



Reports of Cases

JUDGMENT OF THE COURT (Ninth Chamber)

25 January 2024*

(Failure of a Member State to fulfil obligations – Directive 98/83/EC – Quality of water intended for human consumption – Article 4(1) – Obligation on Member States to take the measures necessary to ensure that water intended for human consumption is wholesome and clean – Annex I, Part B – Exceedance of limit values for concentrations of trihalomethanes in drinking water – Article 8(2) – Obligation on Member States to take the necessary remedial action as soon as possible to restore the quality of the water and to give priority to their enforcement action)

In Case C-481/22,

ACTION under Article 258 TFEU for failure to fulfil obligations, brought on 18 July 2022,

European Commission, represented by L. Armati and E. Sanfrutos Cano, acting as Agents,

applicant,

v

Ireland, represented by M. Browne, Chief State Solicitor, A. Joyce and M. Tierney, acting as Agents, and by C. Donnelly, Senior Counsel, and D. Fennelly, Barrister-at-Law,

defendant,

THE COURT (Ninth Chamber),

composed of J.-C. Bonichot, acting as President of the Chamber, S. Rodin (Rapporteur) and L.S. Rossi, Judges,

Advocate General: A. Rantos,

Registrar: A. Calot Escobar,

having regard to the written procedure,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: English.

Judgment

- 1 By its application, the European Commission asks the Court of Justice to declare that:
- by failing to take the measures necessary to ensure that water intended for human consumption meets the minimum requirement relating to concentrations of trihalomethanes (“THMs”) present therein, in accordance with the parametric values set out in Part B of Annex I to Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption (OJ 1998 L 330 p. 32), in 21 public water supply zones, namely those in Schull, Drimoleague, Glenties-Ardara, Roundwood, Caragh Lake PWS 022A, Kilkenny City (Radestown) WS, Granard, Gowna, Staleen, Drumcondrath, Grangemore, Lough Talt Regional Water Supply, Ring/Helvick, Aughrim/Annacurra, Bray Direct, Greystones, Kilmacanogue, Newtown Newcastle, Enniskerry Public Supply, Wicklow Regional Public Supply and Ballymagroarty (Ireland), and in 9 private group water schemes, namely those in Crossdowney, Townawilly, Cloonluane (Renvyle), Lettergesh/Mullaghgloss, Bonane, Parke, Nephin Valley GWS, Curramore (Ballinrobe) and Keash (Ireland), and
 - by failing to ensure that the necessary remedial action is taken as soon as possible to restore the quality of the water intended for human consumption in the aforementioned public water supply zones and private group water schemes and failing to give priority to its enforcement action, having regard inter alia to the extent to which the relevant parametric value has been exceeded and to the potential danger to human health,

Ireland has failed to fulfil its obligations under Article 4(1) of Directive 98/83, in conjunction with Part B of Annex I to that directive, and Article 8(2) of that directive.

I. Legal context

A. European Union law

- 2 Recital 29 of Directive 98/83 stated:

‘Whereas Member States should be authorised, under certain conditions, to grant derogations from this Directive; whereas, furthermore, it is necessary to establish a proper framework for such derogations, provided that they must not constitute a potential danger to human health and provided that the supply of water intended for human consumption in the area concerned cannot otherwise be maintained by any other reasonable means’.

- 3 Article 4(1) of that directive provided:

‘Without prejudice to their obligations under other Community provisions, Member States shall take the measures necessary to ensure that water intended for human consumption is wholesome and clean. For the purposes of the minimum requirements of this Directive, water intended for human consumption shall be wholesome and clean if it:

- (a) is free from any micro-organisms and parasites and from any substances which, in numbers or concentrations, constitute a potential danger to human health, and
- (b) meets the minimum requirements set out in Annex I, Parts A and B;

and if, in accordance with the relevant provisions of Articles 5 to 8 and 10 and in accordance with the Treaty, Member States take all other measures necessary to ensure that water intended for human consumption complies with the requirements of this Directive.’

4 Article 8(2) of that directive provided:

‘If, despite the measures taken to meet the obligations imposed in Article 4(1), water intended for human consumption does not meet the parametric values set in accordance with Article 5, and subject to Article 6(2), the Member State concerned shall ensure that the necessary remedial action is taken as soon as possible to restore its quality and shall give priority to their enforcement action, having regard inter alia to the extent to which the relevant parametric value has been exceeded and to the potential danger to human health.’

5 According to Article 9 of Directive 98/83, headed ‘Derogations’:

‘1. Member States may provide for derogations from the parametric values set out in Annex I, Part B, or set in accordance with Article 5(3), up to a maximum value to be determined by them, provided no derogation constitutes a potential danger to human health and provided that the supply of water intended for human consumption in the area concerned cannot otherwise be maintained by any other reasonable means. Derogations shall be limited to as short a time as possible and shall not exceed three years, towards the end of which a review shall be conducted to determine whether sufficient progress has been made. Where a Member State intends to grant a second derogation, it shall communicate the review, along with the grounds for its decision on the second derogation, to the Commission. No such second derogation shall exceed three years.

2. In exceptional circumstances, a Member State may ask the Commission for a third derogation for a period not exceeding three years. The Commission shall take a decision on any such request within three months.

3. Any derogation granted in accordance with paragraphs 1 or 2 shall specify the following:

- (a) the grounds for the derogation;
- (b) the parameter concerned, previous relevant monitoring results, and the maximum permissible value under the derogation;
- (c) the geographical area, the quantity of water supplied each day, the population concerned and whether or not any relevant food-production undertaking would be affected;
- (d) an appropriate monitoring scheme, with an increased monitoring frequency where necessary;
- (e) a summary of the plan for the necessary remedial action, including a timetable for the work and an estimate of the cost and provisions for reviewing;
- (f) the required duration of the derogation.

4. If the competent authorities consider the non-compliance with the parametric value to be trivial, and if action taken in accordance with Article 8(2) is sufficient to remedy the problem within 30 days, the requirements of paragraph 3 need not be applied.

In that event, only the maximum permissible value for the parameter concerned and the time allowed to remedy the problem shall be set by the competent authorities or other relevant bodies.

5. Recourse may no longer be had to paragraph 4 if failure to comply with any one parametric value for a given water supply has occurred on more than 30 days on aggregate during the previous 12 months.

6. Any Member State which has recourse to the derogations provided for in this Article shall ensure that the population affected by any such derogation is promptly informed in an appropriate manner of the derogation and of the conditions governing it. In addition, the Member State shall, where necessary, ensure that advice is given to particular population groups for which the derogation could present a special risk.

These obligations shall not apply in the circumstances described in paragraph 4 unless the competent authorities decide otherwise.

7. With the exception of derogations granted in accordance with paragraph 4 a Member State shall inform the Commission within two months of any derogation concerning an individual supply of water exceeding 1 000 [cubic metres (m³)] a day as an average or serving more than 5 000 persons, including the information specified in paragraph 3.

8. This Article shall not apply to water intended for human consumption offered for sale in bottles or containers.’

6 Article 14 of that same directive, entitled ‘Timescale for compliance’, provided:

‘Member States shall take the measures necessary to ensure that the quality of water intended for human consumption complies with this Directive within five years of its entry into force, without prejudice to Notes 2, 4 and 10 in Annex I, Part B.’

