# JUDGMENT OF THE COURT (Sixth Chamber)

14 November 2002 *

In Case C-316/00,

**Commission of the European Communities**, represented by R.B. Wainwright, acting as Agent, with an address for service in Luxembourg,

applicant,

v

**Ireland**, represented by D.J. O'Hagan, acting as Agent, and by E. Fitzsimons, SC, and E. Galligan, BL, with an address for service in Luxembourg,

defendant,

APPLICATION for a declaration that:

— by failing to ensure compliance with microbiological parameters 57 (total coliforms) and 58 (faecal coliforms) of Annex I to Council Directive

* Language of the case: English.

80/778/EEC of 15 July 1980 relating to the quality of water intended for human consumption (OJ 1980 L 229, p. 11) in respect of certain public water supplies and certain group water supplies (other than those providing less than 10 $m^3$ a day as an average or serving fewer than 50 persons, unless the water is supplied as part of a commercial or public activity) identified in official drinking water reports and in correspondence concerning Ballycroy (Ireland), and

— by failing, in its implementing legislation, to reflect the binding character of the requirements of Annex I to the directive in relation to group water supplies,

Ireland has failed to fulfil its obligations under Articles 7(6), 18 and 19 of that directive and under the EC Treaty,

THE COURT (Sixth Chamber),

composed of: J.-P. Puissochet, President of the Chamber, R. Schintgen, V. Skouris, F. Macken and J.N. Cunha Rodrigues (Rapporteur), Judges,

Advocate General: A. Tizzano,

Registrar: H. von Holstein, Deputy Registrar,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 7 February 2002,

after hearing the Opinion of the Advocate General at the sitting on 25 April 2002,

gives the following

## Judgment

1 By application lodged at the Court Registry on 21 August 2000 and amended by the reply lodged on 27 February 2001, the Commission of the European Communities brought an action under Article 226 EC for a declaration that:

— by failing to ensure compliance with microbiological parameters 57 (total coliforms) and 58 (faecal coliforms) of Annex I to 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) in respect of certain public water supplies and certain group water supplies (other than those providing less than 10 $m^3$ a day as an average or serving fewer than 50 persons, unless the water is supplied as part of a commercial or public activity) identified in official drinking water reports and in correspondence concerning Ballycroy (Ireland), and

— by failing, in its implementing legislation, to reflect the binding character of the requirements of Annex I to the directive in relation to group water supplies,

Ireland has failed to fulfil its obligations under Articles 7(6), 18 and 19 of that directive and under the EC Treaty.

## Legislative background

*Community legislation*

2 Article 2 of Directive 80/778 states that 'water intended for human consumption shall mean all water used for that purpose, either in its original state or after treatment, regardless of origin,

— whether supplied for consumption,

or

— whether

— used in a food production undertaking for the manufacture, processing, preservation or marketing of products or substances intended for human consumption

and

— affecting the wholesomeness of the foodstuff in its finished form.'

3 Article 7 of Directive 80/778 provides:

'1. Member States shall fix values applicable to water intended for human consumption for the parameters shown in Annex I.

...

3. For the parameters given in Tables A, B, C, D, and E of Annex I:

— the values to be fixed by the Member States must be less than or the same as the values shown in the "Maximum admissible concentration" column;

— in fixing the values, Member States shall take as a basis the values appearing in the "Guide level" column.

...

6. Member States shall take the steps necessary to ensure that water intended for human consumption at least meets the requirements specified in Annex I.'

4 Article 12(1) of Directive 80/778 provides that the Member States are to take all necessary steps to ensure regular monitoring of the quality of water intended for human consumption.

5 Pursuant to Article 18(1) of Directive 80/778, the Member States are to bring into force the laws, regulations and administrative provisions necessary to comply with that directive and its annexes within two years following its notification.

6 The directive was notified to Ireland on 18 July 1980. The period provided for in Article 18 therefore expired on 18 July 1982.

7 Article 19 of Directive 80/778 provides that the Member States are to take the necessary measures to ensure that the quality of water intended for human consumption complies with that directive within five years of its notification. The period provided for in Article 19 therefore expired on 18 July 1985.

8 Annex I to Directive 80/778 contains a list of parameters. Table E of that annex lists the microbiological parameters and lays down their maximum admissible concentrations. As regards the parameters at issue in the present case, its provisions are set out as follows:

| | Parameters | Results: volume of the sample in ml | Guide level (GL) | Maximum admissible concentration (MAC) | |
|---|---|---|---|---|---|
| | | | | Membrane filter method | Multiple tube method (MPN) |
| 57 | Total Coliforms (1) | 100 | — | 0 | MPN<1 |
| 58 | Faecal coliforms | 100 | — | 0 | MPN<1 |

(1) Provided a sufficient number of samples is examined (95% consistent results).

