

Anonymised version

Translation

C-221/24 – 1

Case C-221/24

Request for a preliminary ruling

Date lodged:

22 March 2024

Referring court:

Svea hovrätt, Mark- och miljööverdomstolen (Sweden)

Date of the decision to refer:

12 March 2024

Applicant:

Naturvårdsverket

Defendant:

UQ

SVEA HOVRÄTT (Svea
Court of Appeal)

RECORD

[...]

[...]

12/03/2024

[...]

[...]

[...]

[...]

[...]

[...]

[...]

[...]

[...]

SUBJECT MATTER OF THE CASE

Recovery under the Waste Shipment Regulation; reference for a preliminary ruling to the Court of Justice of the European Union

DECISION UNDER APPEAL

Judgment of the Nacka tingsrätt, mark- och miljödomstolen (District Court, Nacka, Land and Environment Court) of 27 January 2023 [...]

[...]

[...]

Following submission of a report, the Mark- och miljööverdomstolen (Land and Environment Court of Appeal) makes the following

ORDER [...]

1. A reference for a preliminary ruling pursuant to Article 267 TFEU shall be made to the Court of Justice of the European Union in accordance with the attached request for such a ruling [...].
2. The proceedings shall be stayed pending the ruling of the Court of Justice of the European Union.

[...]

[...]

[...]

[...]

REQUEST FOR A PRELIMINARY RULING

The referring court

Svea hovrätt, Mark- och miljööverdomstolen (Svea Court of Appeal, Land and Environment Court of Appeal)

[...]

[...]

[...]

[...]

Parties to the main proceedings

Appellant: Naturvårdsverket (Swedish Environment Protection Agency; ‘the Naturvårdsverket’)
[...] Stockholm

Respondent: UQ
[...]
[...] Umeå

Representatives: [...]
[...]
[...]
[...]

Introduction

- 1 On 26 August 2022, the Naturvårdsverket, as the competent authority in Sweden, informed the Belgian authorities that a container suspected of constituting an illegal shipment of waste under Regulation (EC) No 1013/2006¹ (‘the Waste Shipment Regulation’) had left Sweden on its way to Cameroon via Belgium. The Naturvårdsverket asked the Belgian authorities to stop the container.
- 2 The Naturvårdsverket contacted UQ, as the consignor of the shipment, and informed him that the container was suspected of constituting an illegal shipment of waste and requested evidence that the goods did not constitute waste. UQ subsequently submitted documents, photographs and receipts. The documentation showed that the shipment contained, inter alia, tyres, engines and electronic products. Overall, however, the Naturvårdsverket found that the information submitted was not sufficient to conclude that the contents of the container did not constitute waste.

¹ Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste.

- 3 On 29 September 2022, the Belgian authorities carried out a scan of the container in Belgium. Based on the scan image, it was found that the container was loaded with, inter alia, two vehicles, a large amount of tyres, two engines and other contents.
- 4 In a written notification on 17 October 2022, the Naturvårdsverket informed UQ that the container was deemed to contain waste and would therefore have to be taken back to Sweden. He was asked to submit information on whether he intended to take the contents found loaded in the container back to Sweden himself, or whether the Naturvårdsverket should take the contents back and deal with them at UQ's expense.
- 5 UQ expressed his view to the Naturvårdsverket and stated that he did not concur with the Naturvårdsverket's assessment that the contents of the container constituted waste. With regard to take-back, he stated that he was not sure that he could fulfil the requirements for taking back the container himself and therefore requested that the Naturvårdsverket arrange the take-back to Sweden.
- 6 UQ subsequently requested that the container be inspected in order to assess which of its contents should be regarded as waste. An inspection was carried out by the Belgian authorities on 1 December 2022 during which only a small part of the contents was unloaded. The Belgian authorities concluded that the two vehicles, the electronic products and the tyres constituted waste, some of which was hazardous, and that there was an illegal shipment of waste for the purposes of the Waste Shipment Regulation. UQ continued to argue that the items were not waste.
- 7 The Naturvårdsverket subsequently decided that the contents of the container should be taken back to Sweden and disposed of in an environmentally acceptable manner through the Naturvårdsverket. UQ lodged an appeal against the decision with the Nacka tingsrätt, Mark- och miljödomstolen (District Court, Nacka, Land and Environment Court). The Land and Environment Court annulled the decision in so far as it related to the contents of the container in question being disposed of through the Naturvårdsverket. As grounds, the judgment stated that the decision entailed a restriction of the protection of property which had no legal basis. The Naturvårdsverket has lodged an appeal against the judgment with the Svea hovrätt, Mark- och miljööverdomstolen (Svea Court of Appeal, Land and Environment Court of Appeal) [...]. The question before the Land and Environment Court of Appeal is whether the Waste Shipment Regulation confers on the Naturvårdsverket the right to recover the taken-back contents of the container.

