee has instructed the administrations of the institutions collected together within the Committee of Common Interests to adopt detailed rules for the implementation of the provisions of the Staff Regulations (and of the rules) in the event of differences in the interpretation of these provisions.

All this procedure, claims the defendant, has been observed in the present case, for the Committee of Presidents, on the one hand, has taken note of the observations of the auditor in respect of the application of Article 47 (3) of the Staff Regulations and, on the other, has instructed the Committee of Common Interests to propose a uniform solution to the question. This solution was adopted by the Committee of Presidents by its decision of 9 May 1960 and notified to each of the institutions which had to adopt it. It follows that the decision of 9 May 1960 was taken by the Committee of Presidents within the context of its powers and that as a result the decision of the President of the Court of 21 September 1960 cannot be held to be irregular on the sole ground that it is based on that of 9 May 1960.

The defendant then considers whether, by adopting the solution contained in its decision of 9 May 1960, the Committee of Presidents has wrongly interpreted Article 47 (3) of the Staff Regulations. It maintains the lawfulness of this decision and states in this respect:

(a) With regard to the structure and spirit of the law it must be borne in mind that the separation allowance is intended to constitute additional salary for officials for whom the taking up of their duties with the Community involves a change in their mode and standard of living. By reason of this it is wrong to claim that the concept of this allowance is linked to that of the journey which the official has in fact made to return to his country of origin; this is all the more so in that, according to the terms of Article 9 of the Staff Regulations, officials must reside either in the place where they are employed or the immediate neighbourhood.

The separation allowance with which Article 47 (3) of the Staff Regulations is concerned is basically intended to allow the official who, by reason of his taking up employment with the Community, has had to leave his original home and settle in a different place to overcome the difficulties involved in his expatriation. This, moreover, explains why the draft Staff Regulations of the EEC and Euratom have replaced the words 'separation allowance' by "expatriation allowance". The provision of Article 47 (3) is therefore based on the notion that the official has removed to a place where he is a foreigner and not that of the journey which the official must make each day to get to his place of work or home. As a result it is logical to conclude that the legal distance of 25 km provided for by this article must be calculated as the crow flies, a conclusion which has been adopted likewise by the EEC and Euratom which have granted the allowance in question to staff not living within a radius of 70 km from the centre of Brussels.

(b) The conclusions drawn by the applicant from a comparison of Article 16 (b) of the Provisional Staff Regulations and Article 47 (3) of the Staff Regulations do not appear to be well founded. In adopting the draft regulations the Committee of Presidents had at its eleventh meeting on 24 March 1955 taken the wording used by the said Article 16 (b) where the word used was 'radius'. When a new draft was submitted to it by the President of the High Authority the Committee decided on 12 December 1955 (fourteenth meeting) to continue its work on the basis of this latter draft, Article 47 (3) of which relating to the separation allowance was drafted in a different manner from that adopted by the Committee in its previous draft. Not only had the word 'radius' been replaced by the words 'at a distance not greater than . . . km', but the wording had been proposed in a positive instead of a negative form. The Committee then completed this draft taking the principle of continuous residence for a certain time and the criterion of 25 km already contained in its first draft.

All these circumstances clearly show that the Committee, in adopting the present wording of Article 47 (3) of the Staff Regulations, in no way intended to depart from the principles and criteria which it had adopted in its first draft and the omission of the word 'radius' contained in the first draft was due to the desire to simplify the wording of this article. The solution adopted by the Committee of Presidents must be regarded as a correct and normal interpretation of Article 47 (3) of the Staff Regulations and not as an amendment of it.

3. *The lack of competence of the President of the Court of Justice*

Apart from the irregularity of the decision of the Committee of Presidents the *applicant* maintains in addition that the decision of the President of the Court of 21 September 1960 is irregular because it was *ultra vires.*

According to Article 16 of the Statute of the Court of Justice the Staff Regulations of the Court are laid down by the Court. Thus in accordance with these provisions the Staff Regulations laid down by the Committee of Presidents were adopted by the Court of Justice by decision dated 1 March 1956 and took effect on 1 July 1956 (*vide* Staff Regulations *in fine*). The applicant claims that if this was the procedure for the adoption and implementation of the Staff Regulations within the Court of Justice it is obvious that the same procedure should have been followed in the present case which is concerned with the adoption and implementation of 'a new interpretation' of Article 47 (3) of the Staff Regulations within the Court. Since it is contrary to this procedure, the decision by the President and not by the Court adopting and applying the interpretation, which the Committee of Common Interests gave to the said article and which was followed by the Committee of Presidents, is unlawful.

The *defendant* in answer to this complaint says that all the institutions 'have implemented' the decision of the Committee of

Presidents and, as regards the implementation of the Staff Regulations and Rules, the competence of the President of the Court cannot be doubted, for it follows from Article 1 (b) of Annex I to the Staff Regulations that the implementation within the Court of the Staff Regulations and the Rules is entrusted to the appointing authority, which in the present case is the President of the Court.

