JUDGMENT OF THE COURT (Fourth Chamber)

5 October 1999 *

In Joined Cases C-175/98 and C-177/98,

REFERENCES to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Pretore di Udine (Italy) for a preliminary ruling in the proceedings pending before that court between

Paolo Lirussi (C-175/98)

and

Francesca Bizzaro (C-177/98)

on the interpretation of Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39), as amended by Council Directive 91/156/EEC of 18 March 1991 (OJ 1991 L 78, p. 32), and of Council Directive 91/689/EEC of 12 December 1991 on hazardous waste (OJ 1994 L 377, p. 20), as amended by Council Directive 94/31/EC of 27 June 1994 (OJ 1994 L 168, p. 28),

* Language of the case: Italian.

THE COURT (Fourth Chamber),

composed of: J.L. Murray, acting for the President of the Fourth Chamber, H. Ragnemalm (Rapporteur) and R. Schintgen, Judges,

Advocate General: P. Léger,

Registrar: L. Hewlett, Administrator

after considering the written observations submitted on behalf of:

— the Italian Government, by Professor U. Leanza, Head of the Legal Service in the Ministry of Foreign Affairs, acting as Agent, assisted by F. Quadri, Avvocato dello Stato,

— the German Government, by E. Röder, Ministerialrat at the Federal Ministry of the Economy, and C.-D. Quassowski, Regierungsdirektor at the same Ministry, acting as Agents,

— the Netherlands Government, by J.G. Lammers, Acting Legal Adviser in the Ministry of Foreign Affairs, acting as Agent,

— the Austrian Government, by F. Cede, Botschafter in the Federal Ministry of Foreign Affairs, acting as Agent,

— the Commission of the European Communities, by L. Ström, of its Legal Service, acting as Agent, assisted by G.M. Roberti, of the Naples Bar,

having regard to the Report for the Hearing,

after hearing the oral observations of the Italian Government and of the Commission at the hearing on 6 May 1999,

after hearing the Opinion of the Advocate General at the sitting on 16 September 1999,

gives the following

Judgment

1 By two orders of 20 April 1998, received at the Court on 11 May 1998, the Pretore di Udine (Magistrates' Court, Udine) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) four questions on the interpretation of Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39), as amended by Council Directive 91/156/EEC of 18 March 1991 (OJ 1991 L 78, p. 32), and of Council Directive 91/689/EEC of 12 December 1991 on hazardous waste (OJ 1994 L 377, p. 20), as amended by Council Directive 94/31/EC of 27 June 1994 (OJ 1994 L 168, p. 28).

2 Those questions were raised in criminal proceedings instituted against Mr Lirussi and Mrs Bizzaro, who were charged with having stored waste under improper conditions.

3 Mr Lirussi and Mrs Bizzaro are managers, respectively, of a workshop and of a laundry in the Udine region in Italy. They each obtained a permit from the Assessore Regionale all'Ambiente (Regional counsellor responsible for environ-

mental issues) for the provisional storage of toxic and hazardous waste resulting from the activities of their businesses and comprising, for Mr Lirussi, lead batteries and, for Mrs Bizzaro, sludge, produced by distillation, from a dry-cleaning machine.

4 Authorisation was granted to Mr Lirussi for a period of five years from 1 April 1992 and in respect of a maximum quantity of 0.1 tonnes of waste. The permit expired on 1 April 1997, since Mr Lirussi gave notice of the imminent termination of the storage and requested withdrawal of the permit with a view to leasing the business. As a result of inspections carried out in Mr Lirussi's workshop on 8 April and 21 May 1997, it became apparent that 160 kg of used lead batteries had been stored on the premises of the business after the date on which the permit had expired.

5 The permit issued to Mrs Bizzaro on 9 August 1994 authorised her to store a maximum quantity of 50 kg of waste. Inspections carried out at her laundry revealed, first, that the provisional storage had commenced on 6 June 1994, that is to say approximately two months before the permit had been obtained and, second, that the amount of waste stored by Mrs Bizzaro had exceeded the authorised limit.

6 In the criminal proceedings brought against Mr Lirussi and Mrs Bizzaro, the Public Prosecutor pointed out that the unauthorised storage of which the defendants were accused could, in both cases, be regarded as 'temporary storage' within the meaning of the Italian legislation and, as such, exempt from authorisation since the time-limits and maximum quantities provided for in respect of such storage were not exceeded.

