OPINION OF ADVOCATE GENERAL LÉGER

delivered on 25 October 2001 [1]

1. By this action, the Commission of the European Communities is seeking a declaration that the Hellenic Republic has failed to fulfil its obligations under Article 12(1)(b) and (d) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora. [2] The Commission claims that Greece has failed, within the time-limit laid down, to adopt the requisite measures to establish and implement an effective system of strict protection for the sea turtle *Caretta caretta* in its natural range, the island of Zakinthos (Greece).

I — Legal framework

2. Based on Article 130(s) of the EC Treaty (now, after amendment, Article 175 EC), the Directive's purpose is to contribute to ensuring biodiversity through the conservation of natural habitats and of wild fauna and flora in the European territory of the Member States to which the Treaty applies. [3]

3. Article 2(2) of the Directive states that the measures taken pursuant to the Directive are designed to maintain or restore, at favourable conservation status, natural habitats and species of wild fauna and flora of Community interest.

4. The sea turtle *Caretta caretta* is included in the list of species in Annex IV(a) of the Directive. Annex IV(a) is concerned with animal species of Community interest requiring strict protection.

5. Article 1 of the Directive defines the main terms used.

1 — Original language: French.

2 — OJ 1992 L 206, p. 7, hereinafter 'the Directive'.

3 — First and third to sixth recitals.

6. Article 1(g) of the Directive states that 'species of Community interest means species which, within the territory referred to in Article 2, are:

(i) endangered, except those species whose natural range is marginal in that territory and which are not endangered or vulnerable in the western palaearctic region; [4]

or

(ii) vulnerable, i.e. believed likely to move into the endangered category in the near future if the causal factors continue operating;

or

(iii) rare, i.e. with small populations that are not at present endangered or vulnerable, but are at risk. The species are located within restricted geographical areas or are thinly scattered over a more extensive range;

or

(iv) endemic and requiring particular attention by reason of the specific nature of their habitat and/or the potential impact of their exploitation on their habitat and/or the potential impact of their exploitation on their conservation status.

Such species are listed or may be listed in Annex II and/or Annex IV or V.'

7. Article 1(a) provides that 'conservation means a series of measures required to maintain or restore the natural habitats and the populations of species of wild fauna and flora at a favourable status as defined in (e) and (i)'.

8. The conservation status of a species is defined in the first indent of Article 1(i) as 'the sum of the influences acting on the species concerned that may affect the long-term distribution and abundance of its

4 — This region includes Northern Europe, the Mediterranean basin and Northern and Western Africa. Its eastern limit follows a North-South line from the Taymyr Peninsula to the eastern edge of the Urals and of the Red Sea and the Caspian Sea.

populations within the territory referred to in Article 2'.

9. Under the second indent of Article 1(i), '[t]he conservation status will be taken as "favourable" when:

— population dynamics data on the species concerned indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats,

and

— the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future,

and

— there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis'.

10. Article 12 of the Directive makes provision for the system of protection of a species of Community interest listed in Annex IV(a). It states:

'1. Member States shall take the requisite measures to establish a system of strict protection for the animal species listed in Annex IV(a) in their natural range, prohibiting:

(a) all forms of deliberate capture or killing of specimens of these species in the wild;

(b) deliberate disturbance of these species, particularly during the period of breeding, rearing, hibernation and migration;

(c) deliberate destruction or taking of eggs from the wild;

(d) deterioration or destruction of breeding sites or resting places.

2. For these species, Member States shall prohibit the keeping, transport and sale or exchange, and offering for sale or exchange, of specimens taken from the wild, except for those taken legally before this Directive is implemented.

3. The prohibition referred to in paragraph 1(a) and (b) and paragraph 2 shall apply to all stages of life of the animals to which this Article applies.

4. Member States shall establish a system to monitor the incidental capture and killing of the animal species listed in Annex IV(a). In the light of the information gathered, Member States shall take further research or conservation measures as required to ensure that incidental capture and killing does not have a significant negative impact on the species concerned.'

11. Article 23(1) of the Directive provides that the Member States are to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive within two years of its notification and immediately to inform the Commission thereof. As the Directive was notified in June 1992, the time-limit expired in June 1994.