9 Directive 80/778 was replaced by Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption (OJ 1998 L 330, p. 32).

10 Pursuant to Article 18, Directive 98/83 entered into force on 25 December 1998. In accordance with Article 17(1), the Member States were to implement the directive by 25 December 2000 at the latest. Article 14 provides that the quality of water intended for human consumption is to comply with the provisions of the directive by 25 December 2003 at the latest. The first paragraph of Article 16(1) of the directive repeals Directive 80/778 with effect from that same date.

11 Article 3(2) of Directive 98/83 provides:

'Member States may exempt from the provisions of this directive:

...

(b) water intended for human consumption from an individual supply providing less that 10 $m^3$ a day as an average or serving fewer that 50 persons, unless the water is supplied as part of a commercial or public activity.'

12 Annex I to Directive 98/83 replaces faecal coliforms by '*Escherichia coli* (E coli)' as a compulsory microbiological parameter and classifies coliform bacteria as a mere indicator parameter.

*National legislation*

13 For the purpose of implementing Directive 80/778, Ireland adopted Statutory Instrument No 81 of 1988, entitled 'European Communities (Quality of Water Intended for Human Consumption) Regulations, 1988' ('the 1988 Regulations').

14 Article 4 of the 1988 Regulations states:

'It shall be the duty of a sanitary authority to take the necessary measures to ensure that:

(a) water intended for human consumption meets the requirements of these Regulations, except where a departure is granted under article 5...

...'.

15 Article 8 of the 1988 Regulations provides:

'Where it is found, as a result of monitoring carried out under article 7, that the quality of water intended for human consumption does not meet the requirements of these Regulations, the sanitary authority shall:

(a) take all reasonable steps to warn users of the water supply where there is an unacceptable risk to public health,

(b) in the case of a public water supply, prepare an action programme for the improvement of the quality of the water as soon as practicable,

(c) in the case of a private water supply, notify the person or persons responsible for the supply as soon as practicable of the measures which should be taken for the improvement of the quality of the water.'

16 The 1988 Regulations were amended by Statutory Instrument No 350 of 1999, adopted on 3 November 1999, and by Statutory Instrument No 177 of 2000, adopted on 20 June 2000. They were then repealed and replaced, with effect from 1 January 2004, by Statutory Instrument No 439 of 2000, adopted on 18 December 2000 in order to implement Directive 98/83.

## Facts

17 The present case primarily concerns 'group water schemes', which are of particular importance in Ireland. The Irish Government has supplied the following information regarding the features of those schemes. The Commission has not challenged that information.

18 Group water schemes were first set up in 1962 as the solution to the difficulties that low density settlement patterns posed for the creation of the infrastructure needed to supply drinking water to remote rural areas of Ireland.

19 In Ireland, a group water scheme is a scheme providing two or more households with drinking water using a common or shared source and a distribution system which is owned, operated and maintained by a cooperative group formed in a rural area. Group schemes provide drinking water to some 145 000 rural households. The number of homes served by any such scheme ranges from 2 to over 1 000. According to the 1991 census returns, an average group scheme ensures the supply of water to some 28 homes (approximately 100 persons). Those schemes are developed through cooperative community effort. The schemes are owned collectively by the group members. They set up a trust in which all the assets are collectively owned by the members of the group, or a body corporate (registered cooperative or limited company), to execute, operate and maintain the scheme on their behalf. Grants are available from the Department of the Environment and Local Government to support the capital expenditure necessary for the development and upgrading of such schemes.

20 Of the 145 000 households involved, some 90 000 are served by group schemes connected to public water supply networks. In those situations, the group scheme normally manages the distribution system, while the local authority provides drinking water to the group for distribution to members.

21 The remaining 55 000 households are served by group schemes which rely on private sources such as springs, boreholes, rivers or lakes. It is the schemes supplied from private sources which pose the most serious problems in terms of inadequate water quality, since water filtration and disinfection equipment is not always employed or operated satisfactorily.

22 Since 1991 the Irish authorities have published annual reports on the quality of water intended for human consumption in Ireland ('the annual reports').

**Pre-litigation procedure and procedure before the Court**

23 On the basis of the annual reports and following complaints relating to microbiological contamination of water intended for human consumption in Ireland, the Commission sent a letter of formal notice to Ireland on 30 October 1998.

