OPINION OF MR ADVOCATE-GENERAL DUTHEILLET DE LAMOTHE DELIVERED ON 9 JUNE 1971[1]

Mr President,
Members of the Court,

Mr Vinck is an official in the service of the Commission. Before the 'merger' he used to be in charge of a specialized department in Euratom responsible for safety measures in the nuclear installations.

After upon the 'merger', he considered that this department ought to have been re-organized as a division, that he ought to have been placed at its head, or possibly at the head of some other division, and that in any event he should have been promoted from Grade A 4, which he then occupied, to Grade A 3.

During 1968-1969, he addressed successive and numerous requests to this effect to the Commission which rejected all of them.

By the present application he asks the Court to annul a decision of 21 May 1970 by which the President of the Commission rejected the request which the applicant had addressed to him on 16 February 1970.

The Commission has raised *in limine litis* an objection of inadmissibility on the ground that the application is out of time.

This objection of inadmissibility seems well founded.

The Court has on numerous occasions ruled that applications against express decisions which are purely confirmatory of implied decisions which have become final because they were not contested within the time laid down for bringing appeals, were inadmissible.

The Court went even further and in a recent judgment (*Bode*, 26 May 1971) ruled that appeals against express decisions which confirmed implied decisions, even if brought within the proper time-limit, were inadmissible for lack of interest.

In my opinion this case-law is wholly applicable to the present case.

By letter dated 16 February 1970 which was received on 18 February 1970 at the latest, the applicant had asked the President of the Commission to make good by way of promotion or in the form of damages the harm to his career which he considered he had suffered.

Since the President had not replied to this letter within the period of two months laid down by the second subparagraph of Article 91 (2), the applicant had therefore to regard his request as rejected on 18 or 19 April and to appeal against this implied decision before 20 or 21 June 1970 at the latest.

However, his application was only lodged at the Court Registry on 28 August 1970, that is to say, more than 2 months after the period for appealing to the Court against the implied decision had expired.

Admittedly, the applicant argues that his application was rejected by an express decision of 21 May 1970.

But this decision is purely confirmatory of the implied decision and did not therefore have the effect of causing time to run afresh for the purposes of an appeal.

Admittedly, and this is the peculiarity of the present case, this express decision was taken when the time for an appeal against the implied decision had not yet expired.

But in my view this fact has no effect on the application of the case-law to which I have just referred. Once an implied decision must be regarded as having been taken, then under Article 91 of the Staff Regulations it is from the date when this decision is deemed to have been taken, and only from that date, that the two months period laid down by this provision commences to run.

1 — Translated from the French.

In my opinion, therefore:

— the application must be dismissed as inadmissible;

— the parties must bear their own costs.