

OPINION OF MR ADVOCATE-GENERAL GAND

DELIVERED ON 14 JUNE 1967¹

*Mr President,
Members of the Court,*

Article 2 (4) of Annex VII to the Staff Regulations of Officials provides that the appointing authority may, exceptionally, by special reasoned decision grant an official a dependent child allowance for any person whom the official has a legal responsibility to maintain and whose maintenance involves heavy expenditure. By a decision of 10 July 1963—published on the following 29 July in the Staff Information Bulletin—the Commission of the EEC instructed the Director-General of Administration to exercise the powers conferred by the said Article in respect of all categories of officials.

A decree absolute of dissolution of the marriage of Mr Moulijn, a principal administrator with the Commission of the EEC, to Mrs Pircher was made by the court of first instance of The Hague, under the terms of which he was ordered to pay his former spouse maintenance of 700 guilders a month. He refers to you the implied decision of refusal to be inferred from the silence of the Commission on receipt of the request which he sent to it on 11 November 1966 with the object of obtaining an allowance under Article 2 (4) of Annex VII.

My opinion today deals solely with the admissibility of the application, since the Commission, relying on Article 91 of the Rules of Procedure, raises the preliminary objection that the application is out of time and, having regard to the previous decisions of this Court, I shall invite you to uphold this objection.

In order to come to a decision, the various requests which Mr Moulijn sent to his administration and which are

annexed to the Commission's observations must be considered.

The reply of the Director-General of Administration of 4 February 1966 to the first request sent to him on 22 December 1965 was a refusal based on the argument that the only legal obligations which could be considered were those embodied in the Civil Code to the exclusion of those laid down by the courts. Mr Moulijn challenged this argument on 13 February, but the Director-General confirmed his decision on 1 April. The applicant made another request by a letter which was received on 13 May 1966 and which was addressed to 'the appointing authority in this matter, Mr J. Van Gronsveld, Director-General of Administration', but was no more successful, because the Director-General informed him on 28 June that he refused to alter his decision. Mr Moulijn then applied on 11 November to the Commission. Repeating the arguments which he had already submitted, but without referring to any of the requests which he had made, he applied once more for an allowance under Article 2 (4) of Annex VII to the Staff Regulations; today, it is because of the silence of the Commission for more than two months, which appears to him to amount to an implied decision of refusal within the meaning of Article 91 (2) of the Staff Regulations of Officials, that this matter is brought before you.

His application to the Commission was couched in terms giving the impression that it was new and had not been the subject of any previous decision. If this had been the case, no question of admissibility would arise, but we have seen that the situation was quite different.

On 4 February 1966 the Director-

¹ — Translated from the French.

General of Administration refused to grant Mr Moulijn an allowance under Article 2 (4) and on two occasions confirmed the decision which he had taken. His refusal was a decision against which an appeal could be filed within the period of three months laid down in the first subparagraph of Article 91 (2) and which, as no appeal was filed within this period, became final. There is no doubt that an appeal can be made through official channels against such a decision and this is how the request to the Commission should be regarded, but such an appeal cannot extend the period for lodging an appeal to the

Court unless it also has been lodged within that period (for an example of an appeal through official channels see Case 52/64—*Pfloeschner v Commission of the EEC*—Rec. 1965, p. 1211). However, even if the most favourable solution from the applicant's point of view were adopted, that is to say, by only taking into account the decision of the Director-General of Administration of 28 June 1966 in reply to the request which for the first time expressly mentions the powers conferred on the Director-General, the application sent to the Commission on 11 November is still out of time.

I am of the opinion, therefore:

- that the application of Mr Moulijn should be dismissed as inadmissible;
- that he should be ordered to bear the costs with the exception of the costs incurred by the Commission.