

Ships as waste

Judgment of the Rotterdam Court (in criminal proceedings) of 30.11.2021:

'The Court holds that Regulation (EC) 1013/2006 applies and that the vessel qualifies as waste'.

Director of companies is sentenced to a four month (suspended) jail term and 160 hours of community service.

*By Richard van 't Zelfde
Caland Advocaten*

On 30 November 2021 the Rotterdam District Court rendered judgment (ECLI:NL:RBROT:2021:11861) in criminal proceedings brought by the public prosecutor against the director of several companies in respect of (shortly put) the alleged trespass of provisions of Regulation (EC) No. 1013/2006 on Shipments of Waste (further: 'Regulation 1013/2006'). You can download the Dutch wording of the judgment here: [Judgment](#)

The Public Prosecutor charged the defendant:

- primarily with a trespass against art. 2 (35) (f) Regulation 1013/2006 by (shortly put) the shipment of waste (a vessel) from the European Community for disposal, and
- alternatively with a trespass against art. 2 (35) (a) and/or art. 2 (35) (b) Regulation 1013/2006 by (shortly put) the shipment of waste (a vessel)

destined for recovery without notification to and/or consent by the competent authorities.

The Court needed only one single paragraph to acquit the defendant of the public prosecutor's primary charge: since the vessel had sunk (whilst under towage from Germany to Turkey) near the British coast, she had not left the territory of the European Community.

Therefore there remained to decide on the alternative charge. For that the Court considered the below three questions of importance:

1. did the vessel qualify as 'waste' as meant in Regulation 1013/2006?;
2. did Regulation 1013/2006 or Regulation 1257/2013 apply?;
3. was the vessel shipped to Turkey contrary to Regulation 1013/2006?

Ad. 1 Ship as waste?

According to the Court the facts and circumstances of the case clearly showed that already in 2012 the intention was to have the vessel demolished and that this would be done in Aliaga, Turkey. The Court held that the defendant has disposed of the vessel and that therefore the vessel was waste.

Ad. 2 Regulation 1013/2006 or Regulation 1257/2013?

The Court held that, whilst Regulation 1257/2013 provides (shortly put) that vessels flying the flag of a member state falling within the scope of that Regulation are excluded from Regulation 1013/2006, the vessel in

question did not fly any flag so that already on that ground the vessel was not excluded from Regulation 1013/2006.

More materially, the Court held that Consideration 35 of Regulation 1013/2006 makes clear that said Regulation was meant to ensure a safe and environmentally sound management of ship dismantling in order to protect human health and the environment. Therefore, according to the Court, it can be concluded that said Regulation also concerns vessels (which further more follows from the fact that vessels are mentioned as waste in one of the annexes of Regulation 1013/2006).

The Court held that Regulation 1013/2006 applies and that the vessel qualifies as waste.

Ad. 3 Shipment in trespass with Regulation 1013/2006?

Since the alternative charge concerned the shipment of waste destined for recovery, the Court held that it should consider whether shipment of waste for recovery was involved (or shipment of waste for disposal).

Contrary to the Public Prosecutor's standpoint, the Court held that shipment of waste for recovery was involved.

The Court considered that the most important aim of the acts performed to vessels is the winning back of the many tonnes of steel for recovery/recycling. The Court even considers that, although the vessel contained substantial quantities of hazardous substances (including asbestos that would have to be removed from the vessel) such does not outweigh the enormous amount of steel that comes free for re-use. The Court

also considered that according to social-cultural opinion the demolishing of vessels in principal cannot be understood differently than to have as aim to recycle the vessel's steel, adding that in the relevant law- and rules the demolishing of vessels is directly related to recycling.

The Court concludes that the vessel is waste destined for recovery.

Finally, the Court holds that the requirements of prior notification to the competent authorities and consent by those authorities have not been complied with and that the alternative charge has been proven.

The Court punishes the condemned with (suspended) imprisonment of four months and 160 hours of community service.

Whilst by itself a suspended prison sentence seems lenient, the Court arrived at the suspension since the public hearing in the criminal proceedings did not take place within a reasonable time (as meant in art. 6 ECHR) and because the defendant did not have a prior police record. It is likely that without these 2 grounds the prison sentence would not have been suspended since the Court considers that the fact itself '*did justify imprisonment for considerable time*'.

This judgment does not stand by itself. Previously the Rotterdam Court held in criminal proceedings that ships can qualify as waste under the Regulation 1013/2006 and imposed (severe) sentences.

At Caland Advocaten we have lawyers specialised *inter alia* in maritime law and administrative law to assist also in those cases that require such combination.



Richard van 't Zelfde

Partner

Caland Advocaten

Willemskade 18 A

3016DL Rotterdam

Tel. +31 10 21 777 21

Tel. + 31 6 52 606 922

www.caland.nl