

CASE STUDY AND QUIZZ

Case Law: Summary on waste identification based on C-624/17 (*Tronex*)

A consignment of electrical or electronic appliances to buyer in Tanzania:

Electric kettles, steam irons, fans and shavers; Mainly original boxes, some unpacked; returned by consumers, product line abandoned, some defective.

1. How do you apply the waste definition and interpret the intention to discard the products?

Solution:

The classification of a substance or object as ‘waste’ is to be inferred primarily from the holder’s actions and the meaning of the term ‘discard’ (see Case C-629/19 Sappi Austria Produktion and Wasserverband ‘Region Gratkorn-Gratwein’, § 42 and the case-law cited). That verb must be interpreted in the light of the aim of the Directive, but no decisive criteria is, however, suggested by such a Directive other than the holder’s intention to or action of discarding a given substance or object (Case C-457/02 Antonio Niselli, §33-34). The legal category of waste thus triggered the most significant difficulties of interpretation.

The existence of ‘waste’ must be determined in light of all the circumstances, some of which may constitute evidence that a substance or object has been discarded or of an intention or requirement to discard it. Among the circumstances that may constitute such evidence is the fact that a substance is a production or consumption residue, that is to say a product which was not itself sought and for which special precautions must be taken if it is used owing to the environmentally hazardous nature of its composition. Particular attention must be paid to the fact that the substance or object in question is not or is no longer of any use to its holder, such that that substance or object constitutes a burden which that holder will seek to discard.

2. What rules do you use in classification of:

- **Products in unopened original packaging?**
- **Products in opened original packaging?**
- **Products noted as defective or manifestly defective?**
- **Products in without packaging?**

Solution:

The sale of the shipment does not exclude discarding. EEE in unopened original packaging should normally not be considered waste, while defective EEE must be considered waste. Opened products must be verified whether they are still fit for sale and if necessary they must be repaired. Otherwise their reuse is uncertain and discarding must be assumed. According to the CJEU, such shipment is to be regarded as a ‘shipment of waste’ where that consignment contains appliances in the proper working condition of which has not been previously ascertained or which are not adequately protected from transport damage. Such goods which have become redundant in the seller’s product range, and which are in their unopened original packaging, on the other hand, must not, without indications to the contrary, be regarded as waste.

3. Would you consider application of principles of criminal law because of the difficult interpretation of the concept of waste?

Solution:

‘shipment of waste’ - where that consignment contains appliances in the proper working condition of which has not been previously ascertained or which are not adequately protected from transport damage. Such goods which have become redundant in the seller’s product range, and which are in their unopened original packaging, on the other hand, must not, without indications to the contrary, be regarded as waste.

AG questioned, “*whether the concept of waste is defined with sufficient precision to justify a criminal penalty in the main proceedings. In accordance with the first sentence of Article 49(1) of the Charter of Fundamental Rights, after all, much importance is attached, both in the EU legal order and in national legal systems, to the requirements which the principle of the legality of criminal offences and penalties (nullum crimen, nulla poena sine lege) imposes with respect to foreseeability and precision.*” (para. 51)

QUIZZ

1. EU waste policy aims to protect the environment and human health and help the EU’s transition to a circular economy. It sets objectives and targets to

- a. de-growth waste management
- b. restrict innovation in recycling
- c. limit landfilling

2. Waste is defined as an object or a substance which:

- a. is listed in the European Waste Catalogue
- b. has no or a negative market value
- c. the holder discards or intends or is required to discard

3. The legal category of by-products was firstly defined by:

- a. the circular economy action plan
- b. the CJEU case law
- c. the Waste Framework Directive

4. When it becomes waste, an electronic garage door opening device:

- a. does not fall under the WEEE Directive because is not integral part of the doors
- b. is considered WEEE according to the CJEU
- c. does not fall under the WEEE Directive because is no longer using electricity.

5. Landfills for non-hazardous waste may not accept:

- a. liquid waste
- b. municipal waste
- c. stable, non-reactive hazardous waste

6. The Waste Shipment Regulation’s purpose is to set forth rules on:

- a. the circular economy action plan
- b. the free movement of end-of-life products
- c. the transboundary waste movements

7. Which of the following waste movement does NOT fall within the scope of the Waste Shipment Regulation?

- a. exports
- b. imports
- c. transits within an EU Member State

8. Ships of less than 500gross tonnage fall under the regime of:

- a. EU Ship Recycling Regulation

- b. Waste Framework Directive
- c. Hong Kong Convention

9. Reflagging/Outflagging:

- a. Is a limited practice among EU Member States so far
- b. Attempts to avoid the strict rules contained in the EU Ship Recycling Regulation
- c. Is totally illegal under the EU Ship Recycling Regulation

10. The EU Environmental Crime Directive:

- a. provides which conduct constitutes a criminal offence, when unlawful and committed intentionally or with at least serious negligence
- b. provides which conduct constitutes a criminal offence despite whether committed intentionally
- c. does not provide which conduct constitutes a criminal offence, this is within consideration of the Member States

11. The EU legislation may take related measures considering the criminal law of MS for combating serious environmental offences, but the type and level of criminal penalties...

- a. ...cannot be regulated at the EU level.
- b.were regulated at the EU level already in 1980s.
- c. ...are not yet regulated (will be introduced by the revised EU Directive on Environmental Crime).

12. Mutual legal assistance (according to Directive on European investigation Order)

- a. also includes UK
- b. applies to all Member States except Denmark and Ireland
- c. applies to all Member States