7 Although he considered that the defendants' conduct was therefore not punishable as a criminal offence, the Public Prosecutor none the less requested that a question be referred to the Court for a preliminary ruling in order to determine whether the national legislation is compatible with the provisions of Community law and whether the conduct in question could be regarded as constituting 'temporary storage'.

Relevant Community rules

Directive 75/442

8 Article 1 of Directive 75/442 provides as follows:

'For the purposes of this Directive:

(a) "waste" shall mean any substance or object in the categories set out in Annex I which the holder discards or intends or is required to discard.

The Commission, acting in accordance with the procedure laid down in Article 18, will draw up, not later than 1 April 1993, a list of wastes belonging to the categories listed in Annex I. This list will be periodically reviewed and, if necessary, revised by the same procedure;

(b) "producer" shall mean anyone whose activities produce waste ("original producer") and/or anyone who carries out pre-processing, mixing or other operations resulting in a change in the nature or composition of this waste;

(c) "holder" shall mean the producer of the waste or the natural or legal person who is in possession of it;

(d) "management" shall mean the collection, transport, recovery and disposal of waste, including the supervision of such operations and after-care of disposal sites;

(e) "disposal" shall mean any of the operations provided for in Annex II A;

(f) "recovery" shall mean any of the operations provided for in Annex II B;

(g) "collection" shall mean the gathering, sorting and/or mixing of waste for the purpose of transport.'

9 Article 4 of Directive 75/442 provides as follows:

'Member States shall take the necessary measures to ensure that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment, and in particular:

— without risk to water, air, soil and plants and animals,

— without causing a nuisance through noise or odours,

— without adversely affecting the countryside or places of special interest.

Member States shall also take the necessary measures to prohibit the abandonment, dumping or uncontrolled disposal of waste.'

10 Article 6 of Directive 75/442 provides that 'Member States shall establish or designate the competent authority or authorities to be responsible for the implementation of this Directive'.

11 Article 8 of the Directive states:

'Member States shall take the necessary measures to ensure that any holder of waste:

— has it handled by a private or public waste collector or by an undertaking which carries out the operations listed in Annex II A or B, or

— recovers or disposes of it himself in accordance with the provisions of this Directive.'

12 Pursuant to Article 9 of Directive 75/442, and for the purposes of implementing Articles 4, 5 and 7 thereof, any establishment or undertaking which carries out the operations specified in Annex II A to that directive must obtain a permit from the competent authority referred to in Article 6.

13 The original version of Annex II A, which concerns disposal operations, contained the following definition:

'D 15 Storage pending any of the operations in this Annex, excluding temporary storage, pending collection, on the site where it is produced.'

14 That definition was amended by Commission Decision 96/350/EC of 24 May 1996 adapting Annexes II A and II B to Directive 75/442 (OJ 1996 L 135, p. 32) and now reads as follows:

'D 15 Storage pending any of the operations numbered D 1 to D 14 (excluding temporary storage, pending collection, on the site where it is produced).'

15 Article 10 of Directive 75/442 provides that, for the purposes of implementing Article 4, any establishment or undertaking which carries out the operations referred to in Annex II B must obtain a permit.

16 The original version of Annex II B, which concerns recovery operations, contained the following definition:

'R 13 Storage of materials intended for submission to any operation in this Annex, excluding temporary storage, pending collection, on the site where it is produced.'

17 That definition was adapted by Decision 96/350 and now reads as follows:

'R 13 Storage of wastes pending any of the operations numbered R 1 to R 12 (excluding temporary storage, pending collection, on the site where it is produced.'

18 The first subparagraph of Article 11(1) of Directive 75/442 provides:

'Without prejudice to Council Directive 78/319/EEC of 20 March 1978 on toxic and dangerous waste, as last amended by the Act of Accession of Spain and Portugal, the following may be exempted from the permit requirement imposed in Article 9 or 10:

(a) establishments or undertakings carrying out their own waste disposal at the place of production;

and

(b) establishments or undertakings that carry out waste recovery.'

19 According to Article 13 of Directive 75/442, 'Establishments or undertakings which carry out the operations referred to in Articles 9 to 12 shall be subject to appropriate periodic inspections by the competent authorities.'