4. *Infringement of vested rights*

The *applicant*, after stressing that the act by which he had been granted the separation allowance, as an act emanating from the competent authority and containing a correct interpretation of Article 47 (3) of the Staff Regulations, was legal, concludes that the act in question gave rise to a personal right. It therefore follows that in accordance with the case-law of the Court in the case of *Algera* the benefit of the act in question could not in principle be withdrawn from him, for since the personal right was vested the necessity of maintaining confidence in the permanency of the situation thus created prevails over the interest of the administration seeking to reverse its decision.
Against this argument the *defendant* restricts itself to referring to the principles of the case-law established by the Court in this same case of *Algera*. After contesting that the decision in question can be regarded as the 'revocation of a legal measure', it observes that the statement of facts seems to show that the Committee of Presidents and the President of the Court took the view that there could be no question in the present case of vested rights strictly so called.
In answer to the applicant's argument that, by adopting the Staff Regulations and agreeing to the payment of the separation allowance to the applicant, the Court of Justice had validly concluded with the applicant a tacit agreement which it could not unilaterally cancel, the defendant says that the decision of the Court of Justice of 11 March 1958 by which the separation allowance was granted to the applicant is in the nature of a 'decision' and not of a 'contractual undertaking'. It states in this respect that the legal connexion between it and the applicant after the Staff Regulations came into force was a matter of public law and not of a contractual nature; accordingly, in the interests of the department, it may be amended by the authority.

5. *Infringement of Article 60 (2) of the Staff Regulations*

Lastly the *applicant* maintains that the decision taken is contrary to Article 60 (2) of the Staff Regulations for it disregards the principle contained in this article that 'staff who, as a result of Article 47 (3) no longer receive the separation allowance, shall receive monthly as a compensation allowance the difference between the amount which they were receiving as non-residents on the Staff Regulations' being first applied to them and the amount of the residents' allowance in Article 47 (3)'.
The *defendant* deals with this argument jointly with that of the alleged contractual nature of the undertaking by the Court in granting the separation allowance and makes the same counter-arguments as in respect of the latter.

IV — Procedure

The procedure followed the normal course.
By letter dated 16 January 1961 sent to the President of the First Chamber, the *applicant* requested that 'all the minutes of meetings of the Committee of Presidents and all other documents either from other institutions of the Community or from internal committees, and in particular the Committee of Common Interests relating to the application of Article 47 (3) of the Staff Regulations', be produced.
In its observations lodged on 26 January 1961 the *defendant* confirmed that a scrupulous examination of the minutes of the various meetings of the Committee of Presidents between 24 March 1955 and 29 March 1956 showed that to its knowledge no case had raised again after 24 March 1955 the question of the calculation of the

distance in the application of the allowance for residence or separation. The defendant found no reference either to the subject-matter of the present proceedings on considering the working documents submitted for the attention of the Committee of Presidents relating to the Staff Regulations and originating from the various bodies consulted.

While submitting to the Court's discretion in respect of the necessity and expedience of the production of the documents asked by the applicant, the defendant stressed the inconvenience to which such production could give rise.

At the hearing on 16 February 1961 the Court, after hearing the report of the Judge-Rapporteur and the views of the Advocate-General, decided not to order production of the aforesaid documents.

Grounds of judgment

A—Admissibility

The application complied with the formalities and time-limits provided for by the Treaty and the Rules of Procedure of the Court. Its admissibility is not contested by the defendant and gives rise to no objection by the Court of its own motion.

The application is admissible.

B—Substance

I

The application is based on four complaints:

1. The applicant's first complaint is that the Committee of the four Presidents has infringed Article 62 of the Staff Regulations because it has replaced Article 47 (3) of those Regulations by a provision of a completely different scope without complying with the formalities provided for in Article 62.

In support of his argument the applicant asserts that Article 47 (3) of the Staff Regulations cannot be interpreted in the way which the contested decision has done.

The first part of this complaint is without foundation for there is nothing to lead to the conclusion that the Committee of Presidents intended to amend the wording of Article 47 (3).

The Committee of Presidents has limited itself to interpreting the wording.

The fact that this interpretation may possibly be regarded as wrong cannot lead to the conclusion that an amendment has been made to the wording which may only involve a finding that such interpretation is wrong.

The complaint that Article 62 has been infringed must be dismissed subject to a consideration whether the interpretation given to Article 47 (3) by the Committee of Presidents is correct.

2. The applicant's second complaint is that the President of the Court of Justice was not competent to take the contested decision.

This complaint is based on considerations similar to those of the previous complaint, for the applicant again refers to Article 62 in alleging that amendments to the Staff Regulations are for the Court and not its President.

This complaint must be dismissed for the abovementioned reasons.

In his reply the applicant equates a new method of interpretation to a new decision.

