OPINION OF ADVOCATE GENERAL RUIZ-JARABO COLOMER

delivered on 10 July 2001 [1]

1. The European Commission is seeking a declaration from the Court of Justice that the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under Article 3 of Council Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water [2] ('the Directive').

I — The Directive

2. The aim of the Directive, as stated in the first recital in its preamble and in Article 1, is to protect the environment and public health by reducing the pollution of bathing water, with the exception of water intended for therapeutic purposes and water used in swimming pools, and protecting it against degradation.

3. Article 3 requires Member States to set, for all bathing areas or for each individual bathing area, the values applicable to bathing waters for the physical, chemical and microbiological parameters given in the Annex to the Directive. In accordance with Article 2, those parameters form an integral part of the Directive.

4. Under Article 4, Member States ought to have taken the measures necessary to ensure that, within 10 years of the notification of the Directive, the quality of bathing water conformed to the limit values set in accordance with Article 3. The Directive was notified to the United Kingdom on 10 December 1975, so the relevant period expired on 10 December 1985.

5. Under Article 13 of the Directive, as amended, [3] Member States are required to send the Commission a report on their bathing waters and the most significant characteristics thereof.

1 — Original language: Spanish.

2 — OJ 1976 L 31, p. 1.

3 — As amended by Article 3 of Council Directive 91/692/EEC of 23 December 1991 standardising and rationalising reports on the implementation of certain Directives relating to the environment (OJ 1991 L 377, p. 48).

6. Thus, Member States are required *inter alia*, by virtue of the Directive, to set for all bathing areas the values for the physical, chemical and microbiological parameters laid down and to take the measures necessary to ensure that, within a period of 10 years following notification of the Directive, the quality of bathing water conforms to the said values. [4]

II — Facts

7. The Commission concluded from the United Kingdom's reports concerning the 1996 and 1997 bathing seasons that the percentage of United Kingdom bathing areas complying with the requirements of the Directive was respectively 89.4% and 88.3%. On 22 January 1999 it drew the Government's attention to that fact and asked it to submit such observations as it considered appropriate.

8. The United Kingdom authorities responded by letter of 30 March 1999, in which they stated that they were determined to comply with the Directive's mandatory standards as quickly as possible and indicated the measures that were being taken to improve the quality of bathing water.

4 — See point 8 of my Opinion of 18 January 2001 in a case in which judgment was delivered on 15 March 2001 (Case C-147/00 *Commission* v *France* [2001] ECR I-2387), in which I cited the judgment in Case 96/81 *Commission* v *Netherlands* [1982] ECR 1791, paragraph 2.

9. Since it considered that response inadequate, the Commission sent the United Kingdom a reasoned opinion, granting it a two-month period in which to comply with its obligations.

10. The Government responded on 14 June 1999, conceding that the bathing water for which it was responsible did not conform to the standards set by the Directive. However, it added that the situation in 1997 was exceptional, that the compliance rate had risen in the 1999 bathing season to 91.4% and that as a result of remedial measures already under way a compliance rate of 97% would be achieved before 2005.

11. The Commission brought the present action since it was of the opinion that, on the expiry of the period laid down in the reasoned opinion, the United Kingdom remained in breach of its obligations.

III — Arguments of the parties and the procedure before the Court of Justice

12. The Commission claims that the Court of Justice should declare that the United Kingdom has failed to fulfil its obligations under the Directive, since it has not ensured that its bathing water conforms to the limit

values set in Article 3 in conjunction with the Annex, and order it to pay the costs.

13. For its part, the United Kingdom Government accepts the position as regards the bathing seasons referred to in the Commission's application.

14. Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, and with the express agreement of the parties, the Court of Justice, under Article 44a of the Rules of Procedure, decided to dispense with the oral part of the procedure.

IV — The infringement

15. The United Kingdom Government admits the facts of which the Commission complains, that is to say, that during the 1996 and 1997 bathing seasons United Kingdom bathing water did not conform in its entirety to the values provided for in Article 3 of the Directive in conjunction with the Annex thereto. Consequently, the Court of Justice should treat the allegation of failure to fulfil obligations as proven and make a declaration to that effect in its judgment.

16. The Directive required Member States to ensure that certain results were achieved and not merely to take the measures necessary to improve the quality of bathing water so as to comply with the limits set out in the Directive, [5] subject to the derogations prescribed therein, [6] which do not apply in this case.

17. Although significant efforts may have been made to comply with the Directive, a single instance of non-compliance in a single season, which cannot be put down to compliance being absolutely impossible, is sufficient to constitute an infringement of the Directive. [7]

18. Accordingly, I propose that the Court of Justice should declare that — as the latter itself admits — it has failed to fulfil its obligations under the Directive, since during the 1996 and 1997 bathing seasons its bathing water did not conform in its entirety to the limits set out in Article 3 in conjunction with the annex. [8]

5 — See Case C-56/90 *Commission* v *United Kingdom* [1993] ECR I-4109, paragraphs 42 to 44; Case C-92/96 *Commission* v *Spain* [1998] ECR I-505, paragraph 28; Case C-198/97 *Commission* v *Germany* [1999] ECR I-3257, paragraph 35; and Case C-307/98 *Commission* v *Belgium* [2000] ECR I-3933, paragraph 48.

6 — Article 4(3), Article 5(2) and Article 8.

7 — See point 58 of my Opinion in *Commission* v *Belgium*, cited above, in which I referred to paragraph 34 of the judgment in *Commission* v *Germany*. See also the footnote on page 10 of the Opinion mentioned in footnote 4 above.

8 — In Case C-368/00 *Commission* v *Sweden* [2001] ECR I-4605, the Court of Justice upheld an action against the Kingdom of Sweden for failure to fulfil its obligations under the Directive. As in the present case, the infringement had been admitted by the defendant State.

V — Costs

19. Since the Commission's action has been upheld, the defendant must be ordered to pay the costs, pursuant to Article 69(2) of the Rules of Procedure.

VI — Conclusion

20. I propose that, in view of the foregoing, the Court of Justice uphold the present action and declare that the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under Council Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water, since it has failed to take the necessary measures to ensure that the quality of its bathing water conforms to the mandatory limit values prescribed by the Directive, and that the defendant must pay the costs.