Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

30 March 2017 [1]

(Reference for a preliminary ruling — Environment — Waste — Directive 2008/98/EC — Recovery of waste management costs — Polluter-pays principle — Concept of 'waste holders' — Price charged for waste management — Special levy intended to finance capital investments)

In Case C-335/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Općinski sud u Velikoj Gorici (Velika Gorica Municipal Court, Croatia), made by decision of 3 June 2016, received at the Court on 15 June 2016, in the proceedings

VG Čistoća d.o.o.

v

Đuro Vladika,

Ljubica Vladika,

THE COURT (Sixth Chamber),

composed of E. Regan, President of the Chamber, J.-C. Bonichot (Rapporteur) and S. Rodin, Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— VG Čistoća d.o.o., by Ž. Galeković, Director,

— the Croatian Government, by T. Galli, acting as Agent,

— the European Commission, by E. Sanfrutos Cano and M. Mataija, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

1 — Language of the case: Croatian.

Judgment

1 This request for a preliminary ruling concerns the interpretation of the polluter-pays principle and of Article 14(1) of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ 2008 L 312, p. 3).

2 The request has been made in the course of proceedings between VG Čistoća d.o.o., a municipal waste management company, and Mr Đuro Vladika and Mrs Ljubica Vladika, users of a waste management service, concerning the payment of invoices for the collection and management of municipal waste between October 2013 and September 2014.

Legal context

EU law

3 Recital 1 of Directive 2008/98 is worded as follows:

'Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste [(OJ 2006 L 114, p. 9)] establishes the legislative framework for the handling of waste in the Community. It defines key concepts such as waste, recovery and disposal and puts in place the essential requirements for the management of waste, notably an obligation for an establishment or undertaking carrying out waste management operations to have a permit or to be registered and an obligation for the Member States to draw up waste management plans. It also establishes major principles such as an obligation to handle waste in a way that does not have a negative impact on the environment or human health, an encouragement to apply the waste hierarchy and, in accordance with the polluter-pays principle, a requirement that the costs of disposing of waste must be borne by the holder of waste, by previous holders or by the producers of the product from which the waste came.'

4 Recital 8 of Directive 2008/98 states:

'It is therefore necessary to revise Directive [2006/12] in order to clarify key concepts such as the definitions of waste, recovery and disposal, to strengthen the measures that must be taken in regard to waste prevention, to introduce an approach that takes into account the whole life-cycle of products and materials and not only the waste phase, and to focus on reducing the environmental impacts of waste generation and waste management, thereby strengthening the economic value of waste. Furthermore, the recovery of waste and the use of recovered materials should be encouraged in order to conserve natural resources. In the interests of clarity and readability, Directive [2006/12] should be repealed and replaced by a new directive.'

5 Recitals 25 and 26 of Directive 2008/98 are worded as follows:

'(25) It is appropriate that costs be allocated in such a way as to reflect the real costs to the environment of the generation and management of waste.

(26) The polluter-pays principle is a guiding principle at European and international levels. The waste producer and the waste holder should manage the waste in a way that guarantees a high level of protection of the environment and human health.'

6 Article 3 of that directive provides:

‘For the purposes of this Directive, the following definitions shall apply:

…

5. “waste producer” means anyone whose activities produce waste (original waste producer) or anyone who carries out pre-processing, mixing or other operations resulting in a change in the nature or composition of this waste;

6. “waste holder” means the waste producer or the natural or legal person who is in possession of the waste;

…

9. “waste management” means the collection, transport, recovery and disposal of waste, including the supervision of such operations and the after-care of disposal sites, and including actions taken as a dealer or broker;

10. “collection” means the gathering of waste, including the preliminary sorting and preliminary storage of waste for the purposes of transport to a waste treatment facility;

11. “separate collection” means the collection where a waste stream is kept separately by type and nature so as to facilitate a specific treatment;

…

14. “treatment” means recovery or disposal operations, including preparation prior to recovery or disposal;

…

17. “recycling” means any recovery operation by which waste materials are reprocessed into products, materials or substances whether for the original or other purposes. It includes the reprocessing of organic material but does not include energy recovery and the reprocessing into materials that are to be used as fuels or for backfilling operations;

…’

7 Article 11(1) of Directive 2008/98 provides:

‘Member States shall take measures, as appropriate, to promote the reuse of products and preparing for reuse activities, notably by encouraging the establishment and support of reuse and repair networks, the use of economic instruments, procurement criteria, quantitative objectives or other measures.

