GULATING COURT OF APPEAL

JUDGMENT

Pronounced on: 22 March 2022

Case no.: 21-073085AST-GULA/AVD1

Judges:

Appeal Court Judge	Roar Klausen
Acting Appeal Court Judge	Jan-Inge Wensell Raanes

Lay judges:

Pensioner	Stig Høgholm
Senior Engineer	Janne Pletten
Manager	Hilde Halsteinslid
Section Head	Marianne Magdelen Boge
Teacher	Marit Johanne Sørgjerd Hegg

Defendant	Georg Eide	Advocate Arild Christian Dyngeland
Prosecuting authority	Økokrim	Acting Public Prosecutor Maria Bache Dahl Police Prosecutor Ida Sletsjøe

No restrictions on public disclosure
cf. the Freedom of Information Act section 2 subs. 4, cf. the Freedom of Information Regulations section 3

The case concerns complicity in an attempt to export waste from Norway without the necessary permits from the Norwegian Environment Agency.

On 27 November 2020, Sunnhordland District Court passed judgment with the following conclusion:

1. Georg Eide, born 08.02.1966, is convicted of violation of the Pollution Control Act section 79 subs. 3 cf. section 31 cf. section 32, cf. the Waste Regulations section 13 1, cf. (EC) no. 1013/2006 Article 37 no. 5 cf. no. 1 b) cf. Article 35 no. 4 a), cf. the Penal Code section 16 cf. section 15, and sentenced to 6 – six – months' imprisonment.
2. Eide Marine Eiendom AS is sentenced to suffer confiscation of NOK 2,000,000 – two million kroner, cf. the Penal Code section 67.
3. Georg Eide is sentenced to pay costs of NOK 10,000 – ten thousand kroner.

The defendant, Georg Eide, and Eide Marine Eiendom AS appealed the judgment on 4 December 2020. The appeals relate to procedure, the assessment of evidence in relation to the issue of guilt, the application of law in relation to the issue of guilt, the sentence and the assessment of evidence and application of law in relation to the confiscation.

On 24 June 2021, Gulating Court of Appeal decided to allow the defendant's appeal against his conviction, and the company's appeal.

On 14 December 2021, Eide Marine Eiendom AS, its estate in bankruptcy, withdrew the appeal, and the Court of Appeal confirmed the withdrawal on 22 December 2021.

The prosecuting authority has laid the same charges against the defendant in the court of appeal as in the district court. The charges were issued by the Norwegian National Authority for Investigation and Prosecution of Economic and Environmental Crime (Økokrim) on 19 December 2019, as follows:

> **The Pollution Control Act section 79 subs. 3 cf. section 31 cf. section 32, cf. the Waste Regulations section 13–1, cf. (EC) no. 1013/2006 Article 37 no. 5 cf. no. 1 b) cf. Article 35 no. 4 a), cf. the Penal Code section 16 cf. section 15**
> for complicity in an attempt to illegally export waste for recovery to a state that is not a member of the OECD without the consent of the Norwegian Environment Agency.
>
> **Factual basis:**
> From late December 2016 to 20 February 2017, in Høylandsbygd in Kvinnherad, he ensured that he, Arto Lindholm, Asbjørn Sivertsen and Kjartan Mehammer, among others, assisted in the reactivation of the laid-up ship Tide Carrier, e.g.
>
> - disanchoring;
> - acting as intermediaries to local suppliers of oil. fuel, provisions etc., and divers to repair a rent in the ship's hull;

- assistance from the tugboat Eide Rex to test Tide Carrier’s seaworthiness (engines etc.) on Monday 20 February 2017.

Later that day, Captain Farmanali Modak embarked on a voyage with the vessel Tide Carrier with Gadani, Pakistan, as its destination, where the vessel was to be broken up for scrap on a beach, without permission from the Norwegian Environment Agency.

On Wednesday 22 February 2017, the engines failed off the coast of Jæren, Norway, and the ship started to drift.

Towing of the ship started that evening, and in the afternoon of the next day, on Thursday 23 February 2017, it was docked at Gismarvik, Norway. On Friday 24 February 2017, the Norwegian Maritime Directorate banned the vessel from sailing.

On Monday 3 April 2017, the Norwegian Environment Agency decided that the ship could not leave Norway without permission.

On Thursday 6 July 2017, the Ministry of Climate and Environment upheld the decision, thereby thwarting the attempt.

The vessel contained piping, gaskets, compressors, flooring, insulation materials, wall sheets, doors, cabinets and windows which contained at least 0.1 per cent asbestos in weight. The vessel also contained electrical and electronic waste (EE waste), fluorescent tubes, lead batteries, fire extinguisher equipment containing halon gas, phosphoric acid, mineral-based non-chlorinated hydraulic oils, mineral-based non-chlorinated engine oils, gear oils and lubricant oils.

