JUDGMENT OF THE COURT (First Chamber)
28 March 1990 *

In Joined Cases C-206/88 and C-207/88

REFERENCE to the Court under Article 177 of the EEC Treaty by the Pretura (Magistrate's Court), Asti, Italy, for a preliminary ruling in the criminal proceedings pending before that court against

G. Vessoso, residing at Asti, and

G. Zanetti, residing at Asti

on the interpretation of Article 1 of Council Directive 75/442/EEC of 15 July 1975 on waste (Official Journal 1975, L 194, p. 39) and Article 1 of Council Directive 78/319/EEC of 20 March 1978 on toxic and dangerous waste (Official Journal 1978, L 84, p. 43),

THE COURT (First Chamber)

composed of: Sir Gordon Slynn, President of Chamber, R. Joliet and G. C. Rodríguez Iglesias, Judges,

Advocate General: F. G. Jacobs
Registrar: H. A. Rühl, Principal Administrator

after considering the observations submitted on behalf of

the Government of the Italian Republic, by P. G. Ferri, avvocato dello Stato,

* Language of the case: Italian.

the Commission of the European Communities, by S. Fabro, a member of its Legal Department, acting as Agent,

having regard to the Report for the Hearing and further to the hearing on 21 November 1989,

after hearing the Opinion of the Advocate General delivered at the sitting on 13 December 1989,

gives the following

Judgment

1 By two orders dated 18 December 1987, which were received at the Court on 28 July 1988, the Pretura di Asti referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Article 1 of Council Directive 75/442/EEC of 15 July 1975 on waste (Official Journal 1975, L 194, p. 39) and Article 1 of Council Directive 78/319/EEC of 20 March 1978 on toxic and dangerous waste (Official Journal 1978, L 84, p. 43).

2 That question arose in the context of two criminal prosecutions brought against a number of haulage contractors who are charged with transporting substances on behalf of third parties without obtaining prior authorization, thereby infringing Decree No 915 of the President of the Italian Republic of 10 September 1982 (GURI (Italian Official Gazette) No 343, 15.12.1982, p. 9071), hereinafter referred to as 'the Presidential Decree'. That decree, which was adopted for the purpose of transposing the two abovementioned directives into national law, lays down penalties under criminal law for persons who transport or dispose of waste on behalf of third parties without obtaining the authorization of the competent Italian regional authority.

3 In their defence, the defendants maintained that the substances transported did not constitute waste within the meaning of the Presidential Decree, Article 2 of which defines waste as including 'any substance or object produced by human activity or

natural processes which is, or is intended to be, abandoned'; they claimed that in this case the substances transported were capable of economic reutilization and were not therefore abandoned or intended to be abandoned. In their view, since the activity to which the charges related did not fall within the scope of the Presidential Decree, the criminal penalties laid down therein were not applicable.

4 The Pretura considered that, since the aim of the Presidential Decree was to transpose the two abovementioned directives into national law, it was bound to interpret the definition given in Article 2 of the Presidential Decree in a manner compatible with Article 1 of each directive, in which it is provided that waste is to be understood as 'any substance or object which the holder disposes of or is required to dispose of pursuant to the provisions of national law in force'.

5 The Pretura therefore stayed the proceedings in both cases and sought a preliminary ruling from the Court on whether

'Article 1 of Council Directive 75/442/EEC of 15 July 1975 on waste and Article 1 of Council Directive 78/319/EEC of 20 March 1978 on toxic and dangerous waste must be interpreted as meaning that the legal concept of waste must also cover things which the holder has disposed of which are capable of economic reutilization and whether the said articles must be interpreted as meaning that the term "waste" presupposes the establishment of *animus dereliquendi* on the part of the holder of the substance or object'.

6 Reference is made to the Report for the Hearing for a fuller account of the facts of the case in the main proceedings, the applicable legislation and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

7 The first part of the Pretura's question seeks to ascertain whether the concept of waste within the meaning of Article 1 of both Council Directive 75/442 and Council Directive 78/319 is to be understood as excluding substances and objects which are capable of economic reutilization.

8 The fourth recital in the preamble to Directive 75/442 and the fifth recital in the preamble to Directive 78/319 both stress the importance of encouraging the recovery of waste and the use of recovered materials in order to conserve natural resources. Furthermore, the second indent of Article 1(b) of Directive 75/442 and the second indent of Article 1(c) of Directive 78/319 provide that waste disposal is to be understood as including the transformation operations necessary for the recovery, reuse or recycling of waste. Finally, Article 3(1) of Directive 75/442 and Article 4 of Directive 78/319 require Member States to take appropriate steps to encourage the prevention, recycling and processing of waste, the extraction of raw materials and possibly energy therefrom and any other process for the reuse of waste. It is clear from those various provisions that a substance of which its holder disposes may constitute waste within the meaning of Directives 75/442 and 78/319 even when it is capable of economic reutilization.

9 The answer to the first part of the question must therefore be that the concept of waste within the meaning of Article 1 of Council Directive 75/442 and Article 1 of Council Directive 78/319 is not to be understood as excluding substances and objects which are capable of economic reutilization.

10 The second part of the Pretura's question seeks to ascertain whether the concept of waste, within the meaning of Article 1 of both Council Directives 75/442 and 78/319, presumes that a holder disposing of a substance or an object intends to exclude all economic reutilization of the substance or object by others.

11 Article 1 of each of those directives refers generally to any substance or object of which the holder disposes, and draws no distinction according to the intentions of

the holder disposing thereof. Moreover, those provisions specify that waste also includes substances or objects which the holder 'is required to dispose of pursuant to the provisions of national law in force'. A holder may be required by a provision of national law to dispose of something without necessarily intending to exclude all economic reutilization thereof by others.

12 The essential aim of Directives 75/442 and 78/319, set out in their preambles in the third and fourth recitals respectively, namely the protection of human health and the safeguarding of the environment, would be jeopardized if the application of those directives were dependent on whether or not the holder intended to exclude all economic reutilization by others of the substances or objects of which he disposes.

13 The answer to the second part of the question must therefore be that the concept of waste, within the meaning of Article 1 of Council Directive 75/442 and Article 1 of Council Directive 78/319, does not presume that the holder disposing of a substance or an object intends to exclude all economic reutilization of the substance or object by others.

Costs

14 The costs incurred by the Italian Government and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of 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 di Asti, by orders of 18 December 1987, hereby rules:

The concept of waste, within the meaning of Article 1 of Council Directive 75/442/EEC and Article 1 of Council Directive 78/319/EEC, is not to be understood as excluding substances and objects which are capable of economic reutilization. The concept does not presume that the holder disposing of a substance or an object intends to exclude all economic reutilization of the substance or object by others.

Slynn Joliet Rodríguez Iglesias

Delivered in open court in Luxembourg on 28 March 1990.

J.-G. Giraud
Registrar

G. Slynn
President of the First Chamber