The matter before the Naturvårdsverket

- 8 On 14 December 2022, the Naturvårdsverket decided, inter alia, that the contents of container CMCU 4925067 should be taken back to Sweden and disposed of in an environmentally acceptable manner through the Naturvårdsverket pursuant to

Article 24 of the Waste Shipment Regulation. The decision also stated that the costs incurred by the Naturvårdsverket in taking back and disposing of the waste would be reclaimed from UQ pursuant to Article 25 of the Waste Shipment Regulation.

- 9 As grounds, the decision stated that the container was deemed to contain waste and hazardous waste. It was also stated that the waste was intended to be shipped to Cameroon, in breach of the export prohibition laid down in Article 36 of the Waste Shipment Regulation and Regulation (EC) 1418/2007,² that no notification had been submitted and no written consent had been granted. As UQ was the consignor of the container, he was deemed to be a notifier under the Waste Shipment Regulation. The decision also stated that he had been given the opportunity to take back the contents of the container himself but had opted not to. Nor had he provided any evidence to show that he would be able to dispose of the waste after take-back in a manner that was acceptable in terms of the environment and health. The Naturvårdsverket therefore considered that it could not be deemed possible for UQ to take back or dispose of the waste in the container.
- 10 Before the contents of the container were to be taken back to Sweden, the Naturvårdsverket drew up a notification pursuant to the third subparagraph of Article 24[(2)] of the Waste Shipment Regulation, giving the Naturvårdsverket as the notifier and person responsible for the shipment. An authorised waste reception facility in Sweden was stated as the recipient of the waste. It was also stated that the waste would be shipped for recovery. The notification was approved by the competent authority in Belgium.
- 11 The contents of the container were subsequently taken back to Sweden to the reception facility stated in the notification and has been stored there on behalf of the Naturvårdsverket. The goods taken back were also inspected by the supervisory authority (the Länsstyrelsen i Norrbottens län (County administrative board of Norrbotten)), which considered that they were mixed waste, some of which constituted hazardous waste. The supervisory authority concurred with the assessment of the Belgian authorities and the Naturvårdsverket that the case concerned an unauthorised waste shipment and that the waste should be disposed of in an environmentally acceptable manner.

Proceedings before the Land and Environment Court of the District Court of Nacka

- 12 UQ lodged an appeal against the Naturvårdsverket's decision with the District Court, Nacka, Land and Environment Court. The court found that the only way to understand the Naturvårdsverket's decision was that it meant that UQ's property

² Commission Regulation (EC) No 1418/2007 of 29 November 2007 concerning the export for recovery of certain waste listed in Annex III or IIIA to Regulation (EC) No 1013/2006 of the European Parliament and of the Council to certain countries to which the OECD Decision on the control of transboundary movements of wastes does not apply.

was to be taken from him and recovered. The court found that the decision, in so far as it related to the recovery of the property, entailed a restriction of the fundamental right to protection of property under, inter alia, the European Convention, and that a clear legal basis for the procedure was thus required. The court held in addition that the wording of the provisions of the Waste Shipment Regulation did not provide a basis for the Naturvårdsverket to take a decision, against UQ's wishes, to recover his property to the extent that it was deemed to be waste after it had been taken back to Sweden. In the view of the court, a decision on the recovery of waste in connection with the Naturvårdsverket's take-back of goods to Sweden requires a clear legal basis, which was not present in the Waste Shipment Regulation or national law. The court therefore annulled the decision of the Naturvårdsverket in so far as it concerned the disposal of the container's contents through that agency.

Proceedings before the Svea Court of Appeal, Land and Environment Court of Appeal