7 Article 15 of Directive 98/83, entitled ‘Exceptional circumstances’, provided, in paragraphs 1 and 2 thereof:

‘1. A Member State may, in exceptional circumstances and for geographically defined areas, submit a special request to the Commission for a period longer than that laid down in Article 14. The additional period shall not exceed three years, towards the end of which a review shall be carried out and forwarded to the Commission which may, on the basis of that review, permit a second additional period of up to three years. This provision shall not apply to water intended for human consumption offered for sale in bottles or containers.

2. Any such request, grounds for which shall be given, shall set out the difficulties experienced and include, as a minimum, all the information specified in Article 9(3).’

8 Annex 1 to that directive, entitled ‘Parameters and parametric values’, included a Part B, entitled ‘Chemical parameters’, which was worded as follows:

‘Parameter	Parametric value	Unit	Notes
...
[THMs] – Total	100	[microgram/litre (µg/l)]	Sum of concentrations of specified compounds; Note 10

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...

Note 10: Where possible, without compromising disinfection, Member States should strive for a lower value.

The specified compounds are: chloroform, bromoform, dibromochloromethane, bromodichloromethane.

For the water referred to in Article 6(1)(a), (b) and (d), the value must be met, at the latest, 10 calendar years after the entry into force of this Directive. The parametric value for total THMs from five years after the entry into force of this Directive until 10 years after its entry into force is 150 µg/l.

Member States must ensure that all appropriate measures are taken to reduce the concentration of THMs in water intended for human consumption as much as possible during the period needed to achieve compliance with the parametric value.

When implementing the measures to achieve this value, Member States must progressively give priority to those areas where THM concentrations in water intended for human consumption are highest.'

B. Irish Law

9 Directive 98/83 was initially transposed into Irish law by the European Communities (Drinking Water) Regulations 2000 (S.I. No 439/2000), now replaced by the European Union (Drinking Water) Regulations 2014 (S.I. No 122/2014), as amended ('the 2014 Drinking Water Regulations').

10 Regulation 4 of the 2014 Drinking Water Regulations is worded as follows:

'(1) Subject to any departure granted under Regulation 11, a water supplier shall ensure that the water is wholesome and clean and meets the requirements of these Regulations.

(2) For the purposes of paragraph (1), water shall be regarded as wholesome and clean if—

(a) it is free from any micro-organisms and parasites and from any substances which in numbers or concentrations, constitute a potential danger to human health, and

(b) it meets the quality standards specified in Tables A and B in Part 1 of the Schedule.'

11 Under Regulation 10(4) of the 2014 Drinking Water Regulations:

'Subject to Regulation 9 and paragraphs (5) and (8), where it is found, as a result of monitoring carried out for the purposes of these Regulations, that the quality of water intended for human consumption does not meet the parametric values specified in Part 1 of the Schedule, the supervisory authority shall, subject to any departures in force under these Regulations—

- (a) ensure that the necessary remedial action is taken by the water supplier as soon as possible to restore the quality of the water, and may issue such directions as it considers appropriate for this purpose to the relevant water supplier;
- (b) give priority to its enforcement action, having particular regard to the extent to which the relevant parametric value has been exceeded and to the potential danger to human health;
- (c) unless indicated otherwise in guidelines under paragraph (8), within 14 days of receiving the monitoring results, direct a water supplier to prepare an action programme and to submit it for the approval of the supervisory authority within 60 days, and to implement such action programme for the improvement of the quality of the water so as to secure compliance with these Regulations as soon as possible and not later than [1 year or 2 years depending on the case].’

II. The pre-litigation procedure

- 12 Since 1 January 2014, Irish Water, a public water distribution company, has been responsible for providing public water services on the territory of Ireland and, under the surveillance of the Environmental Protection Agency (‘the EPA’), for ensuring that drinking water quality meets the standards laid down by Directive 98/83 and by the national provisions that transposed it into Irish law. As from that date, Irish Water assumed responsibility for supplying drinking water in areas covering 34 city and county councils. In addition to public water supplies operated by Irish Water, private cooperative groups called ‘group water schemes’ provide drinking water services in a number of rural areas.
- 13 On 3 December 2014 and 23 January 2015, the Commission services asked the Irish authorities to provide them with information on the implementation of Directive 98/83 in Ireland. The Irish authorities responded to those requests on 9 January and 19 March 2015, respectively, providing detailed information on the scope of the exceedances of the permissible limit of THM concentrations in drinking water in Ireland, on the information provided to the public and on the remedial action put in place.
- 14 After assessing the information provided by the Irish authorities on 9 January and 19 March 2015, the Commission services told those authorities, on 11 May 2015, that the situation as described did not comply with the requirements of Articles 4 and 8 of Directive 98/83 and Part B of Annex I to that directive. The Irish authorities responded to that finding by letter of 28 September 2015 and the issue was discussed at a meeting between the Irish authorities and the Commission services on 1 December 2015.
- 15 The Irish authorities sent a first progress report on 7 March 2016, supplemented on 29 April 2016. In respect of the private group water schemes identified as being of concern, the Irish authorities provided separate reports.
- 16 Following an additional request from the Commission services, sent to the Irish authorities on 9 August 2016, the latter sent the Commission services, by letter of 30 August 2016, a second progress report and separate reports in respect of the private group water schemes. On 18 November 2016, the Irish authorities sent a third progress report.

- 17 After examining those three progress reports, the Commission was of the view that, despite some progress, there still appeared to be a number of water supplies in breach of the requirements of Directive 98/83. As a result, the Commission sent a letter of formal notice to Ireland on 20 July 2018, in which it stated that that Member State had failed to fulfil its obligations under Article 4 of Directive 98/83, in conjunction with Part B of Annex I to that directive, and Article 8 thereof with respect to 73 public water supply zones, affecting a population of 481 218, and 24 private group water schemes, affecting 22 989 people.
- 18 On 19 October 2018, Ireland replied to that letter of formal notice detailing the progress already made and noting that full compliance with the requirements of Directive 98/83 was anticipated by the end of 2021.
- 19 On 14 May 2020, the Commission addressed a reasoned opinion to Ireland, in which it took the view that, by failing to take the measures necessary to ensure that water intended for human consumption meets the minimum requirement relating to concentrations of THMs present therein, in accordance with the parametric values set out in Part B of Annex I to Directive 98/83, in 31 public water supply zones, affecting a population of 284 527, and in 13 group water schemes, affecting 9 701 people, and by failing to ensure that the necessary remedial action is taken as soon as possible to restore the quality of the water intended for human consumption in those public water supply zones and private group water schemes and failing to give priority to its enforcement action, having regard, inter alia, to the extent to which the relevant parametric value has been exceeded and to the potential danger to human health, Ireland had failed to fulfil its obligations under Article 4(1) of Directive 98/83, in conjunction with Part B of Annex I to that directive, and Article 8(2) of that directive.
- 20 By that reasoned opinion, the Commission also instructed Ireland to comply with those obligations within a time limit of four months from when it was sent, namely by 15 September 2020.
- 21 Ireland responded to that reasoned opinion on 18 September 2020 and sent additional information to the Commission on 2 March 2021. On 18 June 2021, in response to a request from the Commission services, the Irish authorities provided the results of their monitoring activities relating to 2020.
- 22 In its reply to the reasoned opinion, Ireland claimed that it had achieved long-term compliance with the requirements of Directive 98/83 in 15 of the 31 public water supply zones and in 3 of the 13 private group water schemes referred to in that opinion.
- 23 By letter of 2 March 2021, Ireland informed the Commission that a further two public water supply zones were now compliant.
- 24 On 19 May 2021, the Commission addressed a technical request to Ireland to provide monitoring data on THM concentrations in relation to 2020 for all the public water supply zones covered by the infringement procedure.
- 25 On 18 June 2021, Ireland provided data for most of those supply zones. However, the Commission received no monitoring data, or only incomplete data, for three public water supply zones covered by the reasoned opinion.