Member States shall take measures to promote high-quality recycling and, to this end, shall set up separate collections of waste where technically, environmentally and economically practicable and appropriate to meet the necessary quality standards for the relevant recycling sectors.

…’

8 Article 14 of that directive provides:

‘1. In accordance with the polluter-pays principle, the costs of waste management shall be borne by the original waste producer or by the current or previous waste holders.

2. Member States may decide that the costs of waste management are to be borne partly or wholly by the producer of the product from which the waste came and that the distributors of such product may share these costs.’

9 Article 15(1) of Directive 2008/98 provides:

‘Member States shall take the necessary measures to ensure that any original waste producer or other holder carries out the treatment of waste himself or has the treatment handled by a dealer or an establishment or undertaking which carries out waste treatment operations or arranged by a private or public waste collector in accordance with Articles 4 and 13.’

Croatian law

10 Article 20(1) of the Zakon o komunalnom gospodarstvu (Law on municipal economy), in the version in force at the time of the facts in the main proceedings, provides:

‘The price of municipal services enables the following municipal activities to be financed:

…

4. Maintaining cleanliness by collecting and transporting municipal waste,

5. Disposal of municipal waste

…’

11 Article 4 of the Zakon o održivom gospodarenju otpadom (Law on sustainable waste management) states:

‘(1) For the purposes of this law:

…

10. “waste collection” means normal and emergency waste collection procedures, and waste collection procedures in a recycling park;

…

39. “waste holder” means the waste producer or the natural or legal person who is in possession of the waste;

…

48. “waste producer” means anyone whose activities produce waste or anyone who carries out pre-processing, mixing or other operations resulting in a change in the composition or nature of that waste;

…’

12 Article 6(1) of that law provides that waste management is based on compliance with principles of national law, the *acquis* of EU law and international law on protection of the environment, and, particularly, on the polluter-pays principle, pursuant to which 'the costs of waste management shall be borne by the original waste producer or by the current or previous waste holders, who shall also bear the costs of the implementation of measures to compensate any damage which has been or may be caused by them'.

13 Article 6(2) of that law provides:

'The costs relating to waste management shall be borne by the manufacturer of the product from which the waste originates, or by the waste producer.'

14 Article 28 of that law states:

'(1) On its territory, the local authority must ensure that:

…

2. Waste paper, metal, glass, plastic and textiles, as well as bulky municipal waste, are collected separately;

…'

15 Article 30 of the Law on sustainable waste management, entitled 'Public service for the collection of mixed municipal waste and biodegradable municipal waste', provides:

'(1) The public collection service for mixed municipal waste and biodegradable waste shall include the collection of those types of waste from different users, in containers, where those services are provided, as well as the transport of those types of waste to the person authorised to process them.

…

(6) Users of the services referred to in paragraph 4 of the present article are required to:

…

3. bear the pro-rata costs of municipal waste management according to the quantity of waste presented to the service provider for collection.'

16 Article 33 of this law provides:

'(1) The service provider is required to calculate the price of the public service referred to in Article 30(1) of this law in a way that ensures that the "polluter-pays" principle is applied, that the service is economically viable, and that the security, regularity and quality of the service provided comply with the provisions of this law …

(2) The service provider is required to charge users for the public service referred to in Article 30(1) of the present law on a pro-rata basis for the quantity of waste presented by them for collection during the accounting period; "quantity" shall be taken to mean the mass of the waste presented for collection, or be based on the volume of waste containers and the number of times these containers are emptied, in accordance with the decision referred to in Article 30(7) of the present law.

…

(4) The service provider is required to include the following costs in the price of the public service specified in Article 30(1) of the present law: the costs of acquiring and maintaining waste-collection equipment, the costs of waste transport, the costs of waste processing, and other costs set out in the regulation referred to in Article 29(10) of the present law.