- 13 The Naturvårdsverket has now lodged an appeal against the judgment of the Land and Environment Court with the Svea Court of Appeal, Land and Environment Court of Appeal, claiming that the Naturvårdsverket's decision should be upheld. The Naturvårdsverket has also requested that the Land and Environment Court of Appeal make a reference to the Court of Justice of the European Union ('the EU Court of Justice') for a preliminary ruling on the interpretation of certain provisions of the Waste Shipment Regulation. UQ has contested the Naturvårdsverket's claims in their entirety.
- 14 The Naturvårdsverket has stated, in summary, as follows. It is difficult to see how the system of transboundary movements of waste, and the recovery of illegal transboundary shipments of waste, is to work if the competent authority taking back the waste does not have the right to ensure that the waste taken back is recovered or disposed of. In the view of the Naturvårdsverket, there is a legal basis for that in the Waste Shipment Regulation. The take-back of an illegal waste shipment also constitutes a transboundary movement of waste. In the case of a take-back pursuant to Article 24(2)(a), (b) or (c) of the Waste Shipment Regulation, it is necessary, under the third subparagraph of that article, to draw up a new notification for the shipment back to the country of dispatch from the country where the shipment was stopped. Under Article 4(6) of the Waste Shipment Regulation, a notification is to cover the shipment of waste from its initial place of dispatch and include its interim and non-interim recovery or disposal. The notification must cover, inter alia, the consignor, the consignee, the treatment facility and the treatment procedure. In the view of the Naturvårdsverket, it is thus assumed that what is taken back is waste and that the waste is being taken back for recovery or disposal. The Naturvårdsverket, as the competent authority, is obliged to follow the procedure laid down in the EU regulation. No evidence has been provided to show that UQ is able to dispose of the waste in the shipment in an environmentally acceptable manner and in accordance with the applicable national rules on waste management. UQ has

stated that he received remuneration for some of the contents of the container and that he therefore wished to complete the shipment to Cameroon. There are indications that he intends to re-export the contents of the container. Against that background, it cannot be considered possible for the Naturvårdsverket, as the competent authority, supervisory authority and holder of the waste, to return the waste in the shipment to UQ. If Article 24(2)(a) to (c) of the Waste Shipment Regulation is to be interpreted and applied in the manner established by the Land and Environment Court, then Article 24(2)(d) of the Waste Shipment Regulation could provide a legal basis for the authority of dispatch to recover the waste in the country of dispatch, where it cannot be considered possible for the exporter to deal with the waste in an appropriate manner after it has been taken back. In such situations, the competent authority of dispatch, in this case the Naturvårdsverket, must be responsible for ensuring that the waste is dealt with and recovered, in its capacity as competent authority, supervisory authority, holder of the waste and notifier of the waste shipment.

- 15 UQ has argued, in summary, as follows. As stated by the Naturvårdsverket, it is necessary under the third and fifth subparagraphs of Article 24(2) of the Waste Shipment Regulation to draw up a new notification up in accordance with the requirement set out in Article 4. However, it is apparent from Article 4(6) that a shipment may relate to interim recovery or disposal and that it is not necessary for final treatment of the waste to take place. It is true that he asked the Naturvårdsverket to arrange the return shipment, but he never asked the authority for recovery or disposal. If the Naturvårdsverket has stated in the notification of the return shipment that the authority itself would carry that out, it goes beyond what he has agreed to and the authority does not have the right, over his objections, to assume ownership of the property. There is no legal basis for transferring ownership of the property from an individual to the Naturvårdsverket. The reason why he was unable to arrange the return shipment himself was that the Naturvårdsverket, apparently without any legal basis, required that the return itself be effected in a different way than the shipment to Belgium. He is able to dispose of the waste and can send it for final treatment himself, in exactly the same way as the Naturvårdsverket will do. Even though the property is currently classified as waste, it may, after repair, be classified as property which is not waste. The case concerns the two vehicles that were in the container. Both vehicles have a value on the open market and both have successfully undergone a roadworthiness test; there are also purchase contracts for them and payment has been made. The tyres had been deliberately deflated to ensure that they would not roll in the container. There are still opportunities and financial incentives to repair the minor defects noted. If he could once again show that the vehicles had passed a clean roadworthiness test, that a purchase contract is in place, that the purchase price has been paid and that there is no other major damage, the vehicles would not have been considered waste if they had been shipped alone. The remarks made about the vehicles are limited and the fact that one has corrosion damage does not mean that it is waste. In the event that the vehicles, after repair work, do not meet the requirements in order not to be classified as waste, they will be recovered and he can then have the vehicles scrapped himself.