26 Dissatisfied with the answers and the information provided by Ireland, the Commission decided to bring the present action for failure to fulfil obligations.

III. The action

27 In support of its action, the Commission puts forward two complaints, alleging, first, infringement of Article 4(1) of Directive 98/83, in combination with Part B of Annex I to that directive, inasmuch as Ireland failed to take the measures necessary to ensure that water intended for human consumption meets the minimum requirement relating to THM concentrations present therein, in accordance with the parametric values set out in Part B of that Annex I, as regards the quality of water intended for human consumption in 21 public water supply zones and 9 private group water schemes and, second, infringement of Article 8(2) of Directive 98/83, inasmuch as Ireland failed to take the necessary remedial action as soon as possible to restore the quality of the water intended for human consumption in the those public water supply zones and private group water schemes, having regard, inter alia, to the severity of the exceedance of the parametric value concerned and to the potential danger to human health.

28 As a preliminary point, it should be noted that THMs are chemical compounds that are formed by a reaction between chlorine-based disinfectants and the organic matter in the water, such as bacteria and plant material. They are often present in drinking water, particularly in water treatment systems that use chlorine to eliminate bacteria and contaminants.

29 THMs are of concern for human health and the environment since long-term exposure to high levels of these chemical compounds in drinking water may pose risks such as cancer risks, in particular bladder cancer and colon cancer, and cause gastrointestinal problems and skin irritation. Moreover, THMs, once released into the environment, may be toxic for aquatic wildlife, disrupt freshwater ecosystems and contribute to the formation of ‘dead zones’ in the oceans by encouraging excessive growth of algae.

30 In order to reduce THM concentrations in drinking water, in accordance with Directive 98/83, the water regulation authorities and drinking water treatment undertakings must use alternative disinfection methods, reduce the amount of organic matter in untreated water and optimise treatment processes in order to minimise the formation of these compounds.

A. The admissibility of the action as regards three public water supply zones

1. Arguments of the parties

31 Ireland claims that the Commission’s action is inadmissible in so far as concerns the public water supply zones of Drimoleague, Ring/Helvick and Grangemore.

32 Ireland maintains in its defence that ‘the essential reference point in determining whether or not a particular public water supply is compliant with the parametric values for THMs is the EPA’s [remedial action list]’. It asserts that the three public water supply zones in question were not included on the remedial action list ‘because they no longer existed’. Ireland acknowledges that, in such situations, the Commission is largely reliant on the information provided by the Member State concerned, but denies that it failed to respect, in the present case, its obligation to provide information.

- 33 The Commission claims that Ireland was at fault for not specifically informing it of the decommissioning of those three public water supply zones, for failing to furnish data to prove compliance of the new water supplies with the obligations under Directive 98/83 and, in respect of the Ring/Helvick and Grangemore public water supply zones, for failing to give reasons for removing ‘an incompliant water supply zone’ from the remedial action list.
- 34 According to the Commission, Ireland did not inform it that the public water supply zone of Drimoleague was now connected to the Skibbereen (Ireland) water supply scheme. As a result, when it lodged its application, the Commission was not in possession of any information allowing it to conclude that the problem with the quality of the drinking water in the Drimoleague public water supply zone had been resolved. It is only in its defence that Ireland provided monitoring data indicating that the Skibbereen water supply scheme complied with the parametric values established for THMs. That information was communicated too late to be taken into account in the assessment of whether the application is well founded in relation to the Drimoleague public water supply zone.
- 35 Ireland argues that, although the Commission claims that it had not been informed that the Drimoleague public water supply zone was now supplied by another water supply scheme, the Commission nevertheless admits that the removal of such a zone from the remedial action list should have appeared to it to be an indicator of compliance. In the present case, although the Irish authorities provided the Commission, on 18 June 2021, with the monitoring results, established on 21 July 2020, showing that the parametric value for THM had been exceeded in that public water supply zone, the fact remains that the Drimoleague public water supply zone no longer existed at the date set in the reasoned opinion, namely 15 September 2020.
- 36 As regards the Ring/Helvick and Grangemore public water supply zones, Ireland claims in its defence that they did not exist at that date either, as is apparent from the information provided by that Member State in response to the reasoned opinion.
- 37 According to the Commission, the mere indication in the reply to the reasoned opinion that those two public water supply zones had been removed ‘from EPA’s remedial action list for [THMs]’ did not allow it to conclude that those zones now complied with the requirements established by Directive 98/83. Despite the fact that the change apparently took place before the reply to the reasoned opinion was sent, Ireland did not inform the Commission that the areas formerly served by the Ring/Helvick public water supply and the Grangemore public water supply were now linked to the Dungarvan (Ireland) water supply scheme and to the Boyle (Ireland) water supply scheme, respectively. Moreover, when that information was provided, it was not accompanied by any data that would allow the Commission to conclude that the inhabitants of the Ring/Helvick and Grangemore public water supply zones were now served by a water supply scheme that complied with the relevant parametric values. As a result, when it lodged its application, the Commission was not in possession of any information allowing it to conclude that the problem with the quality of the drinking water in the Ring/Helvick and Grangemore public water supply zones had been resolved.
- 38 The Commission also points out the fact that the Court has already rejected an argument that decommissioning a non-compliant public water supply and connecting the area previously supplied by that supply to a new public water supply zone is sufficient to put an end to an infringement procedure relating to a non-compliant water supply, without it being necessary to inform the Commission of the change nor to provide data relating to the levels of THM concentrations in the new water supply zone. An administrative reorganisation does not render

ineffective the infringement procedure and, while it may indeed be a solution for attaining compliance, it is for the Member State concerned to provide clear information explaining the administrative change, for example the decommissioning of a water supply and the connection of the area concerned with another source, as well as data supporting the conclusion that the change has resolved the problem, that is to say, that the new supply is compliant with the parametric values established by Directive 98/83.

- 39 The Commission is of the view that it has adduced sufficient evidence of the infringement. It had also made a request for further information following Ireland's reply to the reasoned opinion and before bringing the case before the Court, which it was not required to do under Article 258 TFEU.

