

OPINION OF ADVOCATE GENERAL
JACOBS

delivered on 17 January 2002¹

1. In this case the Korkein Hallinto-oikeus (Supreme Administrative Court, Finland) has asked the Court for guidance as to the criteria which are relevant for determining whether in a series of defined circumstances leftover stone resulting from granite quarrying is to be regarded as waste within the meaning of Directive 75/442 on waste.²

75/442 and replaces its substantive provisions, states that ‘the amendments take as a base a high level of environmental protection’.

The Waste Directive

2. The third recital in the preamble to Directive 75/442 states that ‘the essential objective of all provisions relating to waste disposal must be the protection of human health and the environment against harmful effects caused by the collection, transport, treatment, storage and tipping of waste’.

4. Article 1(a) of the Directive as amended (‘the Waste Directive’) defines ‘waste’ as ‘any substance or object in the categories set out in Annex I which the holder discards or intends or is required to discard’.

3. The first recital in the preamble to Directive 91/156,³ which amends Directive

5. Article 1(c) defines ‘holder’ as ‘the producer of the waste or the natural or legal person who is in possession of it’.

6. Annex I to the Directive, headed ‘Categories of waste’, includes under head Q11 ‘Residues from raw materials extraction and processing (e.g. mining residues, oil field slops, etc.)’. The final head, Q16, mentions ‘Any materials, substances or products which are not contained in the above categories’.

¹ — Original language: English.

² — Council Directive 75/442/EEC of 15 July 1975 on waste, OJ 1975 L 194, p. 39.

³ — Council Directive 91/156/EEC of 18 March 1991, OJ 1991 L 78, p. 32.

7. Article 1(a) also provides for the Commission to draw up a list of waste belonging to the categories listed in Annex I. A detailed list of waste known as the European Waste Catalogue was adopted by the Commission pursuant to that provision by Decision 94/3/EC.⁴ Although it is stated in the Catalogue⁵ that the inclusion of a material does not mean that the material is a waste in all circumstances, the entry being relevant only when the definition of waste has been satisfied, it may be noted that the first category, 01 00 00, is headed ‘Waste resulting from exploitation, mining, dressing and further treatment of minerals and quarrying’.⁶

8. Article 4 of the Directive provides:

‘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.’

4 — Commission Decision 94/3/EC of 20 December 1993 establishing a list of wastes pursuant to Article 1(a) of Council Directive 75/442/EEC on waste, OJ 1994 L 5, p. 15. The Catalogue is annexed to the Decision. That Decision was repealed with effect from 1 January 2002 and replaced by Commission Decision 2000/532/EC of 3 May 2000, OJ L 226, p. 3, the Annex to which is headed ‘List of wastes pursuant to Article 1(a) of Directive 75/442/EEC on waste and Article 1(4) of Directive 91/689/EEC on hazardous waste’ (‘the 2002 List of wastes’).

5 — In Introductory note 3 (Paragraph 1 of the Introduction to the 2002 List of wastes).

6 — In the 2002 List of wastes, ‘Wastes resulting from exploration, mining, quarrying, and physical and chemical treatment of minerals’.

9. The Directive defines ‘disposal’ as ‘any of the operations provided for in Annex II, A’⁷ and ‘recovery’ as ‘any of the operations provided for in Annex II, B’.⁸

7 — Article 1(e).

8 — Article 1(f).

10. Annexes IIA and IIB to the Directive⁹ are headed 'Disposal operations' and 'Recovery operations' respectively.

pose of or recover waste must obtain a permit.¹² Permits for disposal 'may be subject to conditions and obligations, or... if the intended method of disposal is unacceptable from the point of view of environmental protection, they may be refused'.¹³

11. Annex IIA includes under head D1 'Deposit into or onto land (e.g. landfill, etc.)', under D12 'Permanent storage (e.g. emplacement of containers in a mine, etc.)' and under D15 'Storage pending any of the operations numbered D1 to D14 (excluding temporary storage, pending collection, on the site where it is produced)'.