The appeal was heard over 11 court days during the period 7–24 February 2022 at Gulating Court of Appeal's premises in Bergen Court House. The defendant appeared and pleaded not guilty. 12 witnesses testified. The evidence presented is documented in the court record with attachments.

Counsel for the prosecution requested that the defendant be convicted as charged and sentenced to nine months' imprisonment and to pay costs at the Court's discretion.

Counsel for the defence requested that the defendant be acquitted or, alternatively, be dealt with as leniently as possible.

The Court of Appeal's opinion of the matter:

1. Introduction

The Court's majority finds, like the district court, that the defendant must be convicted of complicity in an attempt to export the ship for scrapping in Pakistan.

The Court of Appeal has fixed the sentence to six months' imprisonment.

The Court has based its assessment of the evidence on the fundamental principles that conviction requires that guilt be proven beyond reasonable doubt and that the defendant acted with the necessary intent. The standard of proof is strict and relates to the result of a total assessment of all available evidence, not an assessment of each individual piece of evidence separately. On the other hand, the application of law must be based on the interpretation of law that is most probably correct.

The evidence presented before the Court of Appeal is more or less the same as the evidence presented before the District Court.

2. Background of the case

2.1. Briefly about the defendant and the involved companies

Eide Marine Services AS was founded by the defendant's grandfather. The defendant took over as general manager of the company in 1996 and became its owner in 2010. He owned the shares in in the holding company, Eide Marine Services Holding AS. In 2015, the company Eide Marine Group AS was inserted between the holding company and Eide Marine Services AS. During the period relevant to the criminal case, the board of Eide Marine Services AS consisted of the defendant, his brother and their father. In addition to owning ships, the companies in the group were engaged in salvaging and refitting/conversion. Eide Marine Services AS went into liquidation on 3 October 2016.

The defendant had ownership interests in several other companies through the wholly owned company Cerepta AS. Eide Marine Eiendom AS was formed in 2015. Cerepta AS owned all shares in the company and the defendant was both general manager and sole board member. The company owned 20% of Eide Marine Tugs AS, which owned the tugboat Eide Fox. The company went into forced liquidation in April 2021. Eide Marine Logistics AS was established in 2016. Cerepta AS owned all shares in the company and the defendant was both general manager and sole board member. A third company is Eide Marine Contractors AS, established in 2016. Cerepta AS owned 50% of the shares until May 2017. The company is now called Tronds Marine Service AS.

2.2. The ship – Eide Carrier, Tide Carrier, Harrier

Eide Marine Services AS purchased the ship for USD 12,500,000 in 2007 and renamed it Eide Carrier. The ship was built in Ukraine in 1989. The ship was a so-called "LASH carrier", i.e. it was built for transporting lighters, also known as lash barges. The market for this type of ship was in decline before 2007 and non-existent during the period relevant to the criminal case.

The ship was laid-up in Høylandsbygd from 2007 until February 2017. At first, there was a full crew on board the ship, which was later reduced to the necessary safety crew of 6–7 persons. The defendant worked actively during this time to find projects for the ship. All potential projects required conversion. The defendant was in contact with many potential clients. For various reasons, none of the projects was realised. The cost of keeping a crew, maintenance, project development and minor refittings were considerable, roughly NOK 6 million per year.

Early in 2017, the ship was renamed Tide Carrier by its owner at the time, Julia Shipping Inc. The ship sailed under this name when it left Høylandsbygd on 20 February 2017. Shortly after the breakdown on 22 February 2017, the ship was renamed once more, to Harrier.

2.3. From 2007 until November 2016

Eide Marine Services AS' finances deteriorated as a result of the financial crisis in 2008, lack of employment for its vessels, falling rates and the decline of the price of oil in 2014. The company was in danger of defaulting on its obligations to its bank, Nordea. In spring 2014, the bank urged the company to sell assets that did not generate sufficient cash flow, among them Eide Carrier.

Various solutions were discussed with the bank. Among the alternatives were to sell the ship for scrap, to sell it "as is", and to get it into operation. There were buyers and indicative offers for the first two alternatives, while at the same time the defendant worked tirelessly with potential clients who were interested in employing the ship. Later in spring 2014, Fearnley was hired to help find financial solutions.