20 The first paragraph of Article 14 of Directive 75/442 provides as follows:

'All establishments or undertakings referred to in Articles 9 and 10 shall:

— keep a record of the quantity, nature, origin, and, where relevant, the destination, frequency of collection, mode of transport and treatment method in respect of the waste referred to in Annex I and the operations referred to in Annex II A or B,

— make this information available, on request, to the competent authorities referred to in Article 6.'

Directive 91/689

21 Article 11 of Directive 91/689 repealed Council Directive 78/319/EEC of 20 March 1978 on toxic and dangerous waste (OJ 1978 L 84, p. 43) with effect from 27 June 1995.

22 Article 1 of Directive 91/689 provides that the object of the Directive is to approximate the laws of the Member States on the controlled management of hazardous waste, that subject to the Directive, Directive 75/442 is to apply to

hazardous waste and that the definition of 'waste' and of the other terms used in Directive 91/689 are to be those in Directive 75/442.

23 Article 4(1) of Directive 91/689 provides that Article 13 of Directive 75/442 is also to apply to producers of hazardous waste.

24 According to Article 4(2) of Directive 91/689, 'Article 14 of Directive 75/442/EEC shall also apply to producers of hazardous waste and to all establishments and undertakings transporting hazardous waste.'

25 Article 5(1) and (2) of Directive 91/689 provides as follows:

'1. Member States shall take the necessary measures to ensure that, in the course of collection, transport and temporary storage, waste is properly packaged and labelled in accordance with the international and Community standards in force.

2. In the case of hazardous waste, inspections concerning collection and transport operations made on the basis of Article 13 of Directive 75/442/EEC shall cover more particularly the origin and destination of such waste.'

The applicable national legislation

26 The Italian legislation on waste is now to be found in Decree-Law No 22/97 of 5 February 1997 implementing Directive 91/156/EEC on waste, Directive 91/689/EEC on hazardous waste and Directive 94/62/EC on packaging and packaging waste (GURI, Ordinary Supplement No 38 of 15 February 1997), as amended by Decree-Law No 389/97 of 8 November 1997 (GURI No 261 of 8 November 1997, hereinafter 'Decree-Law No 22/97').

27 Decree-Law No 22/97 reproduces in full, in points D 15 and R 13 of Annexes B and C respectively, the corresponding provisions of Annexes II A and II B to Directive 75/442.

28 Article 6(l) of Decree-Law No 22/97 provides that 'storage' ('stoccaggio') is to be interpreted as meaning 'disposal operations comprising the storage pending further operations referred to in point D 15 of Annex B and recovery operations comprising the storage of materials referred to in point R 13 of Annex C'.

29 Article 6(m) of Decree-Law No 22/97 defines 'temporary storage' as follows:

'The accumulation of waste, pending collection, on the site where it is produced, subject to the following conditions:

1. The waste stored may not contain polychlorinated dibenzo-p-dioxin, polychlorinated dibenzo-furan, polychlorinated dibenzophenol in quantities

in excess of 2.5 ppm, or polychlorinated biphenyls or polychlorinated terphenyls in quantities in excess of 25 ppm;

2. Hazardous waste must be collected and taken for recovery or disposal at least every two months, irrespective of the quantity stored or, alternatively, whenever the volume of hazardous waste stored reaches 10 cubic metres. The maximum period of temporary storage is one year if the volume of waste stored does not exceed 10 cubic metres per year or if, irrespective of quantity, the temporary storage is carried out in establishments located in the smaller islands ("isole minori");

3. Non-hazardous waste must be collected and taken for recovery or disposal at least every three months, irrespective of the quantity stored or, alternatively, whenever the volume of non-hazardous waste reaches 20 cubic metres. The maximum period of temporary storage is one year if the volume of waste stored does not exceed 20 cubic metres per year or if, irrespective of quantity, the temporary storage is carried out in establishments located in the smaller islands ("isole minori");

4. Temporary storage must be carried out in respect of homogenous types of waste and in conformity with the relevant technical rules and, in regard to hazardous waste, in conformity with the rules governing the storage of the hazardous substances contained in them;

5. The rules governing packaging and labelling of hazardous waste must be observed.'

30 Article 28 of Decree-Law No 22/97 provides *inter alia* that 'authorisation for the disposal and recovery of waste is granted by the competent region at territorial level within 90 days following submission of the application by the person concerned'.