II — Procedural background

A — *Pre-litigation stage*

12. On 2 December 1998, the Commission, observing that the Hellenic Republic had not taken the requisite measures to establish an effective protection system for the sea turtle *Caretta caretta* on Zakinthos and that it had consequently failed to fulfil its obligations under Article 12(1)(b) and (d) of the Directive, gave the Hellenic Republic formal notice to present its observations on the matter.

13. By letter of 17 March 1999 the Greek authorities replied that a draft Presidential Decree for the establishment of the Zakinthos marine park had been sent to the State Council to be finalised. They also informed the Commission that they had set up a committee responsible for drawing up a specific draft presidential decree, of a general nature, containing financial provisions for all protected natural areas in Greece. They also announced their intention to draw up a third specific presidential decree regarding compensatory measures for the national marine park of Zakinthos.

In this same letter, the Greek authorities also announced a series of measures includ-

ing in particular demolishing all illegal buildings on the beaches, establishing a national land register, banning vehicle access to the beaches, replacing the existing lighting which disturbs the sea turtles and removing sunbeds and sun umbrellas. They also announced that a contract had been signed to build a high-speed patrol boat for port police on Zakinthos to ensure compliance with the protection measures.

14. Noting that the Hellenic Republic had failed to implement the requisite measures setting up an effective system of strict protection for the sea turtle *Caretta caretta* on Zakinthos, which should have included adoption of the necessary institutional framework, on the one hand, and concrete on-site action to protect the animal species in question on the other, the Commission, by letter of 15 June 1999, sent the Hellenic Republic a reasoned opinion in which it reiterated the observations in the letter of formal notice and asked it to comply with the reasoned opinion within two months.

15. On 24 and 25 August 1999, Commission's officials went to Zakinthos for the second time and visited the main nesting beaches of the sea turtle *Caretta caretta*. In particular they found some progress in comparison with the situation at the time of their previous trip. [5] However, as in the case of the previous trip, they noted continued disturbance factors such as might damage or destroy the breeding areas of the species.

16. On 29 October 1999 the Greek authorities replied to the reasoned opinion, informing the Commission that a package of GRD 30 million had been approved for summer 1999 for the programme of public information, wardening, cleaning and protection of the biotope [6] sand beaches of the Bay of Laganas on Zakinthos. The authorities also informed the Commission that sun umbrellas had been removed from Gerakas Beach so as not to exceed the limit for that beach set out in the draft Presidential Decree on the national marine park of Zakinthos.

17. Having received no other information suggesting that the Hellenic Republic had met its obligations under the Directive, the Commission decided to bring this action.

5 — In particular the presence of wardens and information signs on the beaches, the publication and distribution of information leaflets and use of the speed patrol boat.

6 — Particular biological environment providing a species and the area in which it evolves with relatively stable habitat conditions.

B — *Forms of order sought*

18. The application by the Commission was lodged at the Court Registry on 17 March 2000.

19. The Commission claims that the Court should:

— declare that, by failing to adopt or, in the alternative, to notify to the Commission, within the prescribed time-limit, the requisite measures to establish and implement an effective system of strict protection for the sea turtle *Caretta caretta* on Zakinthos so as to avoid any disturbance of the species during its breeding period (end of May to end of August) and any activity which might bring about deterioration or destruction of its breeding sites, the Hellenic Republic has failed to fulfil its obligations under the EC Treaty and under Article 12(1)(b) and (d) of the Directive;

— order the Hellenic Republic to pay the costs.

20. The Hellenic Republic contends that the claims should be dismissed and that the Commission should be ordered to pay the costs.

III — Commission's grounds for complaint and submissions by the Hellenic Republic

A — *Uncontested facts*

21. The Commission observes that the sea turtle *Caretta caretta* appeared on the earth 80 million years ago. Like other sea turtles, it lays eggs only every two to three years. The turtle returns to its place of birth to lay eggs.

