OPINION OF ADVOCATE GENERAL JACOBS
delivered on 26 February 1992 *

My Lords,

1. In this case, the Commission seeks a declaration under Article 169 of the EEC Treaty that, by failing to take the measures necessary to ensure that solid, dangerous and toxic waste is disposed of without endangering human health and without harming the environment, as required by Directive 75/442 on waste (OJ 1975 L 194, p. 39), and in particular by Articles 4 and 6 of that directive, and by Directive 78/319 on toxic and dangerous waste (OJ 1978 L 84, p. 43), and in particular by Articles 5 and 12 of that directive, Greece has failed to fulfil its obligations under the Treaty.

2. Directives 75/442 and 78/319 are intended to eliminate disparities between the provisions on waste disposal applicable in the Member States and to contribute to the protection of the environment and improvement of the quality of life. In accordance with Article 145 of the Greek Act of Accession, Greece was required to give effect to both directives by 1 January 1981.

3. Article 4 of Directive 75/442 provides as follows:

'Member States shall take the necessary measures to ensure that waste is disposed of without endangering human health and without harming the environment, and in particular:

— without risk to water, air, soil and plants and animals,

— without causing a nuisance through noise or odours,

— without adversely affecting the countryside or places of special interest.'

Article 5 of Directive 75/442 requires the Member States to 'establish or designate the competent authority or authorities to be responsible, in a given zone, for the planning, organization, authorization and supervision of waste disposal operations.' According to Article 6 of the directive,

* Original language: English.

'The competent authority or authorities referred to in Article 5 shall be required to draw up as soon as possible one or several plans relating to, in particular:

— the type and quantity of waste to be disposed of,

— general technical requirements,

— suitable disposal sites,

— any special arrangements for particular wastes.

The plan or plans may, for example, cover:

— the natural or legal persons empowered to carry out the disposal of waste,

— the estimated costs of the disposal operations,

— appropriate measures to encourage rationalization, of the collection, sorting and treatment of waste.'

4. By virtue of Article 8 of Directive 75/442, '... any installation or undertaking treating, storing or tipping waste on behalf of third parties must obtain a permit from the competent authority referred to in Article 5 ...'.

5. Article 14 of Directive 75/442 requires the Member States to communicate to the Commission the texts of the main provisions of national law which they adopt in the field covered by the directive.

6. Similar provisions are laid down in respect of toxic and dangerous waste by Directive 78/319. Thus, according to Article 5 of that directive,

'1. Member States shall take the necessary measures to ensure that toxic and dangerous waste is disposed of without endangering human health and without harming the environment, and in particular:

— without risk to water, air, soil, plants or animals;

— without causing a nuisance through noise or odours;

— without adversely affecting the countryside or places of special interest.

2. Member States shall in particular take the necessary steps to prohibit the abandonment and uncontrolled discharge, tipping or carriage of toxic and dangerous

waste, as well as its consignment to installations, establishments or undertakings other than those referred to in Article 9(1).'

7. Article 9(1) of Directive 78/319 requires installations, establishments or undertakings which carry out the storage, treatment or deposit of toxic and dangerous waste to obtain a permit from the competent authorities.

8. By virtue of Article 12 of Directive 78/319,

'1. The competent authorities shall draw up and keep up to date plans for the disposal of toxic and dangerous waste. The plans shall cover in particular:

— the type and quantity of waste to be disposed of;

— the methods of disposal;

— specialized treatment centres where necessary;

— suitable disposal sites.

The competent authorities of the Member States may include other specific aspects, in particular the estimated cost of the disposal operations.

2. The competent authorities shall make public the plans referred to in paragraph 1. The Member States shall forward these plans to the Commission.

3. The Commission, together with the Member States, shall arrange for regular comparisons of the plans in order to ensure that implementation of this Directive is sufficiently coordinated.'

9. Article 21(2) of Directive 78/319 requires the Member States to communicate to the Commission the texts of the main provisions of national law which they adopt in the field covered by the directive.

10. 'Waste' is defined by Article 1(a) of both directives as 'any substance or object which the holder disposes of or is required to dispose of pursuant to the provisions of national law in force'. 'Toxic and dangerous waste' is defined by Article 1(b) of Directive 78/319 as 'any waste containing or contaminated by the substances or materials listed in the Annex to this Directive of such a nature, in such quantities or in such concentrations as to constitute a risk to health or the environment'.

11. On 22 September 1987, the Commission received a complaint that a number of communes, and particularly those in the north of the *nomos* (district) of Chania in Crete, were dumping various types of waste into the mouth of the river Kouroupitos in the commune of Mouzoura Akrotiriou. The gully into which the waste was allegedly being dumped had been an area of outstanding natural beauty. The material dumped there was said to include waste from local military bases, hospitals and clinics, salt factories, poultry farms, slaughterhouses and other local industries.

12. The unrestricted dumping of waste was alleged to have created an intolerable situation in the region, due to the stench and the various species of rodent and insect which had been attracted. Moreover, incineration of the waste was said to be carried out without supervision, creating a risk that fires would break out over large areas, perhaps endangering the military bases, with incalculable consequences for the whole region. In addition, following torrential rain on 22 September 1986, the Kouroupitos apparently burst its banks, dumping into the sea hundreds of tonnes of waste, thereby polluting the entrance to the Gulf of Souda. Fishing in the region was said not to have been prohibited.