The main proceedings and the questions referred

12. Annex IIB includes under head R5 'Recycling/reclamation of other¹⁰ inorganic materials' and under R13 'Storage of wastes pending any of the operations numbered R1 to R12 (excluding temporary storage, pending collection, on the site where it is produced)'.

14. Under Finnish legislation an environmental licence is required for certain projects. Palin Granit Oy, a Finnish company, applied to Vehmassalon kansanterveystyön kuntayhtymän hallitus (Vehmassalo public-health municipal joint board; 'the joint board') for an environmental licence for a stone quarry. The application stated that the leftover stone resulting from quarrying — some 50 000 cubic metres per annum, representing 65-80% of the total stone quarried — would be stored on an adjacent site. It appears from the documents before the Court that the leftover stone is the wrong size or shape to be used in the same way as the stone which is sold after quarrying.

13. Under the Directive, Member States must ensure that any holder of waste either has it handled by a waste collector or by an undertaking which carries out the operations listed in Annex IIA or IIB or recovers or disposes of it himself in accordance with the Directive.¹¹ Establishments which dis-

15. The application stated that the deposit site, of 7.2 hectares, was already in use but that there was still space for storage of 700 000 cubic metres of material. The leftover stone would be used as side

9 — Those annexes were, in accordance with Articles 17 and 18 of the Directive, replaced by Commission Decision 96/350/EC of 24 May 1996, OJ 1996 L 135, p. 32.

10 — i.e. other than metals and metal compounds, listed under the preceding head.

11 — Article 8.

12 — Articles 9(1) and 10.

13 — Article 9(2).

embankments for the quarry area, for making ramps and landscaping the quarry and for other purposes such as aggregates¹⁴ and filling material. The licence was granted in accordance with the application.

16. On appeal by Turun ja Porin Lääninhallitus (Turku and Pori Provincial Administration), Turun ja Porin Lääninoikeus (Turku and Pori Administrative Court) set aside the joint board's decision to grant the environmental licence. The Lääninoikeus held that the leftover stone was to be regarded as waste so that a landfill for industrial waste was being created on the site. Jurisdiction over the application thus belonged, in accordance with national law, to the regional environment centre and not the municipal authorities. The Lääninoikeus accordingly transferred the licence application to Lounais-Suomen Ympäristökeskus (South West Finland Environment Centre; 'the environment centre').

17. Both Palin Granit and the joint board appealed to the Korkein Hallinto-oikeus against the decision of the Lääninoikeus, asking for the decision to be set aside on the basis that, since leftover stone is not waste within the meaning of the national legis-

lation implementing the Waste Directive,¹⁵ its storage does not create a landfill site and the joint board accordingly had jurisdiction over the application.

18. The question before the Korkein Hallinto-oikeus is consequently which administrative authority is competent to hear the licence application. The Korkein Hallinto-oikeus explains in the order for reference that the answer to that question depends on whether leftover stone resulting from stone quarrying is to be regarded in the circumstances as waste within the meaning of the Waste Directive. Before the Korkein Hallinto-oikeus Palin Granit put forward three arguments in support of its view that the leftover stone should not be so regarded.

19. First, it emphasised that the leftover stone consisted mainly of various granites. It was always the same, as regards its mineral composition, as the basic rock from which it was quarried. It did not change state regardless of the length of time for which it was kept or the manner in which it was kept and it was harmless for humans and the environment.

20. Second, Palin Granit observed that leftover stone — in contrast to mining by-products — could be reused directly

14 — Used for example in the construction of harbours and breakwaters.

15 — The Jätelaki (Law on waste, 1072/1993).

without special recovery measures, for example for landfill and breakwaters.

use? Is it relevant generally whether it is stored on the quarrying site, a site next to it or further away?

21. Third, it stated that the leftover stone was stored in the immediate vicinity of the place of quarrying, on an adjoining site, to await use.

- (b) What relevance does it have that the leftover stone is the same as regards its composition as the basic rock from which it has been quarried, and that it does not change its composition regardless of how long it is kept or how it is kept?