22. The region of Zakinthos and the Bay of Laganas, where the infringement occurred, includes 75 kilometres of beach. Of these 75 kilometres, only five are nesting sites for the species. The Bay of Laganas on Zakinthos is nevertheless an essential area, perhaps the most important breeding area in the Mediterranean, for the sea turtle *Caretta caretta*.[7]

23. The breeding period begins at the end of May and finishes at the end of August. During this period, the turtles leave the sea

7 — This fact has emerged from various projects carried out within the framework of the Organisation for Economic Co-operation and Development and the Council of Europe and is not contested by the Hellenic Republic.

at night and head towards the driest place on the beach. They dig a hole of 40 to 60 centimetres and lay on average 120 eggs and then return immediately to the sea. Two months later the eggs hatch and, under a full moon, the baby turtles come out of the sand and immediately run towards the sea. The journey to the sea is considered to be the most important in their lives and must be accomplished unaided. At this stage in their lives they are very vulnerable. Many of them die before reaching adulthood (30 years of age). Out of one 1 000 new-born turtles, only one or two will reach adulthood.

24. As well as natural obstacles, the main obstacles to the development of the species are human activities, particularly those concerned with tourism. Due to activities linked to tourism, breeding beaches are destroyed or damaged. Indeed, the need to ensure sufficient accommodation capacity for tourists leads to an increased number of buildings and, consequently, to more nuisance — such as noise and light — which disturbs egg-laying, incubation and the journey of the new-born turtles to the sea. The lights frighten and disorientate the turtles and they do not dare to come on to the beach and lay their eggs in the sea, or hastily, without taking the time to dig a nest which would allow the eggs to develop normally. Similarly, after hatching, instead of following the natural light on the horizon which guides them towards the sea, the new-born turtles travel towards the lights of the hotels or restaurants and die. Another reason for the increased nuisance which disturbs egg-laying, incubation and the journey of the new-born turtles to the sea is the provision of recreational or leisure activities on the beaches and the island for tourists. Thus, the installation of umbrellas and sunbeds reduces space for egg-laying and destroys nests or puts them in shade, preventing satisfactory incubation. Boats and people cause injuries to the turtles attempting to come and lay eggs on the beaches and to new-born turtles trying to reach the open sea. Vehicles driving on the beaches crush the sand and also disturb egg-laying, incubation and the hatching process. Similarly, waste in the sea and on the beaches causes the death of turtles because they mistake the waste for food. [8]

25. The Commission stresses that, under Article 12 and Annex IV of the Directive, the sea turtle *Caretta caretta* is an animal species of Community interest requiring strict protection. It claims that full and effective application of Article 12(1)(b) and (d) of the Directive requires, on the one hand, a coherent legal framework to be established, the adoption, that is to say, of specific legislative, regulatory or administrative measures and, on the other hand, concrete measures taken on-site.

8 — Plastic bags floating in the water are also mistaken for jellyfish.

B — *First ground for complaint: need to adopt a legal framework to meet particular obligations*

26. The Commission claims, firstly, that the Hellenic Republic has not adopted the appropriate institutional framework establishing, in accordance with Article 12(1)(b) and (d) of the Directive, a strict system of protection for the sea turtle *Caretta caretta*.

27. According to the Commission, Article 12 of the Directive must be interpreted in the light of Article 1(a) and (i) and Article 2. It is apparent from those provisions that a system of strict protection of an animal species of Community interest means a set of coherent and coordinated measures, of a preventative nature, which ensure that the population of the species in question is maintained in the long term or restored in the type of natural habitat to which it belongs. This assumes that there is a sufficiently large natural habitat for the species in question.

28. According to the Commission, on the date of expiry of the time-limit set in the reasoned opinion, the system of protection organised by the Hellenic Republic was clearly insufficient. In support of that claim, the Commission relies on observations made by the State Council which appear on the record attached to the draft presidential decree on the establishment of the national marine park of Zakinthos and the communications from the Greek authorities in reply to the formal notice and to the reasoned opinion of the Commission. [9]

29. The Hellenic Republic contests the alleged infringement of Article 12(1)(b) and (d) of the Directive.

30. It claims that in passing the presidential decree which classifies the land and sea regions of the Bay of Laganas and the Strofada islands as a national maritime park and the coastal areas of the communes of Zakinthos and Laganas as a regional park [10] on 22 December 1999, it established a strict system of protection for the sea turtle *Caretta caretta*. The national maritime park of Zakinthos whose purpose is to protect this important natural heritage and safeguard the ecological balance of the sea and the coast was established under that decree.