31 However, the authorisation system referred to in Article 28 does not apply to 'temporary storage'. Article 28(5) of Decree-Law No 22/97 provides that 'save for the obligation, laid down in Article 12, for operators to keep records of loading and unloading and the prohibition on mixing, the provisions of this Article shall not apply to temporary storage carried out under the conditions laid down in Article 6(1)(m)'.

32 Infringement of Article 28 attracts the penalties set out in Article 51 of Decree-Law No 22/97.

The preliminary questions

33 By two orders of 20 April 1998, the Pretore di Udine stayed proceedings and referred four questions to the Court for a preliminary ruling in each of the cases before it. The first three questions are common to both sets of proceedings and are worded as follows:

'1. What is the difference (if any) between temporary storage and storage of waste pending further operations (or storage of materials) within the producer's premises, and what are the criteria for determining in a given case which of those forms of storage is involved?

2. Is temporary storage excluded from waste "management" in the sense contemplated in Article 1(d) of Directive 91/156/EEC and from all the obligations in relation thereto, including the notification of temporary storage to the supervisory authorities?

3. Is temporary storage subject to supervision and, if so, to what type of measures? In that regard do the principles contained in the first and second subparagraphs of Article 4 of Directive 91/156/EEC apply and to what extent?'

34 In Case C-175/98, the fourth question referred for a preliminary ruling is worded as follows:

'4. Does the activity carried on by the person under investigation, namely the storage of 160 kg of lead batteries for more than one month, without any notification to the supervisory authorities, constitute temporary storage under the terms of the directive?'

35 In Case C-177/98 the fourth question referred for a preliminary ruling is worded as follows:

'4. Does the activity carried on by the person under investigation, namely the storage of 87.5 kg of sludge containing halogen solvents, for more than two months, constitute temporary storage under the terms of the directive?'

Jurisdiction of the Court

36 By its fourth questions, which it is appropriate to consider first, the national court is essentially asking the Court whether the provisions of the directives of which it is requesting an interpretation are applicable in the two cases before it.

37 In proceedings under Article 177 of the Treaty, which is based on a clear separation of functions between the national courts and the Court of Justice, any assessment of the facts in the case is a matter for the national court (see Case 36/79 *Denkavit Futtermittel* v *Finanzamt Warendorf* [1979] ECR 3439, paragraph 12, and Case C-235/95 *Dumon and Froment* [1998] ECR I-4531, paragraph 25).

38 The Court has no jurisdiction to give a ruling on the facts in an individual case or to apply the rules of Community law which it has interpreted to national measures or situations, since those questions are matters for the exclusive jurisdiction of the national court (see Case 13/68 *Salgoil* [1968] ECR 453, Case 51/74 *Van der Hulst* [1975] ECR 79, paragraph 12, and Case C-320/88 *Shipping and Forwarding Enterprise Safe* [1990] ECR I-285, paragraph 11).

39 In those circumstances, it must therefore be held that the Court does not have jurisdiction to answer the fourth questions.

The definition of 'temporary storage'

40 By its first question and the first part of its second question, which it is appropriate to consider together, the national court is essentially asking whether

the concept of 'temporary storage' of waste is distinct from that of 'storage pending further operations' and whether it falls within the definition of 'waste management' within the meaning of Article 1(d) of Directive 75/442.

41 In their written observations, the Italian, German, Netherlands and Austrian Governments and the Commission all agree, in substance, that point D 15 of Annex II A and point R 13 of Annex II B to Directive 75/442 are to be interpreted as meaning that a temporary gathering together of waste, pending collection, on the site where it is produced constitutes 'temporary storage' and not 'storage pending further operations' for the purposes of the Directive.

42 In that respect, it need merely be observed that, by stating that operations for the recovery or disposal of waste include storage pending further operations, but exclude temporary storage, point D 15 of Annex II A and point R 13 of Annex II B necessarily mean that there is a distinction between temporary storage and storage pending further operations. Storage pending further operations thus forms part of the disposal or recovery of waste, whilst temporary storage pending collection is expressly excluded.

43 Furthermore, Annexes II A and II B, at points D 15 and R 13 respectively, state that temporary storage takes place pending collection, which, according to Article 1(d) of Directive 75/442, is the first operation in waste management.

44 Temporary storage consequently precedes waste management and, in particular, the collection of waste, and constitutes a preparatory operation to the recovery or

disposal operations set out in Annexes II A and II B to Directive 75/442, at points D 1 to D 15 and R 1 to R 13 respectively.