…'

The dispute in the main proceedings and the questions referred for a preliminary ruling

17 The dispute in the main proceedings concerns the payment of invoices, charged by VG Čistoća to Mr and Mrs Vladika, for household waste management services between October 2013 and September 2014, amounting to 78.61 Croatian kuna (HRK) per month (approximately EUR 10.54).

18 The defendants in the main proceedings object to the payment of the items on the invoices relating to the payment for separate collections, recycling and the disposal of waste left unlawfully in the environment, and to the payment of a special levy intended to finance capital investment by the waste management company in recycling operations. They do not, however, object to payment of the items on the invoice which relate to the transport and disposal of the amount of waste actually produced and transported.

19 VG Čistoća brought an action before the Općinski sud u Velikoj Gorici (Velika Gorica Municipal Court) against Mr and Mrs Vladika for payment of the sums due.

20 The referring court specifies that Mr and Mrs Vladika have only a 120-litre container and that VG Čistoća calculates a monthly fee for waste transport in order to generate the invoices for its waste management services on the basis of the size of the containers used. That company therefore generated invoices based on the volume of the containers emptied and not on the weight of the waste actually produced by the defendants in the main proceedings.

21 The referring court considers that, in order to ensure respect for the principle of equality, the applicant in the main proceedings should set up a collection system under which only the waste actually produced by users would be charged to them. The referring court also takes the view that those users should be provided with special containers for specific waste collection (paper, plastic, mixed waste). The referring court adds that users should not be required to pay for the disposal of waste by way of recycling. It is therefore uncertain as to whether users should be required to pay for all of the items listed on the invoices issued in respect of municipal waste management.

22 In those circumstances, the Općinski sud u Velikoj Gorici (Velika Gorica Municipal Court, Croatia) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'How is the fee for the collection and transport of household waste calculated in accordance with EU law? How do EU citizens pay the invoices for the collection and transport of municipal waste, that is, do they pay for the collection and transport of municipal waste according to the volume of the empty bins or containers, or according to the volume of refuse transported, and is any other item included within the fee?'

Consideration of the question referred

23 By its question, the referring court essentially asks whether Article 14 and Article 15(1) of Directive 2008/98 must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which provides, on the one hand, that waste management service users are to pay a fee

calculated on the basis of the volume of the container provided for them, and not on the basis of the waste actually transported, and, on the other hand, that they are to pay an additional levy intended to finance investments necessary for the processing of the waste collected.

24 Under Article 14 of Directive 2008/98, and in accordance with the polluter-pays principle, the costs of waste management are to be borne by the original waste producer or by the current or previous waste holders. The waste holders are subject to this financial obligation due to their contribution to the production of that waste (see, by analogy, judgments of 24 June 2008, *Commune de Mesquer*, C-188/07, EU:C:2008:359, paragraph 77, and of 16 July 2009, *Futura Immobiliare and Others*, C-254/08, EU:C:2009:479, paragraph 45).

25 So far as concerns the financing of the cost of management and disposal of urban waste, inasmuch as a service provided on a collective basis to a body of 'holders' is involved, the Member States are obliged, under Article 15 of Directive 2008/98, to ensure that, in principle, all the users of that service, in their capacity as 'holders' within the meaning of Article 3 of that directive, collectively bear the overall cost of disposing of the waste (see, by analogy, judgment of 16 July 2009, *Futura Immobiliare and Others*, C-254/08, EU:C:2009:479, paragraph 46).

26 As EU law currently stands, there is no legislation adopted on the basis of Article 192 TFEU imposing a specific method upon the Member States for financing the cost of the disposal of urban waste, with the result that the cost may, in accordance with the choice of the Member State concerned, equally well be financed by means of a tax or of a fee or in any other manner. Accordingly, recourse to criteria of invoicing based on the volume of the container provided for users, calculated on the basis of, inter alia, the surface area of the property which they occupy and of its use, may provide a means of calculating the costs of disposing of that waste and allocating those costs among the various holders, in so far as this parameter is such as to have a direct impact on the amount of those costs (see, to that effect, judgment of 16 July 2009, *Futura Immobiliare and Others*, C-254/08, EU:C:2009:479, paragraphs 48 and 50).