24 By letter of 16 March 1999, the Irish authorities replied to the letter of formal notice. They stated that they were committed to bringing water supplies up to the standards required by Directive 80/778.

25 Not satisfied with that reply, the Commission sent a reasoned opinion to Ireland on 14 July 1999 referring, first, to the failure of the public water supplies to comply with microbiological parameters 57 and 58 of Annex I to Directive 80/778, second, to the failure of the group water schemes to comply with those same parameters, and, third, to the non-binding nature of the Irish legislation implementing Directive 80/778 in respect of those schemes. The Commission set Ireland a time-limit of two months from the date of notification of the reasoned opinion by which to comply with it.

26 The Irish authorities replied to the reasoned opinion by letter of 11 November 1999. In that letter they acknowledged that there were difficulties with the group water schemes and reaffirmed their commitment to ensuring that all public and group water supplies would be brought up to the standards required under Directive 80/778. They also provided various information regarding the steps taken to implement Directive 80/778 in Ireland. That information was supplemented by a letter of 18 January 2000 and a press release of 27 March 2000 from the Irish Minister for the Environment and Local Government.

27 The Commission nevertheless took the view that the infringement was continuing and brought the present action.

28 In its reply, the Commission amended the forms of order sought in its application, so as to be consistent with Article 3(2)(b) of Directive 98/83, and excluded from the scope of the infringement proceedings group water schemes providing less

than 10 $m^3$ a day as an average or serving fewer than 50 persons where the water is not taken from a public source and where the premises served by the schemes do not engage in commercial activities involving the supply of drinking water to members of the public.

## The action

29 The Court will first consider a number of Ireland's observations concerning the circumstances in which this action was brought. Ireland submits that the infringement procedure was initiated many years after it had notified the Commission, in 1988, of the legislation intended to implement Directive 80/778.

30 In addition, it submits that the public water supply schemes fundamentally comply with the water quality standards laid down in Directive 80/778 and it is unrealistic of the Commission to consider that the schemes must fully comply with all the water quality parameters laid down in that directive.

31 As regards the group water schemes, it argues that the present action does not take account of either the substantial corrective measures which have been taken or the historical and cultural reasons for the creation of those schemes.

32 It must be recalled in that regard that, according to settled case-law, under the system instituted by Article 226 EC, the Commission has a discretion to bring an action for failure to fulfil obligations and it is not for the Court to assess whether

it was appropriate to exercise that discretion (Case C-207/97 *Commission* v *Belgium* [1999] ECR I-275, paragraph 24, and Case C-152/98 *Commission* v *Netherlands* [2001] ECR I-3463, paragraph 20).

33 It is also settled case-law that 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 and that the Court cannot take account of any subsequent changes (see, in particular, Case C-220/99 *Commission* v *France* [2001] ECR I-5831, paragraph 33, and Case C-323/01 *Commission* v *Italy* [2002] ECR I-4711, paragraph 8). It follows that in the present case the question of the existence of the alleged breaches must be determined by reference to the original version of the 1988 Regulations, without regard to the measures which later amended and replaced those regulations.

*The plea alleging failure to comply with microbiological parameters 57 and 58 of Annex I to Directive 80/778 in public water supplies*

34 As regards public water supplies, the Commission has produced a summary drawn from the annual reports which shows year by year, from 1993 to 1998, the situation with regard to microbiological contamination for each public water supply in Ireland. According to the Commission, it is evident from the summary that, for a significant number of the supplies, there is a pattern of repeated breaches of microbiological parameters 57 and 58 of Annex I to Directive 80/778. Moreover, for some of those supplies, the concentrations of faecal coliforms are frequently high.

35 Ireland concedes that breaches of the requirements of Directive 80/778 have occurred but claims that the quality of the water from public supplies is generally

good, as is shown by the successive annual reports. For example, the 1998 annual report indicates that 92% of the samples taken from public supplies are free from all coliforms, while 95% are free of faecal coliforms. Furthermore, Ireland considers that it is necessary to qualify the interpretation of the data in those reports inasmuch as many of the samples failed to comply with the standards only because of the presence, generally in small numbers, of total coliforms unaccompanied by faecal types. The risk to public health is very slight in those cases. Ireland adds that significant investment was made in order to improve water distribution between 1994 and 1999 and it is planned to treble that expenditure in the programme for the period 2000 to 2006.

36 It is common ground between the parties that at the date of expiry of the period laid down in the reasoned opinion, namely 14 September 1999, the public water supplies listed in the Commission's application did not comply with microbiological parameters 57 and 58 of Annex 1 to Directive 80/778. The data submitted by Ireland to show that the limit-values of those parameters were exceeded only by relatively insignificant amounts merely confirms that the limit-values were in fact exceeded.

