OPINION OF ADVOCATE GENERAL JACOBS

delivered on 17 January 2002 [1]

1. In this case the Commission seeks a declaration, pursuant to Article 226 EC, that the Kingdom of the Netherlands has failed to fulfil its obligations under Article 4(1) and Article 6(1) of Council Directive 76/160/EEC of 8 December 1975 [2] concerning the quality of bathing water.

2. The Directive has as its object the protection of the environment and public health, and to those ends it seeks to reduce the pollution of bathing water and to protect such water against further deterioration.

3. Article 4(1) of the Directive provides:

'Member States shall take all necessary measures to ensure that, within 10 years following the notification of this Directive, the quality of bathing water conforms to the limit values set in accordance with Article 3.'

As the Directive was notified on 10 December 1975, the time limit expired on 10 December 1985.

4. Article 6(1) provides:

'The competent authorities in the Member States shall carry out sampling operations, the minimum frequency of which is laid down in the Annex.' Pursuant to Article 12(1) the sampling operations were to commence within two years of the notification of the Directive.

5. In its application the Commission contends that the Netherlands has failed to fulfil its obligations under Article 4(1) and Article 6(1) of the Directive, as appears from the Commission's report for the 1999

1 — Original language: English.
2 — OJ 1976 L 31, p. 1.

season: 0.7% of inland waters (four of the 528 bathing areas) remained insufficiently sampled, and 8% of the inland waters did not comply with the minimum limit values.

6. The Netherlands accepts that it has not complied with its obligations in the matters invoked by the Commission. It submits observations on the reasons for earlier infringements (in 1996, 1997 and 1998); on the measures meanwhile taken to avoid new infringements; and on the frequency of sampling and the quality of bathing water in the 1999 season. According to the Netherlands Government, the results of sampling in the 1999 season show a considerable improvement by comparison with previous years, and the insufficient sampling in the four bathing areas was due to human error. As regards the 8% of inland waters which did not comply with minimum limit values, that represented an increase by comparison with 1998, but the results in half of the waters concerned were probably due to faulty analysis, and the rest to specific causes. In conclusion the Netherlands recognises that it has not complied with its obligations under Article 4(1) and Article 6(1) of the Directive.

Conclusion

7. Accordingly the Court should in my opinion:

(1) declare that the Kingdom of the Netherlands has failed to fulfil its obligations under Article 4(1) and Article 6(1) of Council Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water;

(2) order the Kingdom of Netherlands to pay the costs.