22. The Korkein Hallinto-oikeus considers that the case-law of the Court does not directly resolve the issue whether, taking account of those factors, the leftover stone is waste and has accordingly referred the following question to the Court:

- (c) What relevance does it have that the leftover stone is harmless to human health and the environment? To what extent generally is importance to be attached to its possible effect on health and the environment in assessing whether it is waste?

‘Is leftover stone resulting from stone quarrying to be regarded as waste within the meaning of Article 1(a) of Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991, having regard to points (a) to (d) below?’

- (d) What relevance does it have that the intention is to transfer the leftover stone in whole or in part away from the storage site for use, for example for landfill or breakwaters, and that it could be recovered as such without processing or similar measures? To what extent in this connection should

- (a) What relevance, in deciding the above question, does it have that the leftover stone is stored on a site adjoining the place of quarrying to await subsequent

attention be paid to how definite plans the holder of the leftover stone has for such use and to how soon after the leftover stone has been deposited on the storage site the use takes place?’

23. Written observations have been submitted by the joint board, the Finnish Government and the Commission. No hearing was held.

Analysis

24. Although ‘waste’ is defined in Article 1(a) of the Waste Directive as ‘any substance or object... which the holder discards or intends or is obliged to discard’, that definition is not complete but depends in turn on the meaning of ‘discard’, which is not defined. The concepts of ‘waste’ in general and ‘discard’ in particular have been considered by the Court in several judgments. Although the Court has not developed a comprehensive definition of waste, the following principles may be gleaned from the case-law.

25. First, the term ‘discard’ must be interpreted in the light of the aim of the Directive, which is the protection of human health and the environment against harm-

ful effects caused by the collection, transport, treatment, storage and tipping of waste,¹⁶ and of Article 174(2) EC, pursuant to which Community policy on the environment is to aim at a high level of protection and is to be based on, *inter alia*, the precautionary principle and the principle that preventive action should be taken. Consequently the concept of waste cannot be interpreted restrictively.¹⁷ More particularly, whether a given substance is waste must be determined in the light of all the circumstances, regard being had to the aim of the Directive and the need to ensure that its effectiveness is not undermined.¹⁸

26. Second, although the term ‘discard’ includes the disposal and the recovery of a substance or an object,¹⁹ it may not be inferred from the fact that a substance undergoes an operation referred to in Annex IIB²⁰ to the Directive that that substance has been discarded so as to enable it to be regarded as waste.²¹ However, certain circumstances may constitute evidence that the holder has discarded the substance or intends or is required to discard it within the meaning of Article 1(a) of the Directive. That will be the case, in particular, where the substance used is a production residue.²²

16 — Third recital in the preamble, set out in paragraph 2 above.

17 — Joined Cases C-418/97 and C-419/97 *ARCO Chemie Nederland* [2000] ECR I-4475, paragraphs 36 to 40 of the judgment. It may be noted that the judgment in *ARCO* was delivered after the reference in the present case had been lodged.

18 — *ARCO*, paragraphs 73, 88 and 97 of the judgment.

19 — *ARCO*, paragraph 47 of the judgment.

20 — Or, by analogy, Annex IIA.

21 — *ARCO*, paragraph 51.

22 — *ARCO*, paragraphs 83 to 87 of the judgment.

27. Third, the concept of waste may include substances and objects which are capable of economic reutilisation.²³ It may similarly include substances and objects which are capable of being recovered in an environmentally responsible manner and without substantial treatment: the environmental impact of the processing of that substance has no effect on its classification as waste. More generally, the method of treatment or use of a substance does not determine conclusively whether or not it is to be classified as waste, which, in accordance with Article 1(a) of the Directive, is defined in terms of the holder discarding it or intending or being required to discard it.²⁴

28. Finally, the fact that a substance is classified as a re-usable residue without any certainty of re-use does not remove that substance from the scope of the Directive.²⁵

29. The present case concerns residues from granite quarrying which are stocked on a site either until use — in the short term, to shore up and landscape the developing quarry, or in the longer term, as and when they may be required for use as aggregates and landfill — or (it may be

inferred from the terms of the questions referred), if no such use materialises, indefinitely.

