# REPORT FOR THE HEARING
delivered in Joined Cases C-206/88 and C-207/88 *

## I — Facts and procedure

### A — *The Community provisions*

The Council provided for the harmonization of national laws concerning the disposal of waste by means of Council Directive 75/442/EEC of 15 July 1975 on waste (Official Journal 1975, L 194, p. 39) and Council Directive 78/319/EEC of 20 March 1978 on toxic and dangerous waste (Official Journal 1978, L 84, p. 43).

Pursuant to Article 1(a) of each of those directives, 'waste' means, for the purposes of the directives, 'any substance or object which the holder disposes of or is required to dispose of pursuant to the provisions of national law in force'.

As is apparent from the preamble to the two directives, their essential aim is the protection of human health and the environment against harmful effects caused by the collection, transport, treatment, storage and tipping of waste.

Article 4 of Directive 75/442 and Article 5 of Directive 78/319 require the Member States to take appropriate steps to achieve that aim.

To that end, the Member States are to designate or establish the competent authority or authorities to be responsible, in a given zone, for the planning, organization, authorization and supervision of operations for the disposal of waste (Article 5 of Directive 75/442 on waste and Article 6 of Directive 78/319 on toxic and dangerous waste).

To ensure compliance with the measures taken by the Member States under Article 4, Article 8 of Directive 75/442 on waste provides that every installation or undertaking treating, storing or tipping waste on behalf of third parties must obtain a permit from the competent authority designated by the Member States under Article 5. Article 9 provides that such installations and undertakings are to be periodically inspected by the same authority.

Article 10 provides that undertakings transporting, collecting, storing, tipping or treating their own waste or collecting or transporting waste on behalf of third parties are to be subject to supervision by the competent authority referred to in Article 5.

Directive 78/319 on toxic and dangerous waste also provides — in Article 9 — for a system for authorization and control of the disposal of waste.

* Language of the case: Italian.

B — *The national legislation*

Italy transposed Directives 75/442 and 78/319 into national law by means of Decree No 915 of the President of the Republic of 10 September 1982 (GURI (Italian Official Gazette) No 343, 15.12.1982, p. 9071).

Pursuant to Article 2(1) of that decree, waste means, for the purposes of the decree, 'any substance or object produced by human activity or natural processes which is, or is intended to be, abandoned'.

Article 2(2) of the decree divides waste into three categories: urban waste (essentially bulk waste and waste tipped on public land); special waste (comprising residues of industrial processes and waste deriving from agricultural, craft, commercial and other activities); and toxic and dangerous waste (waste containing substances listed in an annex to the decree).

Urban and special waste, as defined by the Italian decree, are covered by Directive 75/442 whilst toxic and dangerous waste, as defined by the decree, are covered by Directive 78/319.

Article 25 of the decree lays down penalties to be imposed on the management of undertakings which dispose of urban and special waste produced by third parties without first obtaining the authorization provided for in Article 6(d) of the decree. The latter provision makes the regions responsible for issuing authorizations for the disposal of urban and special waste produced by third parties.

C — *The proceedings before the national court*

Messrs G. Vessoso and G. Zanetti are charged in proceedings before the Pretura di Asti with the offence of disposing of urban and special waste produced by third parties without first obtaining authorization from the competent regional authority.

In their defence they contend that the objects and substances of which they have disposed were not waste but were salvaged materials capable of economic reuse. In their view, therefore, no authorization was required for the activities in question.

Consequently, the Pretura di Asti stayed the proceedings and, by two orders of 18 December 1987, asked to the Court

'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 reuse 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'.

The national court explains in its orders for reference that the case-law in Italy is divided on the question whether objects or substances capable of economic reuse constitute waste. It states that in its previous

judgments it has always held that they do constitute waste. Moreover, one of its judgments to that effect has been upheld on that point by the Corte di cassazione, which took the view that, even if objects or substances of which a holder disposes are potentially capable of economic reuse, there is still a public interest in ensuring that the essential stages in their disposal are controlled (judgment of 14 April 1987 in *Perino*, not yet reported). Despite that decision of the Corte di cassazione, the Pretura considers that the question is still uncertain and that a judgment on it should be given by the Court of Justice.

Furthermore, the national court states that, according to some decisions and some academic authorities, the concept of waste is subjective: an object or substance cannot be classified as waste unless the person disposing of it intends to abandon it permanently. That interpretation is based on the definition of waste contained in the Italian presidential decree, of which the idea of abandonment is the central feature. In the Pretura's opinion, such a subjective concept is incompatible with the definition which the directives apply to the concept of waste, which relates solely to the conduct of the holder disposing of the waste. The Pretura considers that, having regard to the conflicting views prevailing on the question, it too should be clarified by a judgment of the Court of Justice.

D — *Procedure before the Court*

The orders from the Pretura di Asti were received at the Court Registry on 28 July 1988.

Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the European Communities, written observations were submitted on 21 October 1988 (Cases C-206/88 and C-207/88) by the Commission of the European Communities, represented by S. Fabro, a member of its Legal Department, acting as Agent, and on 10 November 1988 (Case C-207/88) and on 11 November 1988 (Case C-206/88) by the Government of the Italian Republic, represented by L. Ferrari Bravo, Head of the Department for Contentious Diplomatic Affairs of the Ministry of Foreign Affairs, acting as Agent, assisted by P. G. Ferri, avvocato dello Stato.

By order of 23 November 1988, the Court joined the cases for the purposes of the written procedure and judgment.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry.

By order of 4 October 1989 the Court assigned the case to the First Chamber, pursuant to Article 95(1) and (2) of the Rules of Procedure.

**II — Written observations submitted to the Court**

The Italian Government states first that the definition of waste contained in Article 1(a) of Directive 75/442 centres essentially on the conduct of the person disposing of an object or substance and not on the intention underlying such disposal. The fact that the person disposing of the object or substance wishes to receive some consideration in return does not alter the fact that it is waste.

It then observes that, pursuant to Article 1(a) of Directive 75/442, not only objects or substances which a holder disposes of by his own decision but also those which he disposes of because he is required to by national legislation constitute waste. Waste of the latter type may certainly have a potential for economic reuse. Moreover, the second indent of Article 1(b) and Article 3(1) of the same directive make it clear that reuse is one of the primary purposes for which waste is collected and disposed of. Waste therefore clearly embraces objects and substances which are capable of economic reuse.

The Italian Government therefore suggests the following answer to the question submitted by the national court:

'Under Directive 75/442, neither the absence of any intention on the part of the holder of an object or substance to abandon it nor the fact that it may be capable of economic reuse prevents it from being classified as waste and thus from being subject to the rules on waste contained in national legislation.'

According to the Commission, it is apparent from the terms of Articles 1 of Directives 75/442 and 78/319 that the concept of waste covers all objects and substances which a holder disposes of, whatever the method of disposal and whatever the holder's intention in disposing of it.

Furthermore, only that interpretation ensures that the system of control and authorization introduced by the two directives will function effectively. If their application depended on the intention underlying a disposal operation or on the possibility that the abandoned object or substance might be brought back into economic channels, the system could easily be abused.

The Commission therefore proposes that the question be answered as follows:

'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 taken to mean that the legal concept of waste includes every substance and object which the holder disposes of on any ground or for any reason or cause whatsoever.'

R. Joliet
Judge-Rapporteur