2. Findings of the Court

- 40 Ireland claims, in essence, that the present action is inadmissible in so far as concerns the Drimoleague, Ring/Helvick and Grangemore public water supply zones on the ground, in essence, that at the end of the period for compliance laid down in the reasoned opinion, namely 15 September 2020, the three zones in question were no longer included in the EPA's remedial action list, because they no longer existed. More specifically, the Drimoleague public water supply zone had been connected to the Skibbereen water supply scheme, the Ring/Helvick public water supply zone had been connected to the Dungarvan water supply scheme and the Grangemore public water supply zone had been grouped with the Boyle water supply scheme.
- 41 As a preliminary point, it should be noted that, according to settled case-law relating to the burden of proof in proceedings for failure to fulfil obligations under Article 258 TFEU, it is for the Commission to prove the alleged failure. It is the Commission that must provide the Court with the evidence necessary for the Court to determine whether there has indeed been a failure to fulfil obligations, and in doing so it may not rely on any presumption (judgment of 5 March 2020, *Commission v Cyprus (Collection and treatment of urban waste water)*, C-248/19, EU:C:2020:171, paragraph 20 and the case-law cited).
- 42 It is only where the Commission has adduced sufficient evidence to establish certain matters in the territory of the defendant Member State that it is incumbent on that Member State to challenge in substance and in detail the information produced and the consequences flowing therefrom (judgment of 5 March 2020, *Commission v Cyprus (Collection and treatment of urban waste water)*, C-248/19, EU:C:2020:171, paragraph 21 and the case-law cited).
- 43 Moreover, since the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation prevailing in the Member State concerned at the end of the period laid down in the reasoned opinion, the Court cannot take account of any subsequent legislative or regulatory changes (judgment of 17 December 2020, *Commission v Greece*, C-849/19, EU:C:2020:1047, paragraph 56 and the case-law cited).
- 44 It follows that, in the present case, it is necessary to assess the alleged failure to fulfil obligations in the light of the situation in Ireland at the end of the period laid down in the reasoned opinion, without taking into account the acts by which that Member State decided to make the changes referred to in paragraph 37 above without informing the Commission of those changes nor keeping the latter up to date with the levels of THM pollution in the new drinking water supply zones.

- 45 In the present case, it is not disputed that the exceedances of the parametric values forming the subject matter of the present action, including those in the three public water supply zones in respect of which the admissibility of the action is contested, are established on the basis of data provided to the Commission by Ireland and have not been called into question by that Member State during the pre-litigation stage or before the Court.
- 46 In that regard, it is settled case-law that the Commission, which does not have investigative powers of its own, is largely reliant on the information provided by the Member State concerned (see, to that effect, judgment of 26 April 2005, *Commission v Ireland*, C-494/01, EU:C:2005:250, paragraph 43). It follows that, if Ireland did not inform the Commission of the changes referred to in paragraph 36 above and did not communicate to it any data allowing it to establish that the quality of the drinking water distributed to the persons previously connected to the public water supply zones of Drimoleague, Ring/Helvick and Grangemore were now compliant with the parametric values established by Directive 98/83 in so far as concerns TMH concentrations, the Commission was unable to know whether compliance had been achieved before the end of the period laid down in the reasoned opinion.
- 47 Lastly, it should be noted that the Court has previously rejected an argument in support of the dismissal of an action for failure to fulfil obligations concerning certain agglomerations on the ground that, after a territorial administrative reorganisation, those agglomerations no longer existed. Accordingly, it cannot be concluded solely on the basis of administrative changes within the Irish national system, which took place after the formal notice was issued by the Commission and included the decommissioning of a public water supply that was not compliant with the thresholds established by Directive 98/83 and the connection of the zone previously supplied by that supply to a new public water supply zone, that the infringement procedure in respect of a non-compliant water supply is, for that reason alone, devoid of purpose (see, by analogy, judgment of 6 October 2021, *Commission v Italy (System for collecting and treating urban waste water)*, C-668/19, EU:C:2021:815, paragraphs 40 and 41).
- 48 Although such a territorial administrative rearrangement can indeed ensure compliance with the limit values set by Directive 98/83, it was for Ireland to provide details to the Commission of what the administrative change actually involved, by informing it, for example, that that water supply system was decommissioned and that the zone concerned was connected to another supply system, and providing data demonstrating that that change resolved the problem of THM pollution of the water, that is to say, that the new drinking water supply complies with the limit values prescribed by Directive 98/83.
- 49 In those circumstances, the present action for failure to fulfil obligations is admissible, including so far as concerns the public water supply zones of Drimoleague, Ring/Helvick and Grangemore.

B. Substance

1. The first complaint

- 50 By its first complaint, the Commission claims that Ireland has failed to fulfil its obligations under Article 4(1) of Directive 98/83 in 21 public water supply zones and 9 private group water schemes in which the parametric value as regards the maximum permissible level of THM concentrations present in drinking water, set out in Part B of Annex I to that directive, is exceeded.

51 Ireland disputes the failure to fulfil obligations, claiming that Directive 98/83 does not impose an obligation to achieve a result and that the Commission has not adduced sufficient evidence of the alleged failure. Ireland invokes a number of specific factors such as to justify the exceedance of those limit values.

(a) *The obligation to achieve a result*

(1) Arguments of the parties

52 The Commission notes in its application that Article 4(1) of Directive 98/83 imposes on the Member States an obligation to achieve a result, namely to ensure that water intended for human consumption is wholesome and clean.

53 In its defence, Ireland contends that the fundamental obligation on the Member States under that provision is an obligation ‘to take the necessary measures’ to ensure that the water is wholesome and clean. It claims that that provision must be interpreted in the light of its wording, context and objectives, which should lead to the conclusion that that provision does not impose on the Member States an obligation to achieve a result. Even if it did, such an obligation would not in any case be absolute or unconditional.

54 The Commission claims that the interpretation suggested by Ireland runs counter to the Treaties, Directive 98/83 itself and the case-law concerning compliance with parametric values. Pursuant to the third paragraph of Article 288 TFEU, a directive is binding on the Member States as to the result to be achieved and, here, Article 4(1) of Directive 98/83 requires them to ensure that THM concentrations in drinking water does not exceed the parametric value of 100 µg/l. It is for the Member State concerned to decide what measures are needed to achieve that result, but there is, by contrast, no choice but to achieve it.

55 Indeed, the Court has already interpreted Article 4 of Directive 98/83 as meaning that it binds Member States as to the level of the quality of water to be achieved. According to the Commission, that is apparent from the judgment of 31 January 2008, *Commission v France* (C-147/07, EU:C:2008:67), which concerned a failure to fulfil obligations arising under that provision on the ground of exceedances of the permissible limit of nitrate and pesticide concentrations in drinking water.

56 The Commission points out that Ireland does not contest the fact that, in respect of the sites referred to in the reasoned opinion, THM concentrations in the drinking water exceeded the parametric value of 100 µg/l. On the contrary, Ireland has consistently acknowledged a problem in relation to acceptable levels of THM concentrations.

57 In its rejoinder, Ireland argues, in the alternative, that the obligation placed on the Member States by Article 4(1) of Directive 98/83 could be considered as being an obligation partly of conduct and partly of result.

58 Ireland maintains that interpreting that provision as imposing an absolute and unconditional obligation would ignore the reality of the situation in Ireland. Indeed, the quality of drinking water is not static but may vary over time and according to a wide range of environmental,

geographical and physical factors which affect THM concentration levels and which make compliance with the parametric values laid down by Directive 98/83 very difficult in certain sites, even where all necessary measures are taken.

- 59 According to Ireland, notwithstanding certain limited instances of THM concentrations being exceeded in drinking water, it has taken the necessary measures to ensure that drinking water is wholesome and clean in accordance with its obligation under Article 4(1) of that directive. It follows from this that, at the end of the period laid down for compliance in the reasoned opinion, Ireland was fulfilling its obligation under that provision and, by extension, under the Treaties.

