JUDGMENT OF THE COURT (First Chamber)
12 September 1996 *

In Joined Cases C-58/95, C-75/95, C-112/95, C-119/95, C-123/95, C-135/95, C-140/95, C-141/95, C-154/95 and C-157/95,

REFERENCES to the Court under Article 177 of the EC Treaty by the Pretura Circondariale di Roma, Sezione Distaccata di Tivoli and Sezione Distaccata di Castelnuovo di Porto, for a preliminary ruling in the criminal proceedings before that court against

Sandro Gallotti,

Roberto Censi,

Giuseppe Salmaggi,

Salvatore Pasquire,

Massimo Zappone,

Francesco Segna and Others,

Cesare Cervetti,

Mario Gasbarri,

Isidoro Narducci,

Fulvio Smaldone,

* Language of the case: Italian.

on the interpretation of Council Directive 91/156/EEC of 18 March 1991 amending Directive 75/442/EEC on waste (OJ 1991 L 78, p. 32),

THE COURT (First Chamber),

composed of: D. A. O. Edward, President of the Chamber, L. Sevón (Rapporteur) and M. Wathelet, Judges,

Advocate General: N. Fennelly,
Registrar: R. Grass,

after considering the written observations submitted on behalf of:

— the French Government, by Catherine de Salins, Deputy Director in the Legal Affairs Department of the Ministry of Foreign Affairs, and Gautier Mignot, Secretary of Foreign Affairs in that Department, acting as Agents,

— the Commission of the European Communities, by Maria Condou-Durande and Laura Pignataro, of its Legal Service, acting as Agents,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 8 February 1996,

gives the following

Judgment

1 By ten orders made between 26 October 1994 and 4 April 1995, received at the Court between 6 March and 19 May 1995, the Pretore of the Pretura Circondariale di Roma (District Magistrate's Court, Rome), sitting in some of the proceedings as the Sezione Distaccata di Tivoli (Tivoli Division) and in the remainder as the Sezione Distaccata di Castelnuovo di Porto (Castelnuovo di Porto Division), referred to the Court for a preliminary ruling under Article 177 of the EC Treaty two questions relating to Council Directive 91/156/EEC of 18 March 1991 amending Directive 75/442/EEC on waste (OJ 1991 L 78, p. 32).

2 Those questions were raised in criminal proceedings against various people accused of contravening Italian legislation on waste, in particular Presidential Decree No 915 of 10 September 1982 implementing Directive 75/442/EEC on waste, Directive 76/403/EEC on the disposal of polychlorinated biphenyls and polychlorinated terphenyls and Directive 78/319/EEC on toxic and dangerous waste (GURI No 343 of 15 December 1982, hereinafter 'Presidential Decree No 915/82') and Decree-Law No 397 of 9 September 1988 entitled 'Urgent Provisions concerning the Disposal of Industrial Waste' (GURI No 213 of 10 November 1988) which was converted, after amendment, into Law No 475 of 9 November 1988 (GURI No 264 of 10 November 1988, hereinafter 'Law No 475/88'). Although the orders for reference are not very clear in that respect, it seems that the main charges against the accused are setting up special waste tips without a permit, contrary to Article 10 of Presidential Decree No 915/82, disposing of waste without a permit, contrary to Article 25 thereof, and failing to comply with Articles 3 and 9 octies of Law No 475/88 relating to keeping waste records.

3 In the orders for reference, the Pretore notes first of all that Directive 91/156 radically amended Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39) by changing the definition of waste, encouraging recovery operations and setting as objectives the prevention and reduction of the amount of waste by means of technologies based on recycling, re-use and the production of

energy. He concludes that the implementation of Directive 91/156 ought to lead to a radical change in Italian legislation whereby disposal operations will be distinguished from recovery operations which, in his view, should be subject to a less strict permit system. He notes, however, that the Italian legislature has not implemented Directive 91/156, although the time-limit for transposition expired on 1 April 1993.

4 Continuing his analysis, the Pretore points out that in Directive 91/156 the solution chosen seems to have been primarily, if not exclusively, an administrative system of waste control, restricting criminal-law controls to extreme cases. Accordingly, Presidential Decree No 915/82 is incompatible with the directive, in that criminal-law penalties predominate in its provisions on management and supervision. As a result, he concludes Italian operators are in a less favourable position than those in the rest of the Community, whereas the aim of the directive is to ensure that the internal market functions properly and to remove disparities in the treatment of operators in the single market through the adoption of uniform legislation.

5 The Pretore therefore asks the Court:

'(1) to give a preliminary ruling on the legal effect of the Italian Republic's failure to bring into force the necessary measures to implement Council Directive 91/156/EEC within the prescribed time-limit;

(2) to state, in particular, whether the existence of criminal penalties, and in particular those provided for in Article 25 et seq. of Presidential Decree No 915/82 for failure to observe the Italian rules, may be considered to conflict with Community legislation intended to ensure uniform treatment for operators in the single market *inter alia* as regards penalties.'

Admissibility of the national court's questions

6 The French Government and the Commission have drawn attention both to the difficulty in identifying the capacity in which the accused acted, the charges against them and the applicable provisions of national law and to the lack of precision in the questions.

7 According to the case-law of the Court, the need to provide an interpretation of Community law which will be of use to the national court makes it necessary that the national court define the factual and legislative context of the questions it is asking or, at the very least, explain the factual circumstances on which those questions are based (see, in particular, Joined Cases C-320/90, C-321/90 and C-322/90 *Telemarsicabruzzo and Others* [1993] ECR I-393, paragraph 6, and the order of 20 March 1996 in Case C-2/96 *Sunino and Data* [1996] ECR I-1543, paragraph 4).