European Union law

The Waste Shipment Regulation

- 16 The Waste Shipment Regulation is to apply *inter alia* to shipments of waste exported from the Community to third countries or transiting through the Community on the way from and to third countries (see Article 1(2)).
- 17 In the case of a shipment originating from a Member State, a notifier means any natural or legal person under the jurisdiction of that Member State who intends to carry out a shipment of waste or intends to have a shipment of waste carried out and to whom the duty to notify is assigned in accordance with an established listing (see Article 2(15)).
- 18 Competent authority means, in the case of Member States, the body designated by the Member State concerned in accordance with Article 53 (see Article 2(18)).
- 19 Shipment means, *inter alia*, the transport of waste destined for recovery or disposal which is planned or takes place between a country and another country, or between a country and overseas countries and territories or other areas, under that country's protection (see Article 2(34)).
- 20 Illegal shipment means, *inter alia*, any shipment of waste effected without notification to all competent authorities concerned pursuant to the Waste Shipment Regulation, without the consent of the competent authorities concerned pursuant to that regulation, in a way which is not specified materially in the notification or movement documents or in a way which results in recovery or disposal in contravention of Community or international rules (see Article 2(35)).
- 21 Shipments of waste destined for disposal and recovery operations are to be subject to a procedure requiring prior written notification and consent as laid down in Title II of the Waste Shipment Regulation (see Article 3(1)).
- 22 When a notification is submitted, the notification document (Annex IA to the regulation) and, where relevant, the movement document (Annex IB to the regulation) must be filled in by the notifier (see Article 4(1)). A notification is to cover the shipment of waste from its initial place of dispatch and include its interim and non-interim recovery or disposal (see Article 4(6)).
- 23 The Waste Shipment Regulation lays down take-back obligations in certain specified situations (see Chapter 4). As regards take-back when a shipment is illegal, the first subparagraph of Article 24(2) states that if an illegal shipment is the responsibility of the notifier, the competent authority of dispatch is to ensure that the waste in question is:
 - (a) taken back by the notifier *de facto*; or, if no notification has been submitted;

- (b) taken back by the notifier de jure; or, if impracticable;
- (c) taken back by the competent authority of dispatch itself or by a natural or legal person on its behalf; or, if impracticable;
- (d) alternatively recovered or disposed of in the country of destination or dispatch by the competent authority of dispatch itself or by a natural or legal person on its behalf; or, if impracticable;
- (e) alternatively recovered or disposed of in another country by the competent authority of dispatch itself or by a natural or legal person on its behalf if all the competent authorities concerned agree.

In cases of take-back as referred to in (a), (b) and (c), a new notification is to be submitted, unless the competent authorities concerned agree that a duly reasoned request by the initial competent authority of dispatch is sufficient (see the third subparagraph of Article 24(2)). The new notification is to be submitted by the person or authority listed in (a), (b) or (c) and in accordance with that order (see the fourth subparagraph of Article 24(2)).

- 24 As regards disagreement on classification issues, if the competent authorities of dispatch and of destination cannot agree on the classification as regards the distinction between waste and non-waste, the subject matter is to be treated as if it were waste. That is to be without prejudice to the right of the country of destination to deal with the shipped material in accordance with its national legislation, following arrival of the shipped material and where such legislation is in accordance with Community or international law (see Article 28).
- 25 Member States are to lay down the rules on penalties applicable for infringement of the provisions of the Waste Shipment Regulation and are to take all measures necessary to ensure that they are implemented (see Article 50(1)).

The European Convention on Human Rights

- 26 Article 1 of the Additional Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms ('the European Convention') provides that every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one is to be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions are not, however, in any way to impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Charter of Fundamental Rights of the European Union

- 27 Under Article 17 of the Charter of Fundamental Rights of the European Union [...], everyone has the right to own, use, dispose of and bequeath his or her

lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.

The Swedish legislative framework

- 28 The Naturvårdsverket is the competent authority within the meaning of Article 53 and the correspondent with the meaning of Article 54 of the Waste Shipment Regulation (see Chapter 8, Paragraph 2 of Avfallsförordningen [2020:614] (the Ordinance on waste) [2020:614]; ‘the Avfallsförordningen’)). The Naturvårdsverket is responsible for supervision under the Miljöbalken (the Environmental Code; ‘the Miljöbalken’) with regard to the Waste Shipment Regulation as regards matters for which it is the competent authority (see Chapter 2, Paragraph 24 of the Miljö tillsynsförordningen (the Ordinance on environmental supervision) [2011:13]; ‘the Miljö tillsynsförordningen’)).
- 29 If the Naturvårdsverket, in its capacity as a competent authority, becomes aware of or deals with a matter concerning a waste shipment covered by the Waste Shipment Regulation, it must inform the county administrative board concerned and the municipal committee concerned which performs tasks in the field of health and environmental protection (see Chapter 8, Paragraph 3 of the Avfallsförordningen. With regard to shipments of waste governed by the Waste Shipment Regulation, certain specified county administrative boards are also responsible for supervision in certain counties. In its supervision role, the county administrative board must co-operate with other county administrative boards concerned and with the Coast Guard, the Police Authority and the Customs Service (see Chapter 2, Paragraph 28a of the Miljö tillsynsförordningen). Furthermore, each municipality exercises, through its committees, supervision within the municipality of, inter alia, waste management under Chapter 15 of the Miljöbalken (see Chapter 26, Paragraph 3 of the Miljöbalken).
- 30 A supervisory authority has the option in an individual case of deciding on the orders necessary to enforce the Waste Shipment Regulation (see Chapter 26, Paragraph 9 of the Miljöbalken and also Chapter 1, Paragraph 4 and Chapter 19, Paragraph 10 of the Miljö tillsynsförordningen). According to the *travaux préparatoires*, such an order may, for example, relate to an export ban or an order to submit relevant information such as producing evidence required under the Waste Shipment Regulation or needed to assess the legality of the shipment ...
- 31 The supervisory authority may decide to retain or dispose of waste if that is necessary to ensure compliance with a prohibition laid down in the Waste Shipment Regulation or compliance with an order issued pursuant thereto (see Chapter 26, Paragraph 13b of the Miljöbalken).