27 Consequently, national legislation, such as that at issue in the main proceedings, which, for the purposes of financing the management and disposal of urban waste, provides for a fee calculated on the basis of an estimate of the volume of waste generated, and not on the basis of the quantity of waste actually produced and presented for collection, cannot, as EU law currently stands, be considered contrary to Article 14 and Article 15(1) of Directive 2008/98 (see, by analogy, judgment of 16 July 2009, *Futura Immobiliare and Others*, C-254/08, EU:C:2009:479, paragraph 51).

28 The same applies to an additional levy intended to finance investments necessary for the processing of waste, including the recycling thereof.

29 In accordance with Article 15(1) of Directive 2008/98, Member States must take the necessary measures to ensure that waste producers collectively contribute to the investments necessary to fulfil the objectives in Article 11(1), Article 14 and Article 15(1) of Directive 2008/98, by reason of their contribution to waste production (see, by analogy, judgments of 24 June 2008, *Commune de Mesquer*, C-188/07, EU:C:2008:359, paragraph 77, and of 16 July 2009, *Futura Immobiliare and Others*, C-254/08, EU:C:2009:479, paragraph 46).

30 Although, as the relevant EU law currently stands, the competent national authorities have a wide discretion with regard to determining how prices are calculated, such as for waste management costs and the additional levy at issue in the main proceedings, it is nonetheless incumbent on the referring court, on the basis of the facts and points of law placed before it, to determine whether the price charged and that additional levy do not result in the imposition on certain 'holders' of costs that are manifestly disproportionate to the volume or to the type of waste that they are liable to produce (see, by analogy, judgment of 16 July 2009, *Futura Immobiliare and Others*, C-254/08, EU:C:2009:479, paragraphs 55 and 56).

31 For that purpose, account should, inter alia, be taken of criteria relating to the type of property that the users occupy, its surface area and use, the productive capacity of the waste 'holders', the volume of the containers provided to the users, and the frequency of collection, in so far as those parameters are liable to have a direct impact on the amount of the costs of waste management and disposal.

32 In the light of all of the foregoing, the answer to the question referred is that Article 14 and Article 15(1) of Directive 2008/98 must, as EU law currently stands, be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which, for the purposes of financing an urban waste management and disposal service, provides for a price calculated on the basis of an estimate of the volume of waste generated by users of that service, and not on the basis of the quantity of waste which they have actually produced and presented for collection, as well as for the payment by users, in their capacity as waste holders, of an additional levy intended to finance capital investments necessary for the processing of waste, including the recycling thereof. It is, however, incumbent on the referring court to verify, on the basis of the matters of fact and law placed before it, whether this results in the imposition on certain 'holders' of costs which are manifestly disproportionate to the volumes or nature of the waste that they are liable to produce. Accordingly, the national court may take into account, inter alia, criteria relating to the type of property that the users occupy, its surface area and use, the productive capacity of the 'holders', the volume of the containers provided to the users, and the frequency of collection, in so far as those parameters are liable to have a direct impact on the amount of the costs of waste management.

Costs

33 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Sixth Chamber) hereby rules:

Article 14 and Article 15(1) of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives must, as EU law currently stands, be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which, for the purposes of financing an urban waste management and disposal service, provides for a price calculated on the basis of an estimate of the volume of waste generated by users of that service, and not on the basis of the quantity of waste which they have actually produced and presented for collection, as well as for the payment by users, in their capacity as waste holders, of an additional levy intended to finance capital investments necessary for the processing of waste, including the recycling thereof. It is, however, incumbent on the referring court to verify, on the basis of the matters of fact and law placed before it, whether this results in the imposition on certain 'holders' of costs which are manifestly disproportionate to the volumes or nature of the waste that they are liable to produce. Accordingly, the national court may take into account, inter alia, criteria relating to the type of property that the users occupy, its surface area and use, the productive capacity of the 'holders', the volume of the containers provided to the users, and the frequency of collection, in so far as those parameters are liable to have a direct impact on the amount of the costs of waste management.

[Signatures]