8 Moreover, the information provided in the orders for reference serves not only to enable the Court to give helpful answers but also to enable the Governments of the Member States and other interested parties to submit observations in accordance with Article 20 of the Statute of the Court. It is the Court's duty to ensure that the opportunity to submit observations is safeguarded, in view of the fact that, by virtue of the abovementioned provision, only the orders for reference are notified to the interested parties (see, in particular, Joined Cases 141/81, 142/81 and 143/81 *Holdijk and Others* [1982] ECR 1299, paragraph 6, and *Sunino and Data*, cited above, paragraph 5).

9 In this case, however, having regard to the very general nature of the questions submitted and the detailed interpretation of Directive 91/156/EEC set out by the national court in the grounds of the orders, the Court has sufficient information to provide a helpful answer to those questions. They should therefore be declared admissible.

The national court's questions

10 The national court seeks essentially to ascertain, first, whether Community law, in particular Directive 91/156, must be interpreted as permitting the imposition of criminal penalties such as those laid down in Italian law and, secondly, what consequences may result from the Italian Republic's failure to implement the directive within the prescribed time-limit.

11 It is apparent from the wording of the questions and the context of the orders for reference that the second limb of the above question is merely a wider formulation of the first and that it has no meaning unless the criminal penalties under Italian law are considered incompatible with Community law, in particular Directive 91/156. As the questions are linked, they should be considered together.

12 The questions are based on the Pretore's interpretation of the directive set out above, according to which the new Community law provisions relaxed the permit system for waste recovery and introduced a system of controls that is primarily administrative in nature, restricting criminal-law controls to serious cases. In addition, according to the Pretore the aim of the directive is to ensure the proper functioning of the Internal Market and to remove disparities in the treatment of economic operators.

13 As the Advocate General made clear in points 23 to 30 of his Opinion, such an interpretation of the permit system in Directive 91/156 is incorrect. Articles 9 and 10 of the directive require undertakings and establishments handling waste to obtain a permit, whether they carry out disposal operations specified in Annex IIA to the directive or operations which may lead to recovery specified in Annex IIB. Article 11 makes provision for exemptions from the permit requirement in the case

of establishments and undertakings carrying out their own waste disposal at the place of production or carrying out waste recovery; this requires the adoption of national measures, regarding which the Member States enjoy a wide discretion.

14 Furthermore, Directive 91/156 does not impose any specific obligations on the Member States as regards systems of controls and penalties. That does not mean, however, that national provisions which impose criminal penalties for infringements of legislation implementing the directive are incompatible with the latter. The Member States are required, within the bounds of the freedom left to them by the third paragraph of Article 189 of the EC Treaty, to choose the most appropriate forms and methods to ensure the effectiveness of directives (Case 48/75 *Royer* [1976] ECR 497, paragraph 75). The Court has also held that where a directive does not specifically provide any penalty for an infringement or refers for that purpose to national laws, regulations and administrative provisions, Article 5 of the Treaty requires the Member States to take all measures necessary to guarantee the application and effectiveness of Community law. For that purpose, while the choice of penalties remains within their discretion, they must ensure in particular that infringements of Community law are penalized under conditions, both procedural and substantive, which are analogous to those applicable to infringements of national law of a similar nature and importance and which, in any event, make the penalty effective, proportionate and dissuasive (C-382/92 *Commission* v *United Kingdom* [1994] ECR I-2435, paragraph 55, and C-383/92 *Commission* v *United Kingdom* [1994] ECR I-2479, paragraph 40).

15 It follows that a Member State is entitled to impose criminal penalties for failure to comply with legislation intended to implement the directives on waste — Directive 75/442 or Directive 91/156 — if it considers that to be the most appropriate way of ensuring their effectiveness, provided that the penalties laid down are analogous to those applicable to infringements of national law of a similar nature and importance and are effective, proportionate and dissuasive.

16 Finally, the Court has held that Directive 91/156 was validly adopted on the basis of Article 130s of the Treaty and not Article 100a, since the main object of the harmonization provided for in Article 1 of the directive was to ensure, with a view to protecting the environment, the effective management of waste in the Community, regardless of its origin, and it had only ancillary effects on the conditions of competition and trade (C-155/91 *Commission* v *Council* [1993] ECR I-939, paragraphs 20 and 21). It is therefore incorrect to consider the specific objectives of that directive to be the proper functioning of the internal market and the abolition of disparities in the treatment of economic operators.

17 Moreover, even if Directive 91/156 did pursue the specific objectives that the national court ascribes to it, that would not reduce the freedom conferred on the Member States by the third paragraph of Article 189 of the Treaty to choose the most appropriate forms and methods for ensuring its effectiveness.

18 The answer to the questions referred should therefore be that Article 5 and the third paragraph of Article 189 of the Treaty must be interpreted as not precluding a Member State from imposing criminal penalties to ensure compliance with the obligations laid down by Directive 91/156, provided that those penalties are analogous to those applicable to infringements of national law of a similar nature and importance and are, in any event, effective, proportionate and dissuasive.

Costs

19 The costs incurred by the French Government and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (First Chamber)

in answer to the questions referred to it by the Pretura Circondariale di Roma by orders made between 26 October 1994 and 4 April 1995, hereby rules:

Article 5 and the third paragraph of Article 189 of the EC Treaty must be interpreted as not precluding a Member State from imposing criminal penalties to ensure compliance with the obligations laid down by Council Directive 91/156/EEC of 18 March 1991 amending Directive 75/442/EEC on waste, provided that those penalties are analogous to those applicable to infringements of national law of a similar nature and importance and are, in any event, effective, proportionate and dissuasive.

Edward Sevón Wathelet

Delivered in open court in Luxembourg on 12 September 1996.

R. Grass D. A. O. Edward

Registrar President of the First Chamber