- 32 An illegal shipment of waste is punishable by a fine or a maximum of two years' imprisonment for anyone who, intentionally or by negligence, ships waste in breach of the articles of the Waste Shipment Regulation which are relevant in the present case (see Chapter 29, Paragraph 4a of the Miljöbalken). For certain breaches of the Waste Shipment Regulation, an environmental penalty fee may be payable (see Chapter 11, Paragraphs 1 to 7 of Förordning [2012:259] om miljöstraffavgifter (Ordinance [2012:259] on environmental penalty fees)).
- 33 Waste may be seized by the police or public prosecutors in the circumstances set out in Chapter 27 of the Rättegångsbalken (the Code of Judicial Procedure; 'the Rättegångsbalken'). Waste that has been seized may be declared forfeited following judicial proceedings, unless that is manifestly unreasonable and the property has been the subject of a crime, for example under Chapter 29, Paragraph 4a of the Miljöbalken (see Chapter 29, Paragraph 12 of the Miljöbalken). The authority which stores waste that can reasonably be assumed to be forfeited under Chapter 29, Paragraph 12 of the Miljöbalken and has been seized under Chapter 27 of the Rättegångsbalken may (1) immediately have the waste sold if there is a risk that the waste will be destroyed during storage, the storage entails excessive costs or there are other special reasons, and (2) destroy the waste if it cannot be sold or if it can be assumed that it will be put to criminal use or is otherwise unsuitable for sale (see Chapter 29, Paragraph 12a of the Miljöbalken).

The need for a preliminary ruling

- 34 The question arises in the present case as to whether a competent authority of dispatch, having effected a take-back of an illegal shipment of waste pursuant to Article 24(2)(c) of the Waste Shipment Regulation and the notification which, according to the third and fourth subparagraphs of that article, must precede such a take-back, is thereafter to be regarded as the holder of the waste and, under that regulation, may/must also recover or dispose of the waste, despite the opposition of the original sender.
- 35 If the authority of dispatch has the right to recover or dispose of the waste in such a situation, the question also arises as to whether such a right is compatible with the protection of property since Article 24(2)(c) does not expressly state that the owner of the waste may be deprived of the right to his, her or its property following take-back.
- 36 In summary, the Land and Environment Court of Appeal considers that it is not clear or has not been clarified how Article 24(2) is to be applied in a case such as the present one. In order to give judgment in the case, the Land and Environment Court of Appeal requires answers to the questions of interpretation set out below.

Request for a preliminary ruling

- 37 The Land and Environment Court of Appeal refers the following questions to the Court of Justice of the European Union for a preliminary ruling.

1. Does a take-back under Article 24(2)(c) of the Waste Shipment Regulation include a requirement or possibility for the authority of dispatch to recover or dispose of the waste after take-back, where a notification and a movement document stating how the waste is to be treated in the country of destination have been drawn up for the return shipment?
2. Under what circumstances may Article 24(2)(d) be applied by the authority of dispatch to recover or dispose of the waste in an illegal shipment of waste in the country of dispatch? How does point (d) relate to point (c), for example may take-back and recovery/disposal be effected pursuant to points (c) and (d) together or does the application of one point require that the procedure under the immediately preceding point has not been possible?
3. If Article 24(2) of the Waste Shipment Regulation may be interpreted as meaning that, following take-back, the authority of dispatch has the ultimate power of disposal over the waste, even where the original sender wishes to regain the waste, is such an interpretation compatible with the protection of property under Article 17 of the Charter of Fundamental Rights of the European Union and Article 1 of the Additional Protocol to the European Convention?