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

Mr President,
Members of the Court,

Mr van Eick, who was a scientific officer at Euratom, was dismissed from his office by a disciplinary decision on 4 July 1967.

By your judgment of 11 July 1968 you annulled that decision, finding that the hearing of the official concerned which took place during the disciplinary proceedings had not been properly conducted.

Following your judgment Mr van Eick was reinstated and new disciplinary proceedings were instituted against him. During these proceedings he refused to be heard by the members of the Commission who had summoned him for that purpose.

He was again removed from his post and asked you to annul this further measure.

By your judgment of 4 February 1970 you rejected this request finding in particular that there had been no irregularity in the procedure.

Mr van Eick would not accept this and submitted a new request to the Commission for the revocation of the decision removing him from his post, for the disciplinary proceedings to be once more instituted against him and for the award of compensation.

In his present application Mr van Eick asks you to annul the Commission's decision dismissing the said request.

In my view it is obvious that such an application cannot be entertained by you.

As the Commission rightly emphasizes, the application founders on the force of *res judicata* of your judgment of 4 February 1970 as a result of which the removal of Mr van Eick from his post became irreversible.

In fact, since the applicant has no grounds to put forward in support of an application for revision in the circumstances laid down by Article 41 of the Protocol on the Statute of the Court, he has sought to achieve the same result, that is to say, once more to call in question your judgment, by way of a request to the Commission.

The Commission has declined to become involved with this manoeuvre and in my view you can only confirm that its attitude is correct.

Since Mr van Eick's application in my opinion amounts to an abuse of the process of the Court I propose that you should refuse to allow him to benefit from the provisions of Article 70 of the Rules of Procedure and that you should order him to bear the entire costs of the proceedings.

My opinion is, therefore,

1. That the application should be dismissed;

2. that the costs of the proceedings should be borne by Mr van Eick.

1 — Translated from the French.