31. The defendant claims that under the 1999 decree the sea turtle *Caretta caretta* is protected, within the park in question, as a priority species within the areas of absolute protection and the nature protection areas. The 1999 decree also provides for access for a limited number of visitors during the breeding period as a day-time leisure activity (from 7 am to 7 pm) and information and awareness measures on the environment. There is also provision for other very

9 — See points 13 and 16 of this Opinion.

10 — FEK D'906/22.12.1999 (hereinafter 'the 1999 decree').

specific measures (for example, a limited number of sun umbrellas and sunbeds on particular beaches).

32. The Hellenic Republic observes that, during the last 20 years, measures have progressively been passed to ensure the protection of this animal species on the island of Zakinthos. It cites in this respect various laws, regulations and administrative measures adopted for this purpose from 1980 onwards. [11] The 1999 decree is merely one stage of the progressive implementation of a strict system of protection for this species.

33. The Greek Government claims that the delay in adopting the presidential decrees concerning compensatory measures cannot be regarded as constituting a failure on the part of the Hellenic Republic to fulfil its obligation to take the necessary measures for effective protection of the sea turtle *Caretta caretta*.

34. The Hellenic Republic submits that the data available on the nesting of the sea turtle *Caretta caretta* in the Bay of Laganas during the last 15 years show that the Commission's action is unfounded. It claims, indeed, that there is no evidence that the number of nests is decreasing.

C — *Second ground for complaint: need to take concrete measures on-site*

35. The Commission complains that the Hellenic Republic has not taken sufficient specific measures on-site to provide effective protection for the *Caretta caretta* during the egg-laying period.

36. The Commission states that it made two visits to the breeding areas on the island of Zakinthos, the first in July 1998 and the second at the end of August 1999. [12] The Commission recognises that progress was made between July 1998 and August 1999. Thus, during its second visit it noted wardens present on the breeding beaches and information boards referring to the presence of the turtles on those beaches. It also observed that information on the *Caretta caretta* sea turtles during the egg-laying period was distributed to people staying on the island (in particular that leaflets were distributed on the beaches).

The Commission, however, considers those measures still to be insufficient and that the intense exploitation of the island for the purposes of tourism is difficult to reconcile with the protection of the species. Thus, during its second visit, the Commission noted on some breeding beaches — Gerakas, Daphni, Kalamaki, Laganas — many more sun umbrellas and sunbeds than

11 — In particular the Presidential Decree of 16 June 1990 (FEK A'347/5.7.1990).

12 — In this second case, after expiry of the time-limit laid down in the reasoned opinion.

permitted under the draft 1999 decree, an increase in the number of illegal buildings on Daphni beach and mopeds being used on the sand beach in eastern Laganas.

37. The Hellenic Republic admits the existence of the illegal buildings on the Daphni beaches, but claims that they are not in use and that the local authority has decided to have them demolished. It states that new laws on lighting have been passed. Thus, by virtue of those laws, lighting from blocks of flats and other buildings and public lighting will no longer be visible directly from the beach and will indeed be at least one nautical mile from the sea. It adds that the local authority of Laganas has complied with those new laws. It also acknowledges that mopeds do cross part of the beach.

It observes, however, that effective warden-ing of the beach of Laganas which is 2 000 metres long, is difficult because of its length. As regards the number of sun umbrellas and sunbeds, it admits that some communes were not observing the requirements of the 1999 decree. It states, however, that on Gerakas beach, the number of umbrellas and sunbeds has now been much reduced and that on Daphni beach umbrellas have been removed. The Hellenic Republic also claims that the administrative body of the national marine park of Zakinthos has responsibility for defining where umbrellas and sunbeds are to be placed and stored and their characteristics. It adds that, under the 1999 decree, sunbeds and umbrellas may only be placed between three and five metres from the sea and that they must be removed after sunset.

IV — Assessment

A — *Need to adopt a legal framework to meet certain obligations*

38. In the words of the Court's settled case-law, 'the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation in that Member State as it stood at the end of the period laid down in the reasoned opinion. The Court cannot therefore take account of any subsequent changes.' [13]

39. Under Article 12(1)(b) and (d) of the Directive, Member States shall take the

13 — See in particular Case C-67/99 *Commission* v *Ireland* [2001] ECR I-5757, paragraph 36, Case C-71/99 *Commission* v *Germany* [2001] ECR I-5811, paragraph 29, and C-220/99 *Commission* v *France* [2001] ECR I-5831, paragraph 33.

requisite measures to establish a *system of strict protection* for the animal species listed in Annex IV(a) in their natural range, prohibiting the deliberate disturbance of these species, particularly during the period of breeding, and the deterioration or destruction of breeding sites.