Even considered in this light the complaint is not well founded for it is clear that the President of the Court (and even, more precisely, the Registrar subject to review by the President) was competent to apply Article 47 (3).

The President of the Court cannot be denied the competence and the duty to interpret the wording which he is called upon to apply subject to review by the Court of the correctness of this interpretation.

3. The applicant's third complaint is that the President of the Court has infringed a vested right.

The decision granting the separation allowance to the applicant has not been revoked retroactively but only amended in respect of the future. Further the allowance has been maintained *ad personam* until the amount of the allowance is absorbed by subsequent advancements.

If the administrative authority becomes aware that a certain allowance has been granted as a result of a wrong interpretation of a legal provision it has the power to amend the previous decision.

Even if in certain cases in view of vested rights withdrawal on grounds of unlawfulness does not have a retroactive effect it always takes effect from the present.

This complaint is not well founded.

4. Finally, the applicant claims an infringement of Article 60 (2) of the Staff Regulations which provides for the grant of a compensatory allowance to staff 'who by reason of Article 47 (3) no longer enjoy the separation allowance'.

(a) Article 60 (2) contains a provisional provision which took account solely of situations existing before the Staff Regulations entered into force and could therefore be applied solely to govern those situations.

(b) Even if this provision could apply in the case of an isolated amendment of Article 47 (3) (a case which does not apply here), it cannot be applied in the case of 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.

This complaint is not well founded.

II

It remains to be considered whether the interpretation of Article 47 (3) given by the Committee of Presidents and confirmed by the President of the Court is correct.

The defendant maintains that the wording of this article which has replaced Article 16 (b) of the Provisional Staff Regulations had been proposed by the High Authority which both under the Provisional Staff Regulations and the Staff Regulations has always applied the criterion of 'as the crow flies'.

This fact is alleged to show that the intention of the authors of the provision was not to amend the system as clearly appearing from the previous wording and 'that the disappearance of the word "radius" is not the result of a formal decision but only the simplification of the drafting'.

This argument is not supported by any document capable of showing that the intention to amend the system previously established must be ruled out.

On the other hand, the difference in wording between the two articles is itself an argument capable of leading to the presumption that the authors of the new provision intended to amend the former criterion, since in the absence of evidence to the contrary it must be assumed that any difference in wording involves a difference in the scope if the new wording leads to a different interpretation.

The wording of the former article left no doubt at all, for the word 'radius' accords precisely with the concept of distance as the crow flies.

On the other hand, the words used by Article 47 (3) may literally be given a double interpretation, since the distance may be calculated according to as the crow flies or by road or rail.

In these circumstances, if the word 'radius' had replaced the word 'distance' in the article, the scope of the amendment would have been clear, for the authors of the new provision would have obviously had the intention of choosing between the two possible interpretations of the former wording that which related to the concept of distance as the crow flies.

In the present case, however, it is the reverse which has happened.

The very fact of having replaced in the present case the word 'radius' by the word 'distance' clearly shows that the authors of the article wished to reject the concept of 'as the crow flies' (a concept which was clearly expressed by the word 'radius') and that they wished on the other hand to adopt the concept of 'journey' by road or railway.

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.

Finally, the argument that the criterion of calculation as the crow flies has always been applied both under the Provisional Staff Regulations and the Staff Regulations is weakened by the fact that the criterion was not applied by the Court when at the request of those concened it applied Article 47 (3).

It must also be observed that Article 47 (3) does not prescribe precisely the method of calculating the distance (by road or rail or the shortest of these two ways).

If the drafting is defective there is nothing to prevent selecting by means of interpretation the most reasonable criterion, that is to say, that of the shortest distance either by road or by rail of a normal journey.

In these circumstances, while recognizing that the drafting of Article 47 (3) may at first sight lend itself to a double interpretation, the Court must find that the interpretation given by the Committee of Presidents and the President of the Court is not in accord with the scope of this provision.

The decision by which the previous decision was revoked is unlawful and must therefore be annulled.

Costs

The applicant has succeeded in his action.

Under Article 69 (2) of the Rules of the Court the defendant must be ordered to pay the costs.

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the parties;
Upon hearing the opinion of the Advocate-General;
Having regard to Article 58 of the Staff Regulations of the European Community of Coal and Steel;
Having regard to Articles 47 (3), 60 (5) and 62 of the said Regulations;
Having regard to the Protocols on the Statute of the Court of Justice of the ECSC, the EEC and Euratom;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities, especially Article 69,

THE COURT

hereby:

1. **Annuls the decision of the President of the Court of Justice of the European Communities withdrawing the separation allowance granted to the applicant;**

2. **Orders the defendant to bear the costs.**

Delivered in open court in Luxembourg on 1 June 1961.

Catalano Riese Delvaux

Rueff Rossi

H. J. Eversen
Deputy Registrar
For the Registrar

N. Catalano
(Acting President of the Court)
President of the First Chamber