45 Temporary storage pending collection, on the site where it is produced, is therefore to be defined as the preparatory operation to waste management within the meaning of Article 1(d) of Directive 75/442.

46 The answer to the first question and to the first part of the second question must therefore be that the concept of 'temporary storage' of waste is distinct from that of 'storage pending further operations' and does not fall within the definition of 'waste management' within the meaning of Article 1(d) of Directive 75/442.

The duties of control and supervision of temporary waste storage operations

47 By the second part of the second question and the third question, which it is appropriate to consider together, the national court is essentially asking whether the competent national authorities are required to ensure compliance with the obligations resulting from Article 4 of Directive 75/442 in respect of the temporary storage of waste.

48 The governments which submitted written observations, and the Commission, submit that 'temporary storage' is not, in principle, subject to the substantive provisions of Directive 75/442. That exclusion is justified by the need to prevent undertakings that produce waste in the course of their activities from becoming, because of this, subject to the strict rules of that directive.

49 The Commission adds, however, that as a derogation from rules designed to ensure that objectives of fundamental importance, such as the protection of the environment and of health, are attained, the concept of 'temporary storage' must be interpreted strictly and must comply with the principles referred to in Article 130r of the EC Treaty (now, after amendment, Article 174 EC). The Member States, which are required to ensure the effectiveness of Directive 75/442, in particular the general principles laid down in Article 4 thereof, must therefore adopt provisions which are sufficiently strict to prevent the abuse by undertakings of the derogation provided for by the Directive in respect of 'temporary storage'. According to the Commission, the provisions of the Italian legislation do not appear to be inconsistent with the aims of the Directive.

50 In that respect it should be recalled that the first paragraph of Article 4 of Directive 75/442 provides that Member States are to take the necessary measures to ensure that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment, and in particular, without risk to water, air, soil and plants and animals, without causing a nuisance through noise or odours and without adversely affecting the countryside or places of special interest.

51 Article 4 of Directive 75/442, adopted on the basis of Article 130s of the EC Treaty (now, after amendment, Article 175 EC), is intended to implement the principles of precaution and preventive action contained in the second sentence of the second paragraph of Article 130r of the Treaty. By virtue of those principles, it is for the Community and the Member States to prevent, reduce and, in so far as is possible, eliminate from the outset, the sources of pollution or nuisance by adopting measures of a nature such as to eliminate recognised risks.

52 Article 4, second paragraph, and Article 8 of Directive 75/442 lay down *inter alia* obligations which must be fulfilled by the Member States in order to comply with the principles of precaution and preventive action, namely, respectively, to prohibit the abandonment, dumping and uncontrolled disposal of waste and to ensure that any holder of waste has it handled by a private or public waste

collector, or by an undertaking which carries out the operations listed in Annex II A or B, or recovers or disposes of it himself in accordance with the provisions of the Directive.

53 In so far as waste, even waste which is stored temporarily, can cause serious harm to the environment, the provisions of Article 4 of Directive 75/442, which are intended to implement the principle of precaution, also apply to temporary storage.

54 Notwithstanding the fact that undertakings holding waste, which store it temporarily, are not subject to the requirement of registration or authorisation provided for by Directive 75/442, all storage, whether temporary or pending further operations, as well as waste management within the meaning of Article 1(d) of that Directive must comply with the principles of precaution and preventive action which Article 4 of Directive 75/442 is intended to implement and, in particular, the obligations resulting from that provision and from Article 8 of the Directive.

55 The answer to the second part of the second question and to the third question must therefore be that the national competent authorities are required to ensure that temporary storage operations comply with the obligations resulting from Article 4 of Directive 75/442.

Costs

56 The costs incurred by the Italian, German, Netherlands and Austrian Governments and the Commission, 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 (Fourth Chamber),

in answer to the questions referred to it by the Pretore di Udine by orders of 20 April 1998, hereby rules:

1. **The concept of 'temporary storage' of waste is distinct from that of 'storage pending further operations' and does not fall within the definition of 'waste management' within the meaning of Article 1(d) of Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991.**

2. **The national competent authorities are required to ensure that temporary storage operations comply with the obligations resulting from Article 4 of Directive 75/442.**

Murray Ragnemalm Schintgen

Delivered in open court in Luxembourg on 5 October 1999.

R. Grass

Registrar

P.J.G. Kapteyn

President of the Fourth Chamber