



SUMMARY OF CASE LAW ON WASTE PRODUCER LIABILITY IN EUROPE

PORTUGAL

Name of case: VIEIRA MARINHO, 771 / 09.9TBLSA.C1

Country and court: Judgment of the Court of Appeal of Coimbra, Portugal

Date of holding: September 29, 2010

Summary of facts: A fire protection team collected metal scrap and provided it to a third-party with instructions to take it to a recycling facility. The intermediary left it for a period in a rural location near a forest. It eventually was picked up and taken to the recycling facility. The environmental authority sought a fine for illegal “abandonment” of the wastes. The parties appealed this fine (\$750 Euro).

Legal basis for holding waste generator or producer liable: The Court focused on whether the actions constituted abandonment under Portuguese law. Finding that the location was “merely transitory” the Court rejected the abandonment claim. Applying Article 2, paragraph 1, of Decree 178/2006, the Court observed that rules also applied to storage, but found that the waste in question reached a recycling facility after only several days’ delay. *“With regard to this case, given the framework for statutory fines at al. (a) of paragraph 1 and Article 3, Article 67 of Decree 178/2006, of 05/09, applied by the appeal court, where we would have to conclude that the offense whose practice was attributed to the applicant is a minor breach.”*

The Court did find that *“The accused by failing to ensure the management of waste they produced and held, did not act with the care that was required and that they were capable of.”* The opinion noted:

“[W]e find that their actions fall within the concept of “discharge” of waste, is described as ‘the waste disposal operation.’ However, under the provisions of paragraph 3 of article 9, already mentioned, is also prohibited the discharge of waste in places not licensed to carry out waste management operations. According to the provisions of article 23, paragraph 1 of Decree Law No. 178/2006, of 05/09, storage, sorting, treatment, recovery and disposal of waste are subject to licensing...”

The key language of the decision recognized the Ministry of Environment¹ position submitted on the case:

“The need to minimize the generation of waste and to ensure their sustainable management has become, however, a matter of citizenship. There is an increasingly clear awareness that responsibility for the management of waste should be shared by all of the community: the producer of a good consumer citizen of the waste producer to the holder, the management operators to regulatory administrative authorities. With regard to the costs of waste management, the increasing assertion of the 'polluter pays' has been determining the priority responsibility of producers of consumer goods, waste producers or owners. Thus, Decree Law n. ° 178/2006 of 5 September, which establishes the general system of waste management, transposing into national law Directive n. ° 2006 / 12 / EC of the European Parliament and of the Council of 5 April and Directive n. ° 91/689 / EEC of the Council of 12 December.

“It follows immediately this law to incorporate the principle of responsibility for waste management, and its particular producer as primarily responsible, defining Article 5 °, n. ° 1 of Decree Law No. 178/2006, of 5 September, that 'waste management is an integral part of their life cycle and of the producer responsibility "and paragraph 3, of the same Article 'In case of impossibility of determining the waste producer responsibility for their management rests with the holder. " According to Article 67, n. 1, point a) of that regulation, ...provides that 'The breach of duty to ensure that waste management who, in accordance with Article 5 fits this responsibility (...) is punishable offense ... ' As is clear from the letter of the law the waste producer has a legal duty to ensure their proper management, any breach of this duty constitutes the offense. That is, in this present case, the defendant was required to observe a certain conduct or behavior imposed by law, for the right purpose: to provide by appropriate final destination of the waste they produced, for protection of the general interest of the community (and therefore his own) to preserve the environment and public health.”

Nevertheless, the Court was unconvinced that temporary storage at the unlicensed location was a serious offense for purposes of assessing a penalty.

Scope of damages or relief ordered: Administrative fine.

Commentary: The decision along with the position of the Ministry leave no doubt that on other facts the waste producers would have been subjected to cleanup responsibility and substantial administrative fines. Since the decision, the Portuguese law has been amended and has very specific language now that follows the arguments advanced

¹ General Inspectorate of Environment and Spatial Planning , the Ministry of Environment, Spatial Planning and Regional Development.

above by the Ministry of Environment. The responsibility of the waste producer may be potentially satisfied by assuring the delivery of the waste to the proper facility and its treatment in accordance with all regulations. There is some ambiguity over what would happen in cases where the licensed facility had its own problems and did not satisfy all legal and regulatory requirements.

“Article 5 Principle of management responsibility

“1 - Responsibility for waste management, including the costs involved, is on the original waste producer, notwithstanding that it may be attributed in whole or in part to the producer of the product which the waste came and shared by the distributors of such product if such course of applicable legislation.

2 - are excluded from the provisions of paragraph municipal waste whose daily production does not exceed 1100 liters per producer, in which case their are managed by municipalities.

3 - In case of impossibility of determining the waste producer responsibility for their management rests with the holder.

4 - When the waste has external sources, its management by the head of its introduction in the country, except in the cases expressly defined in legislation governing the shipment of waste.

5 - The original waste producer or holder shall, in accordance with the principles of waste management hierarchy and the protection of human health and the environment, ensure the treatment of waste, and for this purpose use:

a) a trader ;

b) a licensed entity running out collection or treatment of waste;

. c) a licensed entity responsible for specific waste streams management systems

6 - Responsibility for the management of waste as defined in paragraphs 1 and 3 of this Article, shall be extinguished by the transfer to an entity referred to in b) and c) above.

7 - Natural or legal persons carrying on a professional basis, the collection or transport waste must deliver waste collected and transported in licensed operators for the treatment of waste.

Contains amendments to the following legislation:

- [Decree No. 73/2011, of 17/06](#)

Refer to previous versions of this article:

- [1st version: Decree No. 178/2006, of 05/09](#)

Note: Nothing in the waste law transposed into national law supersedes, replaces or negates potential liability under the Environmental Liability Directive or the Industrial Emissions Directive (IPPC). Both of which have been applied to waste producers.

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