(2) *Findings of the Court*

- 60 In accordance with Article 4(1) of Directive 98/83, in conjunction with Part B of Annex I to that directive, the Member States are under the obligation to comply with the parametric value of 100 µg/l with regard to the maximum total permissible level of THM concentrations in drinking water.
- 61 Ireland argues that Article 4(1) of that directive does not create an obligation of result as regards the non-exceedance of that limit value.
- 62 In that regard, it must be recalled that, under the third paragraph of Article 288 TFEU, a directive is to be binding, as to the result to be achieved, upon each Member State to which it is addressed, but will leave to the national authorities the choice of form and methods to achieve it.
- 63 In the present case, that result consists in the Member States ensuring that the water supply intended for human consumption complies with a certain number of essential quality and health parameters, including the one at issue in the present action, namely a maximum level of THM concentrations in drinking water. Accordingly, those States are required to ensure that those concentrations do not exceed, in total, 100 µg/l.
- 64 Article 4(1) of Directive 98/83 provides that the Member States must take all measures necessary to ensure that water intended for human consumption meets the requirements established therein.
- 65 Thus, the Court has already held, in particular in the judgment of 31 January 2008, *Commission v France* (C-147/07, EU:C:2008:67), that Article 4 of Directive 98/83 binds the Member States as to the minimum quality standards to which water intended for human consumption must meet. In the same vein, in the judgment of 14 November 2002, *Commission v Ireland* (C-316/00, EU:C:2002:657), the Court held that Council Directive 80/778/EEC of 15 July 1980 relating to the quality of water intended for human consumption (OJ 1980 L 229, p. 11), which Directive 98/83 replaced, did not establish a mere duty of diligence but an obligation to achieve a particular result. The same is true of the obligation placed on Member States under Article 4(1) of Directive 98/83.
- 66 It follows that Ireland's argument that that provision of EU law does not impose an obligation to achieve a result must be rejected.

(b) *The evidence*

(1) Arguments of the parties

- 67 Ireland criticises the Commission for relying on the presumption that, because the drinking water quality in the 21 public water supply zones and 9 private group water schemes listed in the annex to its application allegedly did not comply with the maximum threshold of THM concentrations, namely 100 µg/l, that Member State had necessarily failed to fulfil its obligations under Article 4(1) of Directive 98/83.
- 68 Ireland is of the view that, where the obligation under Article 4(1) of Directive 98/83 is an obligation to take the necessary measures to achieve a result, and where it is apparent from that directive that, even when such measures are taken, it may not always be possible to meet the parametric values set in accordance with Article 5 of that directive, it is not sufficient for the Commission to rely on such a presumption. In the present case, it is, instead, for the Commission to establish, by way of sufficient evidence, that, in respect of the supplies identified in the annex to the application, Ireland has failed to take the necessary measures to ensure that water intended for human consumption is wholesome and clean, which that institution has failed to demonstrate.
- 69 The Commission notes that the exceedance of a parametric value is a matter of objective fact and the data provided by Ireland, which have not been called into question, speak for themselves in that respect.
- 70 It is however true that the Commission must provide the Court with the information necessary to allow it to establish the failures to fulfil obligations which the Commission alleges against the Member States. The latter are nevertheless required to facilitate the achievement of the Commission's tasks and, where it is a question of checking that the national provisions intended to ensure effective implementation of a directive are applied correctly in practice, it is necessary to take into account the fact that that institution, which does not have investigative powers of its own in the matter, is largely reliant on the information provided by the Member State concerned.
- 71 Ireland maintains in its rejoinder that the fact that the measures adopted by a Member State take effect and ensure compliance with its obligations under a directive only after some time does not mean that there has been a failure to take those necessary measures.

(2) Findings of the Court

- 72 Ireland submits that the Commission has not shown by way of sufficient evidence that, in each of the drinking water supplies identified in its application, Ireland has failed to take the necessary measures to ensure that water intended for human consumption is wholesome and clean.
- 73 In that regard, it should be borne in mind that in proceedings under Article 258 TFEU for failure to fulfil obligations it is incumbent upon the Commission to prove the allegation that the obligation has not been fulfilled. It is the Commission's responsibility to place before the Court the information needed to enable the Court to establish that the obligation has not been fulfilled, and in so doing the Commission may not rely on any presumption (see, to that effect, judgment of 26 April 2005, *Commission v Ireland*, C-494/01, EU:C:2005:250, paragraph 41 and the case-law cited).

- 74 However, the Member States are required, under Article 4(3) TEU, to facilitate the achievement of the Commission's tasks, which consist in particular, pursuant to Article 17(1) TEU, in ensuring that the provisions of the Treaty and the measures taken by the institutions pursuant thereto are applied (judgment of 26 April 2005, *Commission v Ireland*, C-494/01, EU:C:2005:250, paragraph 42 and the case-law cited).
- 75 With that in mind, account should be taken of the fact that, where it is a question of checking that the national provisions intended to ensure effective implementation of a directive are applied correctly in practice, the Commission, which does not have investigative powers of its own in the matter, is largely reliant on the information provided by any complainants and by the Member State concerned (judgment of 26 April 2005, *Commission v Ireland*, C-494/01, EU:C:2005:250, paragraph 43 and the case-law cited).
- 76 It follows in particular that, where the Commission has adduced sufficient evidence of certain matters in the territory of the defendant Member State, it is incumbent on the latter to challenge in substance and in detail the information produced and the consequences flowing therefrom (judgment of 26 April 2005, *Commission v Ireland*, C-494/01, EU:C:2005:250, paragraph 44 and the case-law cited).
- 77 In such circumstances, it is indeed primarily for the national authorities to conduct the necessary on-the-spot investigations, in a spirit of genuine cooperation and mindful of each Member State's duty, to facilitate the general task of the Commission (judgment of 26 April 2005, *Commission v Ireland*, C-494/01, EU:C:2005:250, paragraph 45 and the case-law cited).
- 78 Thus, where the Commission relies on detailed complaints revealing repeated failures to comply with the provisions of a directive, it is incumbent on the Member State to contest specifically the facts alleged in those complaints (judgment of 26 April 2005, *Commission v Ireland*, C-494/01, EU:C:2005:250, paragraph 46 and the case-law cited).
- 79 In the present case, account should be taken of the fact that the data provided by Ireland itself relating to the compliance with – or exceedance of – the parametric values set out in Directive 98/83, and more specifically in Part B of Annex I to that directive, as regards THM concentrations in water intended for human consumption, are scientific data which were not called into question by that Member State during the pre-litigation stage and which thus constitute objective facts.
- 80 Moreover, as regards the Commission's proof that that Member State adopted the measures necessary to ensure that water intended for human consumption is wholesome and clean in accordance with its obligations under Directive 98/83, although, pursuant to Article 288 TFEU and the settled case-law of the Court, the Member States have 'the choice of form and methods' as regards the implementation of that directive, it is their duty to achieve the result defined by that directive. Therefore, although Ireland is free to define the methods used to implement that directive in its internal legal order in the light of the particularities thereof, it must, however, comply with all of its provisions and, accordingly, ensure that THM concentrations in drinking water do not exceed 100 µg/l throughout its territory.
- 81 Since that obligation still had not been complied with by Ireland, when the deadline for compliance which the Commission gave Ireland in its reasoned opinion, which was more than 17 years after the date on which the Member States were required to ensure that their situation was compliant with the requirements of Directive 98/83, had expired, the Court finds that the

Commission, relying on parametric measurements provided by Ireland which attest to the exceedance of the THM limit value in the drinking water in all the public water supply zones and all the private group water schemes covered by the present action, has adduced sufficient evidence in support of the alleged failure to fulfil obligations. It follows that the exceedances thus established must be considered to be persistent, without it being necessary for the Commission to provide additional evidence to that effect.