37 Furthermore, the argument that Ireland has taken steps to improve the quality of water intended for human consumption cannot be accepted. However strenuous the efforts of that Member State to improve the quality of drinking water on its territory may have been, it must be pointed out that, in respect of water quality, Article 7(6) of Directive 80/778 does not establish a mere duty of diligence but an obligation to achieve a particular result.

38 As the Court has already held, it follows from Article 7(6) of Directive 80/778 that the Member States must take the steps necessary to ensure that water intended for human consumption at least meets the requirements specified in

Annex I to that directive. The only derogations from that obligation are those provided for in Articles 9, 10 and 20 of the directive. The directive therefore requires Member States to ensure that particular results are achieved and, save for the derogations provided, does not allow them to plead special circumstances as grounds for the failure to comply with that obligation. The fact that a Member State has taken all reasonably practicable measures cannot therefore justify a failure to comply with that obligation (see Case C-337/89 *Commission* v *United Kingdom* [1992] ECR I-6103, paragraphs 21 to 25).

39 It follows from the foregoing that the plea alleging failure to comply with microbiological parameters 57 and 58 of Annex I to Directive 80/778 in public supplies of water intended for human consumption must be regarded as well founded.

*The plea alleging failure to comply with microbiological parameters 57 and 58 of Annex I to Directive 80/778 in group water schemes*

40 The Commission submits that group water schemes fall within the scope of Directive 80/778. On the basis of the data in the annual reports for 1993 to 1998, the Commission adduces a summary which refers to a number of such schemes in Ireland which do not comply with microbiological parameters 57 and 58 of Annex I to Directive 80/778. The Commission also refers to complaints specifically concerning the district of Ballycroy and to an exchange of letters between the Commission and the Irish authorities as support for its allegation of contamination of the group water supply in that district. Since it is apparent from those reports, and from the correspondence relating to Ballycroy, that a number

of group water schemes in Ireland do not comply with parameters 57 and 58, the Commission considers that Ireland has failed to fulfil its obligations under Articles 7(6) and 19 of Directive 80/778. It considers that the steps taken by the Irish authorities to comply with Directive 80/778 are inadequate until the authorities succeed in guaranteeing compliance with the maximum permissible concentrations laid down for total coliforms and faecal coliforms.

41 Ireland submits that Directive 80/778 does not apply to group water schemes. In Case C-42/89 *Commission* v *Belgium* [1990] ECR I-2821, the Court held that Directive 80/778 applies only to water supplied for human consumption and not to water derived from private sources, which should be considered to include group water schemes.

42 As regards the steps taken by the Irish authorities to comply with the requirements of Directive 80/778, Ireland submits that effluent from point (farmyards, septic tanks, silage slabs, etc.) and diffuse sources is the main contributor to pollution of surface and ground waters in rural areas. That problem is being tackled on a number of fronts through a comprehensive national policy, consisting in a series of detailed measures. Ireland stresses the effectiveness of those source-protection measures and claims that they are fully in accordance with Community environmental policies. In fact, in most cases they are financed by the Structural and Cohesion Funds of the EU.

43 First of all, it should be noted that Ireland does not deny that the group water schemes referred to in the Commission's application do not comply with the microbiological parameters 57 and 58 of Annex I to Directive 80/778.

44 Ireland argues essentially that Directive 80/778 does not apply to those schemes. In that regard, it is true that in paragraph 17 of the judgment in Case C-42/89 *Commission* v *Belgium*, cited above, the Court held that that directive applies only to water supplied for human consumption and to water used by a food production undertaking, and that water from private sources of supply is excluded from its scope. In interpreting the term 'private sources' in the context of that judgment, it must be noted that the case concerned a national provision implementing Directive 80/778 and excluding from its scope water drawn by private individuals for household use. It is clear from paragraphs 18 and 19 of that judgment that that ruling was based on the distinction between water from private sources and water supplied for human consumption. The exclusion confirmed by that judgment must therefore be understood as limited to wells and other private water sources where the water is directly drawn by the individual for his own use. By contrast, a situation where the water is supplied to several users by way of a supply network is clearly covered by the concept of supply to consumers and therefore falls within the scope of Directive 80/778. Unlike water drawn by an individual for his own use, water supplied to several users by way of a supply network undergoes extraction and distribution processes which prevent it from being individually monitored by each user.

45 It follows that group water schemes fall within the scope of Directive 80/778. Where a feature of the facility in question is the operation of a supply network, it is of no relevance that the facility serves only a small number of consumers.