30. The Finnish Government submits essentially that leftover stone resulting from stone quarrying is not waste within the meaning of the Directive where its use is an integral part of production and it is used directly without being subject to any recovery or disposal operation.

31. The Commission considers that on the facts the leftover stone is waste within the meaning of the Directive because it is to be subject to disposal and recovery operations within the meaning of Annexes IIA and IIB to the Directive and is a by-product with no immediate use.

32. It may be noted that the observations were submitted before the Court delivered its judgment in *ARCO*²⁶ and hence do not fully reflect the relevant case-law.

33. In my view, the inference with regard to residues remaining indefinitely on the

23 — Joined Cases C-206/88 and C-207/88 *Vessoso and Zanetti* [1990] ECR I-1461.

24 — *ARCO*, paragraphs 64 to 66.

25 — Joined Cases C-304/94, C-330/94, C-342/94 and C-224/95 *Tombesi and Others* [1997] ECR I-3561, paragraphs 53 and 54 of the judgment; see also paragraph 61 of my Opinion in that case.

26 — Cited in note 17.

site must in any event be that they have been discarded and are hence waste. The deposit and stocking of substantial quantities of leftover stone manifestly involves the risk — as the Finnish Government notes — that noise and dust pollution will be caused and the countryside adversely affected by the creation of a rural eyesore. Such occurrences however are precisely those which the Directive seeks to avoid.²⁷

deposit may be regarded as a disposal operation under either head DI of Annex IIA to the Directive, ‘Deposit into or onto land (e.g. landfill, etc.)’, or head D12, ‘Permanent storage (e.g. emplacement of containers in a mine, etc.)’, and hence subject to the requirement of a permit within the meaning of Article 9 of the Directive.

34. It may be argued that the act of depositing the leftover stone is not correctly regarded as discarding on the basis that at that point the producer of the residues does not know whether they will be used or not. It must however be borne in mind that the definition of waste in Article 1(a) of the Directive includes substances or objects which the holder *intends* to discard. A holder who intends to leave indefinitely deposited on the site whatever leftover stone is not otherwise used must be taken to satisfy the definition even if at the relevant time he cannot identify which stones will remain and which will be used. Any other interpretation would clearly be contrary to the aim of the Directive, and indeed to the objectives of Community policy on the environment, spelt out in Article 174(2) EC, and be liable seriously to undermine the effectiveness of the Directive.

36. With regard to residues which are stocked pending ultimate use, it seems to me that the aim of the Directive dictates that they too should be regarded as a substance or objects which the holder discards or intends to discard. In particular, as the Commission submits, the absence of any guarantee that given residues will be used requires that they should be within the scope of the Community waste legislation.²⁸ Moreover even if they are ultimately used, their deposit pending use is clearly liable to give rise to the same type of environmental nuisance, including noise and dust pollution and the risk of ‘adversely affecting the countryside’ within the meaning of Article 4 of the Directive, as if they were deposited indefinitely.

35. I accordingly conclude that leftover stone which is indefinitely deposited is to be classified as waste within the meaning of the Directive. More specifically, such

37. It appears that the potential uses to which the leftover stone may be put include as side embankments for the quarry area, for making ramps and landscaping the quarry and for other purposes such as aggregates (used for example in the con-

27 — Article 4, set out in paragraph 8 above.

28 — See *Tombesi*, cited in note 25, paragraphs 53 and 54 of the judgment, summarised in paragraph 28 above.

struction of harbours and breakwaters) and filling material. Those uses may constitute either disposal or recovery, depending on the overriding purpose of the operation and in particular on whether, in the absence of waste, another substance would have had to be used for the same operation for reasons unconnected with the storage of waste.²⁹

relevant generally whether it is stored on the quarrying site, a site next to it or further away.

38. Storage of the leftover stone on the site pending future use will accordingly itself amount to a disposal or recovery operation under head D15 of Annex IIA or head R13 of Annex IIB.³⁰

41. I have already stated that I consider that the fact that the leftover stone is stored to await subsequent use does not preclude its classification as waste. The Finnish Government and the Commission are of the same view.