(c) The ‘specific and distinctive factors’

(1) Arguments of the parties

- 82 Ireland maintains that the specific and distinctive geographical and environmental factors, namely the nature of its water sources, the presence of peat, shallow topographical slopes and higher-than-average rainfall, must be taken into consideration, since they make it particularly challenging in certain cases to meet the objective of ensuring that THM concentrations in drinking water comply with the limits laid down in Directive 98/83, particularly while also maintaining an effective disinfection process. The remedial measures required are of such a magnitude that they involve structural solutions, such as the installation of new or substantially upgraded water treatment plants, which by their nature involve a significant amount of time and capital investment.
- 83 The Commission claims, in its reply, that Directive 98/83 itself envisaged a situation in which a Member State was unable to comply fully with the obligations set out thereunder and provided for a specific framework of possible derogations. That directive also made it possible for a Member State to benefit, in exceptional cases, from a longer transposition period. According to the Commission, Ireland did not avail of any of those options.
- 84 According to the Commission, Ireland has been aware of the problem for almost 20 years and has in fact benefited from significantly more time than would have been granted under any one of the formal derogations. Neither the geological factors nor the requirements under planning and/or environmental rules invoked by Ireland can be usefully relied upon to justify that long-standing non-compliance.
- 85 Ireland states, in that regard, that, overall, the drinking water supplied in Ireland largely meets the requirements of Directive 98/83 and that the present proceedings are concerned with the situation at a particular point in time, namely the end of the period laid down for compliance in the reasoned opinion.
- 86 Moreover, even if the Commission’s interpretation of Article 4(1) of Directive 98/83 were correct and the derogations provided for by that directive were exhaustive, the fact remains that the Court has already held that extraneous circumstances outside the control of the Member State rendering it impossible or abnormally difficult to comply with its obligations under a directive, even where all due care is taken, may excuse what might otherwise constitute a failure of a Member State to fulfil its obligations under EU law.

(2) *Findings of the Court*

- 87 As is apparent from paragraph 82 above, Ireland relies on the fact that there are a number of geographical, geological and environmental factors or even regulations that make it particularly difficult in certain cases to achieve the objective of ensuring that THM concentration levels in drinking water comply with the limits laid down in Directive 98/83. In addition, according to that Member State, those factors make it necessary to implement structural solutions, which require time and considerable financial resources.
- 88 It is apparent from Directive 98/83, particularly recital 29 and Article 9 thereof, that that directive allows a Member State that is unable to comply fully with the obligations set out thereunder to provide for derogations from the parametric values set out in Part B of Annex I to that directive. In addition, Article 15 of that directive provides for the possibility for a Member State, in exceptional circumstances, to request a longer period for transposition.
- 89 In the present case, Ireland did not avail of those possibilities.
- 90 Moreover, the procedure provided for in Article 258 TFEU presupposes an objective finding that a Member State has failed to fulfil its obligations under the FEU Treaty or secondary legislation (see, to that effect, judgments of 1 March 1983, *Commission v Belgium*, 301/81, EU:C:1983:51, paragraph 8, and of 4 March 2010, *Commission v Italy*, C-297/08, EU:C:2010:115, paragraph 81).
- 91 Where such a finding has been made, as in the present case, it is irrelevant whether the failure to fulfil obligations is the result of intention or negligence on the part of the Member State responsible, or of technical difficulties encountered by it (judgments of 1 October 1998, *Commission v Spain*, C-71/97, EU:C:1998:455, paragraph 15, and of 4 March 2010, *Commission v Italy*, C-297/08, EU:C:2010:115, paragraph 82).
- 92 In any event, a Member State which encounters temporarily insuperable difficulties preventing it from complying with its obligations under EU law may plead force majeure only for the period necessary in order to resolve those difficulties (judgment of 13 December 2001, *Commission v France*, C-1/00, EU:C:2001:687, paragraph 131).
- 93 The Court notes in that regard that neither the geographical, geological or environmental factors nor the requirements under planning and/or environmental rules invoked by Ireland can constitute situations of force majeure justifying the fact that that Member State has not complied, nearly 17 years after the date set under Article 14 of Directive 98/83, with its obligations under that directive, even though it had the possibility of providing for temporary derogations on the basis of Article 9 of that directive. Indeed, those are not unpredictable short-term events having an impact for a limited period, since it is not disputed that Ireland has failed to ‘maintain an effective and robust disinfection process’ for a significant number of public water supply zones and private group water schemes since Directive 98/83 came into force and, in any event, that that was the situation at the end of the period laid down for compliance in the reasoned opinion.
- 94 It follows that Ireland cannot usefully put forward arguments relating to the geographic, geological or environmental particularities of its territory or to planning and/or environmental rules in order to justify its persistent failure to fulfil obligations under Directive 98/83, especially

since, first, the exceedance of the limit value for THM concentrations in water intended for human consumption has been observed during a considerable period of time and, second, Ireland did not avail of the possible derogations provided for by that directive.

- 95 In those circumstances, the Court finds that, by failing to take the measures necessary to ensure that water intended for human consumption meets the minimum requirement relating to the concentration of THMs present therein, in accordance with the parametric values set out in Part B of Annex I to Directive 98/83, in 21 public water supply zones, namely those in Schull, Drimoleague, Glenties-Ardara, Roundwood, Caragh Lake PWS 022A, Kilkenny City (Radestown) WS, Granard, Gowna, Staleen, Drumcondrath, Grangemore, Lough Talt Regional Water Supply, Ring/Helvick, Aughrim/Annacurra, Bray Direct, Greystones, Kilmacanogue, Newtown Newcastle, Enniskerry Public Supply, Wicklow Regional Public Supply and Ballymagroarty, and in 9 private group water schemes, namely those in Crossdowney, Townawilly, Cloonluane (Renvyle), Lettergesh/Mullaghgloss, Bonane, Parke, Nephin Valley GWS, Curramore (Ballinrobe) and Keash, Ireland has failed to fulfil its obligations under Article 4(1) of Directive 98/83.

2. The second complaint

- 96 By its second complaint, the Commission claims that, by failing to ensure that the necessary remedial action is taken as soon as possible to restore the quality of the water intended for human consumption in the public water supply zones and private group water schemes referred to in the previous paragraph and failing to give priority to its enforcement action, having regard inter alia to the extent to which the relevant parametric value has been exceeded and to the potential danger to human health, Ireland has failed to fulfil its obligations under Article 8(2) of Directive 98/83.

(a) Arguments of the parties

- 97 The Commission recalls, in its application, that, pursuant to Article 8(2) of Directive 98/83, if water intended for human consumption does not meet the parametric values set as regards the total value of THM concentrations referred to in Part B of Annex I to that directive, the Member State concerned is required to take ‘as soon as possible’ the remedial action necessary ‘to restore [the water’s] quality’, having regard inter alia to the extent to which the relevant parametric value has been exceeded and to the potential danger to human health.
- 98 In the present case, the failure to comply with the parametric value set for THMs constitutes, by definition, a potential danger to human health, since water that does not meet that minimum requirement cannot be considered to be wholesome and clean.
- 99 According to the Commission, Ireland itself acknowledges that the number of instances of exceedance of the permissible levels of THM concentrations in its territory is high compared to other Member States. In addition, although Member States have some discretion in deciding what measures to adopt, those measures must, in any event, ensure that the period during which the limit values are exceeded is as short as possible. However, in the present case there is no doubt, in the light, in particular, of evidence showing that there have been exceedances for nearly 20 years, that Ireland has failed to fulfil that obligation. Indeed, although Ireland was required to comply with the parametric values as from 26 December 2003, and despite regular exchanges with the Commission since 2013 concerning that failure to comply, the situation is still not compliant

despite the fact that a further 10 years have passed. The creation of Irish Water in 2013, in particular, merely demonstrates that Ireland had been slow to act, given that the transposition deadline for Directive 98/83 had, at that time, already elapsed 10 years previously.