46 That interpretation is not called into question by the fact that the group water schemes take the form of a trust or company rather than a public body. Whatever their legal form, those schemes are characterised by the fact that the water supplied to the users through the schemes cannot be individually monitored by those users.

47 The measures which Ireland claims to have taken to improve the quality of water from group supply schemes cannot, for the reasons set out in paragraphs 37 and 38 of this judgment, justify the failure to fulfil the obligation in question.

48 It follows from the foregoing that the plea alleging failure to comply with microbiological parameters 57 and 58 of Annex I to Directive 80/778 in group water schemes is well founded.

*The plea alleging non-conformity of the Irish legislation implementing Directive 80/778*

49 The Commission submits that the Irish legislation implementing Directive 80/778, namely the 1988 Regulations, does not reflect the binding character of the requirements of Annex I to that directive in relation to group water schemes. According to the Commission, Directive 80/778 leaves no doubt as to the binding character of that annex. However, the 1988 Regulations do not provide clearly and unambiguously that any legal person must ensure that the water provided by Irish group water schemes meets the requirements of that annex. No direct duty to comply with those requirements is imposed on the companies or trusts operating such distribution schemes. Consequently, the Commission considers that Ireland has failed to fulfil its obligations under Articles 7(6), 18 and 19 of Directive 80/778.

50 Ireland submits that this plea is based on the premiss that the requirements of Directive 80/778 apply to group water schemes. It disputes that interpretation for the reasons set out in paragraph 41 of this judgment.

51 Furthermore, Ireland argues that by virtue of Article 6(3) of the Local Government (Sanitary Services) Act, enacted in 1962, the sanitary authorities are invested with powers to purchase waterworks where a request to that effect is made by all or a majority of the persons entitled to sell them and where those waterworks are in good order and repair.

52 It should be noted that, for the reasons set out in paragraphs 44 to 46 of this judgment, Directive 80/778 applies to group water schemes. Pursuant to Articles 7(6), 18 and 19 of Directive 80/778, Ireland was therefore obliged to ensure the binding character of Annex I to that directive in respect of those schemes.

53 In cases of non-compliance with the quality parameters, however, Article 8 of the 1988 Regulations provides only that users are to be warned where there is an unacceptable risk to public health and that recommendations for measures to improve the quality of the water are to be drawn up. Those provisions are not sufficient to ensure the binding character of Annex I to Directive 80/778.

54 It is of no relevance that under the Local Government (Sanitary Services) Act, 1962, the sanitary authorities are entitled to purchase waterworks where a request to that effect is made by all or a majority of the persons entitled to sell them. That power does not make the water quality parameters binding since it is discretionary and exercisable solely at the request of the individuals concerned.

55 It follows that the plea alleging non-conformity of the Irish legislation implementing Directive 80/778 is well founded.

56 In the light of all the foregoing considerations, it must be held that:

— by failing to ensure compliance with microbiological parameters 57 (total coliforms) and 58 (faecal coliforms) of Annex I to Directive 80/778 in respect of certain public water supplies and certain group water supplies (other than those providing less than 10 $m^3$ a day as an average or serving fewer than 50 persons, unless the water is supplied as part of a commercial or public activity) identified in official drinking water reports and in correspondence concerning Ballycroy, and

— by failing, in its implementing legislation, to reflect the binding character of the requirements of Annex I to the directive in relation to group water supplies,

Ireland has failed to fulfil its obligations under Articles 7(6), 18 and 19 of that directive.

## Costs

57 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. 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.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1. Declares that:

— by failing to ensure compliance with microbiological parameters 57 (total coliforms) and 58 (faecal coliforms) of Annex I to Council Directive 80/778/EEC of 15 July 1980 relating to the quality of water intended for human consumption in respect of certain public water supplies and certain group water supplies (other than those providing less than 10 $m^3$ a day as an average or serving fewer than 50 persons, unless the water is supplied as part of a commercial or public activity) identified in official drinking water reports and in correspondence concerning Ballycroy, Ireland, and

— **by failing, in its implementing legislation, to reflect the binding character of the requirements of Annex I to the directive in relation to group water supplies,**

**Ireland has failed to fulfil its obligations under Articles 7(6), 18 and 19 of that directive;**

2. Orders Ireland to pay the costs.

Puissochet Schintgen Skouris

Macken Cunha Rodrigues

Delivered in open court in Luxembourg on 14 November 2002.

R. Grass — Registrar

J.-P. Puissochet — President of the Sixth Chamber