40. Under Article 2(2) of the Directive, the measures adopted pursuant to Article 12 of the Directive are to be designed to maintain or restore, at favourable conservation status, species of wild fauna of Community interest.

41. For the purposes of the first indent of Article 1(i) of the Directive, conservation status of a species means the sum of the influences acting on the species concerned that may affect the *long-term* distribution and abundance of its populations within the territory referred to in Article 2 of the Directive.

42. Under the second indent of Article 1(i) of the Directive, conservation status is regarded as 'favourable' when *population dynamics data on the species* concerned indicate that it is maintaining itself *on a long-term basis* as a viable component of its natural habitats, that the *natural range* of the species *is neither being reduced nor is likely to be reduced* for the foreseeable future *and that there is, and will probably continue to be a sufficiently large habitat* to maintain its populations on a long-term basis.

43. It is clear from the wording of these provisions that the obligations stemming from Article 12 of the Directive arise for the Member States before a reduction in the numbers of the species in issue, the *Caretta caretta* turtle, is found, or there is a real risk of the protected species disappearing. [14] In other words, the measures to be taken are essentially of a *preventative* nature. Furthermore, the combined effect of those provisions is apparently that a system of strict protection of an animal species of Community interest means a set of coherent and coordinated measures, of a preventative nature, which ensure in the long term that the population of the species in question is maintained or restored in the type of natural habitat to which it belongs. This assumes that there is a sufficiently large natural habitat for the species in question.

44. The fact that during the last 15 years no reduction in the number of nests on the island of Zakinthos has been proven is therefore insufficient to exempt the Hellenic Republic from the obligations incumbent on it under Article 12 of the Directive. In order to comply with the obligations of

14 — See by analogy C-355/90 *Commission* v *Spain* [1993] ECR I-4221, paragraph 15.

the Directive, the Hellenic Republic must adopt a set of precise, concrete measures to avoid a reduction in the population of the species, by ensuring in particular that the turtles' breeding area is maintained in a favourable state.

45. It is apparent from these proceedings that on 14 August 1999, after expiry of the time-limit set in the reasoned opinion, the Hellenic Republic had not fully complied with its obligations under Article 12 of the Directive.

46. The observations by the State Council as they appear on the record attached to the draft 1999 decree are quite sufficient in this respect to establish that fact. It is clear from the report drawn up by the State Council that the provisions in force, in particular the 1990 decree, were not sufficient to ensure effective protection for the marine systems and land of the Bay of Laganas. The record states that the breeding beaches at Daphni, Gerakas and Kalamaki are under considerable pressure due to road construction near those beaches. In winter these roads become torrents. That phenomenon causes erosion of the soil and, consequently, destruction of the breeding beaches. The State Council also stresses that human activity linked to the exploitation of tourist resources generates further nuisance such as excessive noise. The State Council emphasises that this nuisance is such as to disturb the protected species during the breeding period. Consequently, it recommends that the competent Greek authorities significantly limit access to beaches in the districts of Daphni, Gerakas and Kalamaki in order to keep those breeding areas in a favourable state. [15] Subsequent to the date of these observations the Hellenic Republic adopted the 1999 decree. The Hellenic Government does not contest the observations made by the State Council.

47. Moreover, in its communications replying to the letter of formal notice from the Commission and the reasoned opinion, and in its defence and its submissions during the hearing, the Hellenic Republic admitted that full, coordinated measures to ensure strict protection of the species in question were being adopted, but that on 14 August 1999 they had still not been adopted.

48. In their communication of 17 March 1999, the Greek authorities in fact announced a set of measures including, in particular, the demolition of all illegal buildings on the beaches, setting up a national land register, a ban on vehicle access to beaches, replacing existing lighting which disturbs sea turtles and the removal of sunbeds and umbrellas. The

15 — Other concrete measures to protect these sites are also recommended, in particular the establishment of infrastructures which make recreational and leisure activities for tourists compatible with the areas needed for the protected species to breed (including the siting of car parks).