- 100 The Commission also observed that drinking water is consumed on a daily basis and there is no readily available alternative for the consumer if the water supply does not meet the minimum standards of wholesomeness and cleanliness as defined by Directive 98/83. As a result, the wording ‘as soon as possible’ must be interpreted relatively strictly.
- 101 Ireland submits that the Commission has not demonstrated that it had not taken the necessary action to restore the quality of the water intended for human consumption and asserts that the application relies on presumptions. Thus, the Commission has failed to identify even one specific example of remedial action and/or enforcement action that should have been taken by that Member State but was not. Ireland states in that regard that significant progress has been made, with long-term compliance having been achieved in all but 15 of the 73 public water supply zones referred to in the letter of formal notice.
- 102 Ireland also submits that the mere fact that exceedances of THM concentration levels have been identified, even over an extended period of time, in no way means that the necessary remedial and/or enforcement action has not been taken. Moreover, in many of the cases that are the subject matter of the present action, Ireland had to allow the measures deemed necessary to ensure the long-term compliance of drinking water with Directive 98/83 to evolve over time, besides the fact that implementing structural solutions also takes time.
- 103 Ireland does not dispute that the wording ‘as soon as possible’ used in Article 8(2) of Directive 98/83 means that the remedial action necessary must be taken in as short a timeframe as possible. However, in its view, that criterion cannot be assessed without reference to the particular situation prevailing in the Member State concerned. In assessing whether the necessary remedial action was taken ‘as soon as possible’ within the meaning of that Article 8(2), it is particularly necessary to have regard to the situation of the specific water supply, which the Commission did not do in the present case.
- 104 The Commission notes that, as is the case with the infringement procedure in general, it is not for the Commission to provide a list of hypothetical measures that could have been taken in respect of each non-compliant water supply zone. Moreover, contrary to what Ireland claims, it did not rely on any presumption. The Commission points out that it not only established exceedances of the parametric values set for THMs but also noted that those exceedances have been persisting since at least 2012 and that the dates provided by Ireland as being the date on which each specific supply would achieve long-term compliance with the parametric values for THM concentrations have been delayed, in most cases repeatedly, in relation to all water supply zones covered by the present action.

(b) Findings of the Court

- 105 In accordance with Article 8(2) of Directive 98/83, if the parametric value set for THM concentrations in drinking water has been exceeded, the Member State concerned is required to take the necessary remedial action ‘as soon as possible’ and to prioritise that action in order to bring the level of those concentrations to below the limit established in Part B of Annex I to that directive, having regard inter alia to the extent to which the relevant parametric value has been exceeded and to the potential danger to human health.

- 106 First of all, Ireland claims that the Commission has not demonstrated that it did not take the necessary remedial action, and that its alleged failure in that regard is based on presumptions. The Commission has not identified even one specific example of remedial action and/or enforcement action that should have been taken by that Member State.
- 107 In that regard, it should be borne in mind that, in proceedings for failure to fulfil obligations under Article 258 TFEU, it is for the Commission to establish the existence of the alleged failure to fulfil obligations and thus to prove that a Member State has failed to fulfil an obligation under a provision of EU law, without being able to rely on any presumption (judgment of 10 November 2020, *Commission v Italy (Limit values – PM10)*, C-644/18, EU:C:2020:895, paragraph 83). However, in the present case, it cannot be considered that the Commission is relying on a mere presumption that Ireland has failed to take the necessary remedial action within the meaning of Article 8(2) of Directive 98/83, since exceedances of the limit values that are significant in scale and duration, as in the present case, constitute in themselves evidence that Ireland has not taken such action (see, by analogy, judgment of 4 March 2021, *Commission v United Kingdom (Limit values – NO2)*, C-664/18, EU:C:2021:171, paragraph 135).
- 108 It is settled case-law that while Member States have a degree of discretion in deciding what remedial measures to adopt, those measures must ensure that the period during which the limit values are exceeded is as short as possible (see, to that effect, judgment of 10 November 2020, *Commission v Italy (Limit values – PM10)*, C-644/18, EU:C:2020:895, paragraph 136 and the case-law cited).
- 109 In addition, it is apparent from the file before the Court that the dates on which it was originally estimated that compliance would be achieved were deferred by Ireland each time there was a new progress report, so that the timetable for the planned remedial action also suffered significant delays, with the result that the exceedances of the limit values for THM concentrations have persisted since at least 2012.
- 110 By the first progress report, Ireland had already acknowledged delays in relation to upgrade works for 19 out of a total of 81 water supplies. The third progress report again indicated delays concerning 23 out of a total of 73 water supplies. In its reply to the letter of formal notice, Ireland had pushed the date for bringing its situation into compliance back to 2021, and in its reply to the reasoned opinion, that date had once again been moved back, this time into 2023.
- 111 Similarly, contrary to what Ireland claims, a failure to fulfil obligations may remain persistent even where a partial downward trend is revealed by the data collected, which nevertheless does not result in that Member State complying with the parametric values that it is required to observe (see, to that effect, judgments of 22 February 2018, *Commission v Poland*, C-336/16, EU:C:2018:94, paragraph 65, and of 30 April 2020, *Commission v Romania (Exceedance of the limit values for PM10)*, C-638/18, EU:C:2020:334, paragraph 70). That is the case here.
- 112 It is apparent from the file before the Court and the matters of fact mentioned in the context of the examination of the first complaint that Ireland has manifestly failed to adopt in good time appropriate measures to ensure that the time period during which the limit values for THM concentrations are exceeded is as short as possible in the public water supply zones and private group water schemes covered by the present action. Thus, as noted in paragraph 109 above, the exceedance of those limit values has remained systematic and persistent since at least 2012 in those zones and group schemes, despite the obligation on the Member State to take all appropriate and effective action and to give priority to their enforcement action, in order to

comply with the requirement that the period of exceedance be kept as short as possible (see, by analogy, judgment of 10 November 2020, *Commission v Italy (Limit values – PM10)*, C-644/18, EU:C:2020:895, paragraph 146 and the case-law cited).