39. The referring court mentions a series of specific points reflecting the circumstances of the main proceedings and asks in effect whether those points may be relevant to the question whether leftover stone resulting from stone quarrying is to be regarded as waste within the meaning of the Directive.

42. With regard to the location of the storage site, nothing in the Directive suggests that it is relevant to the classification of leftover stone as waste whether the stone is stored on the quarrying site itself or on another site, either adjacent or more distant. Whether the leftover stone is waste depends solely on whether it has been discarded. It would clearly be contrary to the aims of the Directive, as the Finnish Government points out, if the producer of residues could ensure that the waste legislation did not apply to his operations merely by storing the residues in one place rather than another.

40. First the referring court asks whether it is relevant that the leftover stone is stored on a site adjoining the place of quarrying to await subsequent use and whether it is

43. The location of storage may in some circumstances however, as the Finnish Government observes, determine whether a permit is required, since it may be inferred from the terms of heads D15 of

²⁹ — See further my Opinion delivered on 15 November 2001 in Case C-6/00 *A.S.A. Abfall Service*, in particular paragraphs 76 to 89.

³⁰ — See paragraphs 11 and 12 above.

Annex IIA and R13 of Annex IIB³¹ that temporary storage on the site where waste is produced pending collection for disposal or recovery is not a disposal or recovery operation and hence not subject to the permit requirement in Articles 9(1) and 10 of the Directive.³²

required to be — discarded: as the Court stated in *ARCO*,³⁴ the fact that a substance is a residue whose composition is not suitable for the use made of it, or that special precautions must be taken when it is used owing to the environmentally hazardous nature of its composition, may be regarded as evidence of discarding.

44. Second, the referring court asks whether it is relevant that the composition of the leftover stone (i) is the same as that of the basic rock from which the stone was quarried and (ii) does not change regardless of how long or in what conditions the leftover stone is kept.

45. Again in my view those qualities of the leftover stone are irrelevant for the purpose of classifying it as waste, although in more general terms, as the Commission and the Finnish Government note, the composition of a substance may determine whether it is hazardous waste within the meaning of Council Directive 91/689/EEC of 12 December 1991 on hazardous waste.³³ Similarly there may be circumstances in which the composition of a substance may be relevant to determining whether the substance has been — or is intended or

46. Nothing in the Directive suggests however that the composition of a substance determines more generally whether it is waste. The definition of waste in Article 1(a) of the Directive refers to *any substance or object* in the categories set out in Annex I; that annex itself contains a residual category which refers to *any materials, substances or products*. Moreover it is clear from the case-law of the Court that the concept of waste is not to be interpreted restrictively.³⁵ More specifically, certain of the categories of waste specified in Annex I to the Directive demonstrate that residues sharing the same composition as their source may be waste: see for example head Q10, which comprises machining/finishing residues, and Q11, which includes residues from raw materials extraction. That conclusion is also borne out by certain of the categories of waste specified in the European Waste Catalogue: see for example some of the items listed under head 01 01 00 (waste from mineral excavation), head 01 04 01 (waste gravel and crushed rocks), head 01 04 06 (waste from stone cutting and

31 — Set out in paragraphs 11 and 12 above.

32 — See paragraph 13 above.

33 — OJ 1991 L 377, p. 20.

34 — Cited in note 17, paragraph 87 of the judgment.

35 — See paragraph 25 above.

sawing), head 03 01 00 (wastes from wood processing and the production of panels and furniture), head 04 00 00 (Wastes from the leather and textile industries), head 10 11 00 (wastes from manufacture of glass and glass products), head 12 01 00 (wastes from shaping (including forging, welding, pressing, drawing, turning, cutting and filing)) and head 17 00 00 (Construction and demolition waste (including road construction)).³⁶ In addition, the Court in *Tombesi*³⁷ was clearly prepared to accept that marble rubble was waste within the meaning of the Directive.