Greek authorities also stated that a contract for building a high-speed patrol boat for the port police of Zakinthos to ensure compliance with the protection measures had just been signed.

49. In their defence they claimed that the 1999 decree implemented the objectives set out in Article 12 of the Directive, that is to say after expiry of the time-limit given in the reasoned opinion.

50. For the first time, and contrary to what it had claimed until that point, the Hellenic Republic maintained in its rejoinder that the 1999 decree had repealed the former 1990 presidential decree on urban control areas, simply incorporating and coordinating the various provisions of the special rules for the port of Zakinthos previously adopted to ensure concrete and effective protection of the species. The Greek Government claimed, therefore, that as at 14 August 1999 the necessary measures to establish a strict system of protection for the sea turtle *Caretta caretta* had been taken.

51. When the Court invited the Greek Government [16] to state, reproducing their wording, the specific provisions within its legal order that were in force on 14 August 1999 and which it considered sufficient to meet the requirements of Article 12(1)(b) and (d) of the Directive, the Greek Government simply listed a series of legislative, regulatory and administrative decisions without reproducing the wording of the obligations therein contained. The Greek Government has not therefore established that it met the obligations of Article 12 of the Directive within the time-limit set in the reasoned opinion.

52. In the light of the foregoing it is apparent that this first ground of complaint is well founded.

B — *Need for specific on-site measures*

53. The Commission also alleges that the Hellenic Republic did not take specific on-site measures allowing it to meet the obligations of Article 12(1)(b) and (d) of the Directive.

54. The Commission sets out findings it made during a visit in late August 1999 to the breeding beaches of the *Caretta caretta* turtles on the island of Zakinthos. It pointed out that, despite signs explaining the presence of turtle nests on the beaches on the south of the island, it had been established that acts attributable to man had been committed which might disturb the species. In particular the Commission

16 — See written question put by the Court before the hearing.

reported that mopeds were being used on the sand beach in eastern Laganas, that there were more umbrellas and sunbeds than the maximum stipulated in the draft 1999 decree on the beaches of Gerakas, Daphni, Kalamaki and Laganas and that there were illegal buildings on Daphni beach.

55. Pursuant to Article 12(1)(b) and (d) of the Directive, the Member States must take the requisite measures to establish a system of strict protection for the species concerned, prohibiting the deliberate disturbance of these species during the period of breeding and the deterioration or destruction of breeding sites.

56. It is not contested that factors disturbing egg-laying, incubation and hatching and the journey to the sea by the young *Caretta caretta* turtles include, in particular, noise and artificial light near or at the breeding sites.

57. The use of sunbeds and umbrellas as well as mopeds on the beach, despite warnings regarding the presence of turtle nests, constitute deliberate acts such as might disturb the species during a period when, in accordance with Community law, it must especially be protected. The same applies to the illegal buildings near Daphni beach.

58. Moreover, the Hellenic Republic has not seriously contested the correctness of those findings, but has stated that, following the adoption of new measures, in particular those based on the provisions of the 1999 decree, [17] no complaint may be made against it.

59. It is apparent from the foregoing that the second ground of complaint is also well founded.

60. In conclusion, notwithstanding the right of Member States to exploit their tourism resources and the measures taken by the Greek Government during the period under consideration to protect the animal species in question, I consider the defendant State has failed, within the time-limit, to implement the strict measures required under Community law to preserve in the long-term a particularly protected species; only that Member State was in a position to take those measures.

17 — In particular the recruitment of more wardens, establishment of the management and administrative body of the national marine park of Zakinthos which will have authorisation to coordinate the various measures actually adopted by the competent authorities such as communes (in particular regarding the issue of building licences) and, in certain cases, to enact certain rules (in particular concerning umbrellas and sunbeds on the beach, and rules on public lighting).

Conclusion

For the reasons given, I propose that the Court should:

(1) declare that, by failing to adopt, within the prescribed time-limit, the requisite measures to establish and implement an effective system of strict protection for the sea turtle *Caretta caretta* on Zakinthos so as to avoid any disturbance of the species during its breeding period (end of May to end of August) and any activity which might bring about deterioration or destruction of its breeding sites, the Hellenic Republic has failed to fulfil its obligations under Article 12(1)(b) and (d) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora;

(2) order the Hellenic Republic to pay the costs of the action.