- 113 Consequently, although Ireland was required, in accordance with Article 14 of Directive 98/83, to take the measures necessary to ensure that the quality of water intended for human consumption complied with that directive by 26 December 2003, that Member State continued, until the expiry of the time limit prescribed by the Commission in its reasoned opinion, namely 17 years later, to fail to ensure that compliance, even after regular exchanges with the Commission regarding that non-compliance began in 2013.
- 114 Such a situation in itself demonstrates, without there being any need to examine in greater detail the content of the measures adopted by Ireland in the various public water supply zones and private group water schemes covered by the present action, that that Member State has neither implemented appropriate and effective measures, nor given priority to their enforcement action, in order to put an end to the exceedances of the limit values for THM concentrations ‘as soon as possible’, within the meaning of Article 8 of Directive 98/83 (see, by analogy, judgment of 10 November 2020, *Commission v Italy (Limit values – PM10)*, C-644/18, EU:C:2020:895, paragraph 147 and the case-law cited).
- 115 As regards the argument put forward by Ireland that it is essential for the Member State concerned to have sufficiently long deadlines so that those measures can produce effects, it must be noted that, in the present case, Ireland has, in fact, as is apparent in particular from paragraphs 93, 109 and 110 above, benefited from a particularly long period of time to ensure that its position is compliant with the requirements of Directive 98/83, having regard to the time limits provided for that purpose by that directive, which were applicable to all the Member States (see, by analogy, judgment of 10 November 2020, *Commission v Italy (Limit values – PM10)*, C-644/18, EU:C:2020:895, paragraph 148 and the case-law cited).
- 116 Moreover, so far as concerns Ireland’s argument that the deadlines for compliance that it announced are appropriate to the scale of the structural changes necessary to bring an end to the exceedances of the limit values for THM concentrations in drinking water, having regard in particular to the difficulties resulting from planning, the presence of peat bogs and shallow topographical slopes, higher-than-average yearly rainfalls than in other Member States, the nature of Irish water supplies which are innately rich in organic matter, as well as the socioeconomic and budgetary implications of the investments to be made, it must be borne in mind that the Court has already held, in response to similar arguments, that the Member State concerned must establish that the difficulties in putting an end to the exceedances of the limit values on which it relies are such as to rule out the possibility that compliance could have been achieved in a shorter time frame (see, to that effect, judgment of 10 November 2020, *Commission v Italy (Limit values – PM10)*, C-644/18, EU:C:2020:895, paragraph 151 and the case-law cited), which Ireland has failed to demonstrate in the present case.
- 117 In any event, the structural difficulties, arising from the socioeconomic and budgetary implications of large-scale investments that need to be made or from the topographical situation, are not, in themselves, exceptional and are not, therefore, capable of justifying the persistent exceedances of the parametric value of THM concentrations in drinking water for more than 10 years (see, by analogy, judgment of 10 November 2020, *Commission v Italy (Limit values – PM10)*, C-644/18, EU:C:2020:895, paragraph 152 and the case-law cited).

- 118 It follows from the foregoing that none of the arguments put forward by Ireland is capable of calling into question the finding that that Member State has failed to fulfil its obligations to ensure that the period of exceedance of those limit values was as short as possible by taking, as soon as possible, the necessary action to restore the drinking water to a quality that complies with the requirements of Directive 98/83.
- 119 As regards Ireland's complaint that the Commission did not provide it with specific examples of remedial action and/or enforcement action that it should have taken, it should be borne in mind that it is not for the Commission to provide a list of hypothetical measures that could have been taken in respect of each non-compliant public water supply zone and private group water scheme. Indeed, such a practice would be inconsistent with the sovereignty from which the Member States benefit in respect of choosing the method for implementing a directive in their territory within the period set by the EU legislature. Accordingly, instead, it is for Ireland to determine as soon as possible the measures that it considers to be adequate to ensure its situation is brought into compliance as regards the limit values for THM concentrations laid down by Directive 98/83, and to inform the Commission of those measures as well as the evolution of its compliance.
- 120 That is especially important in the light of the risks to human health and the environment that a high concentration of THMs in drinking water presents, as noted in paragraph 29 above. That is why, as is expressly clear from Article 5(2) of Directive 98/83, Part B of Annex I to that directive lays down the threshold of the concentration of THMs above which it cannot be guaranteed that drinking water is 'clean and wholesome' and the Member States are free to set more stringent standards. It follows that, in the light of its persistence, the exceedance of the parametric values relating to THM concentrations in drinking water in the public water supply zones and in the private group water schemes covered by the present action was liable of posing a potential danger to human health.
- 121 It follows that the second complaint put forward by the Commission must be upheld.
- 122 In the light of all the foregoing considerations, it must be held that Ireland:
- by failing to take the measures necessary to ensure that water intended for human consumption meets the minimum requirement relating to concentrations of THMs present therein, in accordance with the parametric values set out in Part B of Annex I to Directive 98/83, in 21 public water supply zones, namely those in Schull, Drimoleague, Glenties-Ardara, Roundwood, Caragh Lake PWS 022A, Kilkenny City (Radestown) WS, Granard, Gowna, Staleen, Drumcondrath, Grangemore, Lough Talt Regional Water Supply, Ring/Helvick, Aughrim/Annacurra, Bray Direct, Greystones, Kilmacanogue, Newtown Newcastle, Enniskerry Public Supply, Wicklow Regional Public Supply and Ballymagroarty, and in 9 private group water schemes, namely those in Crossdowney, Townawilly, Cloonluane (Renvyle), Lettergesh/Mullaghgloss, Bonane, Parke, Nephin Valley GWS, Curramore (Ballinrobe) and Keash; and
 - by failing to ensure that the necessary remedial action is taken as soon as possible to restore the quality of the water intended for human consumption in the aforementioned public water supply zones and private group water schemes and failing to give priority to its enforcement action, having regard inter alia to the extent to which the relevant parametric value has been exceeded and to the potential danger to human health,

has failed to fulfil its obligations under Article 4(1) of Directive 98/83, in conjunction with Part B of Annex I to that directive, and Article 8(2) of that directive.

Costs

- 123 Under Article 138(1) of the Rules of Procedure of the Court of Justice, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.
- 124 Since the Commission has applied for costs to be awarded against Ireland and the latter has been unsuccessful, Ireland must be ordered to pay the costs incurred by the Commission in addition to bearing its own costs.

On those grounds, the Court (Ninth Chamber) hereby:

1. Declares that Ireland,

- **by failing to take the measures necessary to ensure that water intended for human consumption meets the minimum requirement relating to concentrations of trihalomethanes present therein, in accordance with the parametric values set out in Part B of Annex I to Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption, in 21 public water supply zones, namely those in Schull, Drimoleague, Glenties-Ardara, Roundwood, Caragh Lake PWS 022A, Kilkenny City (Radestown) WS, Granard, Gowna, Staleen, Drumcondrath, Grangemore, Lough Talt Regional Water Supply, Ring/Helvick, Aughrim/Annacurra, Bray Direct, Greystones, Kilmacanogue, Newtown Newcastle, Enniskerry Public Supply, Wicklow Regional Public Supply and Ballymagroarty (Ireland), and in 9 private group water schemes, namely those in Crossdowney, Townawilly, Cloonluane (Renvyle), Lettergesh/Mullaghgloss, Bonane, Parke, Nephin Valley GWS, Curramore (Ballinrobe) and Keash (Ireland); and**
- **by failing to ensure that the necessary remedial action is taken as soon as possible to restore the quality of the water intended for human consumption in the aforementioned public water supply zones and private group water schemes and failing to give priority to its enforcement action, having regard inter alia to the extent to which the relevant parametric value has been exceeded and to the potential danger to human health,**

has failed to fulfil its obligations under Article 4(1) of Directive 98/83, in conjunction with Part B of Annex I to that directive, and Article 8(2) of that directive;

2. Orders Ireland to pay the costs.

Bonichot

Rodin

Rossi

Delivered in open court in Luxembourg on 25 January 2024.

A. Calot Escobar
Registrar

J.-C. Bonichot
Acting President of the Chamber