47. Similarly there is nothing to suggest that the fact that a substance is stable means that it cannot be waste; indeed as the Commission observes it may be all the more important to ensure that a residue which will subsist indefinitely is properly recovered or disposed of. Again, that interpretation finds support both in the broad definition of waste in the Directive as interpreted by the Court and in certain of the categories listed in the European Waste Catalogue, for example under head 01 00 00 (Waste resulting from exploration, mining, dressing and further treatment of minerals and quarrying), which covers various types of rock and stone, and head 10 11 02 (waste glass).³⁸

36 — The equivalent heads in the 2002 List of wastes are 01 01; 01 04 08; 01 04 13; 03 01; 04; 10 11; 12 01 and 17.

37 — Cited in note 25.

38 — The equivalent heads in the 2002 List of wastes are 01 and 10 11 02.

48. Third, the referring court asks whether it is relevant that the leftover stone is harmless to human health and the environment and to what extent generally importance is to be attached to its possible effect on health and the environment in assessing whether it is waste.

49. It is clear to my mind that those factors are also irrelevant to the question whether the leftover stone falls within the definition of waste. I would note again the all-embracing nature of the definition of waste in Article 1(a) of and Annex I to the Directive. Even if the referring court is correct in its assertions that the residues in question are harmless to human health and the environment (but see paragraph 33 above), that fact cannot be relevant to whether the residues are waste. That question, as I have already stressed, depends solely on whether their holder discards — or intends or is required to discard — them.

50. Moreover, the assumption which appears to underlie the position of the referring court and the Finnish Government is that, merely because a product is 'natural' (as opposed, I imagine, to man-made), it cannot be waste. That assumption is clearly incorrect: many natural products are, unsurprisingly, listed in the European

Waste Catalogue (see in particular many of the items under head 02 00 00 (Waste from agricultural, horticultural, hunting, fishing and aquaculture primary production, food preparation and processing)³⁹).

51. If however given residues are harmless, that will of course tend to make it easier to satisfy the requirement in Article 4 of the Directive that, once discarded, they are recovered or disposed of ‘without endangering human health and without using processes or methods which could harm the environment’.

52. Finally, the referring court asks whether it is relevant that the intention is to transfer the leftover stone in whole or in part away from the storage site for use, for example for landfill or breakwaters, and that it could be recovered as such without processing or similar measures, and more specifically whether the extent to which the holder of the leftover stone has definite plans for such use and the lapse of time between deposit on the storage site and use of the leftover stone are relevant.

53. I have answered most of that question — in the negative — already.⁴⁰ I have not however previously considered the relevance of the alleged lack of processing.

54. Even if the assertion that the leftover stone may be used without processing or similar measures is correct (and it may be noted that the Finnish Government states that the residues may require breaking into smaller pieces depending on the use envisaged), I do not see how that can affect its classification as waste, which turns, I reiterate, on whether the holder discards it or intends or is required to discard it. It is in any event clear from the Court’s judgment in *ARCO*⁴¹ that neither the degree of treatment to which a substance is to be subjected by way of recovery nor the environmental impact of that treatment has any effect on its classification as waste. Assuming — as appears to be the case — that the leftover stone has indeed been discarded, or at least is intended to be discarded, future use not involving processing will still constitute recovery under head R5 of Annex IIB to the Directive, ‘Recycling/reclamation of other inorganic materials’.⁴²

40 — See paragraphs 29 to 38 above.

41 — Cited in note 17, paragraphs 65 and 66 of the judgment; see paragraph 27 above.

42 — See further paragraphs 80 to 82 of my Opinion in *A.S.A. Abfall Service*, cited in note 29.

39 — Head 02 in the 2002 List of wastes.

Conclusion

55. I accordingly consider that the questions referred by the Korkein Hallinto-oikeus should be answered as follows:

- (1) Leftover stone resulting from stone quarrying which is stored to await possible use, failing which it will remain indefinitely on the site, is to be regarded as discarded or intended to be discarded and is accordingly to be classified as waste within the meaning of Article 1(a) 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) It is not relevant to the classification of the leftover stone as waste (a) whether it is stored on the quarrying site, a site next to it or further away; (b) that it is the same as regards its composition as the basic rock from which it has been quarried and does not change its composition regardless of how long it is kept or how it is kept; (c) that it is harmless to human health and the environment or (d) that it can be recovered as such without processing or similar measures.