13. By letter dated 27 January 1988, the Commission asked the Greek Government to comment on the complaint. In its response, dated 15 March 1988, the Greek Government did not deny the allegations made in the complaint, but claimed that the competent ministry had agreed to put an end to the dumping of waste into the Kouroupitos and that a plan for the disposal of waste in Chania had been drawn up which envisaged new waste-disposal sites. The Greek Government acknowledged, however, that until the plan was implemented, which was not expected to take place before August 1988, waste from Chania would continue to be dumped in the Kouroupitos.

14. The response of the Greek Government did not satisfy the Commission that the requirements of Directives 75/442 and 78/319 had been met. In the absence of any further information from the Greek Government, on 26 April 1989 the Commission sent it a letter of formal notice under Article 169 of the Treaty, asking it to specify the measures it had taken to give effect to those directives.

15. The Greek authorities responded by letter dated 4 August 1989, in which they set out their medium and long-term plans for waste disposal in Chania. The Commission took the view that the response of the Greek authorities demonstrated that no concrete steps had yet been taken to ensure that waste was disposed of in the district without endangering human health and without harming the environment. It therefore addressed a reasoned opinion to the Greek Government in accordance with Article 169 of the Treaty. The Greek Government did not respond to the reasoned opinion, and the Commission accordingly brought the matter before the Court.

16. In response to a question from the Court, the Commission has provided more information about the type of waste with which the present proceedings are concerned. The Commission states that the waste comes from a number of sources, including military bases, local hospitals and pharmacies, and small local businesses such as tanneries, dying and cleaning undertakings and car-repair workshops. According to the Commission, it contains one or more of a number of the substances listed in the Annex to Directive 78/319, namely mercury and mercury compounds; cadmium and cadmium compounds; chrome 6 compounds; lead and lead compounds; organic-halogen compounds; chlorinated solvents; organic solvents; pharmaceutical compounds; chemical laboratory materials, not identifiable and/or new, whose effects on the environment are not known; and aromatic polycyclic compounds (with carcinogenic effects).

17. At the hearing, the Greek Government challenged for the first time the admissibility of the action in so far as it concerns Directive 78/319. Since its challenge was not based on matters of law or of fact which came to light in the course of the written procedure, it is clear that, even if the challenge was well founded, the Court would be entitled not to take account of it: see Article 42(2) of the Rules of Procedure. It is arguable, however, that the Court should consider the question of admissibility of its own motion. I will therefore comment briefly on it.

18. The Greek Government points out that the Commission's letter of 27 January 1988, by which the Greek Government was asked to comment on the complaint received by the Commission, contained no reference to Directive 78/319. According to the Greek Government, the Commission was not therefore entitled to raise the question of the steps taken by Greece to comply with that directive in the letter of formal notice and the reasoned opinion.

19. There is plainly nothing in this argument. It is the letter of formal notice which represents the first formal step in proceedings under Article 169 and which gives the Member State concerned the opportunity to submit its observations on the alleged breach before the Commission delivers a reasoned opinion on the matter. Any contact there may be in connection with the alleged breach between the Commission and the Member State in question prior to the dispatch of the letter of formal notice is purely informal and has no legal consequences for the rest of the procedure. In the present case, it is clear that the Greek Government was given the opportunity to submit its observations on its alleged failure to implement both the directives in issue before the delivery of the reasoned opinion. The admissibility of the application in relation to each of those directives is consequently beyond doubt.

20. The Greek authorities sought to give effect to Directives 75/442 and 78/319 by Law No 1650 of 16 October 1986 and Ministerial Decrees 49541/1424 and 72751/3054. It is evident from the pleadings of the Greek Government in this case, however, that no concrete steps have yet been taken to ensure that waste is disposed of in Chania without endangering human

health and without harming the environment.

21. In its defence, for example, the Greek Government reiterates that the competent ministry has agreed that the dumping of waste in the Kouroupitos should cease and adds that the responsible local authorities have set themselves the long-term objective of eliminating waste by incineration. As a first step, a polytechnic institute was apparently asked to undertake two studies on the matter. In order to find a solution to the problem in the medium term, a further study was commissioned from the same body with a view to finding a waste-disposal site which would remove the need for waste to be dumped in the Kouroupitos. The Greek Government states, however, that the completion of that study met with considerable local resistance and that the local authorities concerned were looking at alternative ways of eliminating waste in the region. The Greek Government expresses the view that a solution will ultimately be found which will enable the waste which is currently being dumped in the Kouroupitos to be disposed of by other means.

22. It appears from information supplied by the Greek Government in response to a question from the Court that the polytechnic institute has now completed the studies commissioned from it and that a proposal for the disposal of waste in the region has been drawn up. However, the Greek Government acknowledges that the site chosen by the authorities for waste-disposal has encountered local resistance and that the steps necessary to ensure that waste is disposed of in the district without endangering human health and without harming the environment have still not been taken.

23. It is evident that, while the Greek Government may have made some progress towards the implementation of Directives 75/442 and 78/319, it has still to adopt concrete measures to achieve that result in the district of Chania more than ten years after the expiry of the time-limit laid down in the Greek Act of Accession. Accordingly, I consider that the Court should declare that, by failing to take all the measures necessary to comply with Directive 75/442 on waste and Directive 78/319 on toxic and dangerous waste within the time-limit laid down in the Greek Act of Accession, Greece has failed to fulfil its obligations under the Treaty. Greece should be ordered to pay the costs.