The result was that Eide Carrier was sold to Eide Carrier AS on 13 June 2014 as a temporary financing solution. This was a company created for the single purpose of purchasing and owning the ship for a short period before it was sold back to the Eide Group. The shareholders were external investors, several of them with links to Fearnley. The Eide Group could then continue working the following year to develop alternatives for the ship. Eide Carrier AS purchased the ship for NOK 30,000,000. Eide Marine Services AS was responsible for keeping the ship laid up and maintaining it during the following year. Eide Marine Services AS had a right to repurchase the ship for NOK 36,500,000 within 30 May

2015. On the same day, 13 June 2014, an agreement was signed between Eide Carrier AS and Eide Marine Eiendom AS saying that Eide Carrier AS, within 1 June 2015, could demand that Eide Marine Eiendom AS purchase the ship for NOK 36,500,000.

The following year, the defendant and the other employees of the Eide Group worked on finding projects for the ship, but without success. As the deadline in the agreement with Eide Carrier AS approached, it became clear that neither Eide Marine Services AS nor Eide Marine Eiendom AS had the financial strength to repurchase the ship. As alternatives to resale in accordance with the agreements, Eide Carrier AS considered extending the deadline and selling the ship for scrap. Fearnley was involved also in these deliberations, and introduced the defendant to the company Wirana Shipping Corporation Pte Ltd (hereinafter Wirana). Wirana is a company registered in Singapore. According to its website, it is *"one of the largest vessel cash buyers"*. Wirana had already been in contact with employees of the Eide Group. Among other things, they had in June 2014, via a shipbroker, asked to inspect Eide Carrier, without this ever happening.

On 8 July 2015, Eide Marine Eiendom AS sold the ship for USD 5,000,000 to Julia Shipping Inc., a single-purpose company established in Saint Kitts and Nevis by Wirana to own Eide Carrier. This happened the same day that Eide Marine Eiendom AS repurchased the ship from Eide Carrier AS. Eide Marine Eiendom AS received settlement from Julia Shipping, which was used to pay Eide Carrier AS.

The contract with Julia Shipping gave Eide Marine Eiendom AS a right to buy back the ship after six months for USD 5,500,000 and after eight months for USD 5,665,000. The ship was to remain in Høylandsbygd. According to the contract, Eide Marine Eiendom AS was responsible for maintaining the ship so that it would pass a seaworthiness test if and when Julia Shipping took delivery of the ship.

Eide Marine Eiendom AS was unable to buy back the ship after six and eight months. On 31 March 2016, the parties signed Addendum 1 to the contract. In it, Eide Marine Eiendom AS assumed an obligation to buy back the ship for USD 6,280,000 within 31 August 2016.

Eide Marine Eiendom AS was not able to buy back the ship on 31 August 2016 either. After new negotiations, Addendum 2 to the contract was signed on 19 September 2016 saying that Eide Marine Eiendom AS was in default but that the repurchase obligation was postponed until 15 November 2016 against 2.0833% interest per month from 31 August 2016.

2.4. November 2016 to February 2017

New negotiations were held in November 2016 about another extension. Julia Shipping, represented by Keyur Dave, visited Høylandsbygd on 8 November. Parallel to the negotiations, Julia Shipping started preparations for take-over and notified the defendant that

they within a short time would send management and crew from the associated companies Nabeel Shipmanagement and Seaswan Shipping Service to Høylandsbygd. It became clear that Eide Marine Eiendom AS would not be able to buy back the ship and no extension was agreed.

On 25 November 2016, the defendant sent an email to Wirana notifying them that he was unable to finance a repurchase but that scrap prices had gone up and that he would do all he could to help prepare the ship for departure. On 30 November, Trace Carvalho of Nabeel Shipmanagement sent an email to the defendant notifying him that they had engaged the shipbroker Vilhelm Ravn AS to assist in the preparations for departure and asked them to establish direct contact with the defendant. Throughout December, the defendant and representatives of the ship's owners and management were in constant dialogue through meetings and email about the reactivation of the ship.

On 30.12.16, the defendant became ill and was sent to Haukeland University Hospital where he was diagnosed with a cerebral stroke. After about a week, he was transferred to Nordåstunet for rehabilitation.

Early in January 2017, crew from Seaswan Shipping Service arrived in Høylandsbygd and boarded the ship. One of the crew members was Shamsunder Gawande. Until departure, he worked with i.a. Arto Lindholm, Asbjørn Sivertsen and Kjartan Mehammer to prepare the ship for sailing. In addition, the original crew of 6–7, all employees of the defendant's company, remained on board for a month or so. They helped train the new crew. All panels, signs and documentation on board the ship were in Russian. The pilot and chief remained on board until the seaworthiness test on 20 February 2017.

On 25 January 2017, the ship was registered in the Comoros and its name changed to "Tide Carrier".

On 7 February 2017, a meeting was held on the Eide Group's premises in Høylandsbygd at which, among others, the defendant, Lindholm, Sivertsen, Carvalho and Gawande were present. On the agenda were remaining tasks before departure, i.a. the unloading of equipment on the ship that did not belong to Julia Shipping, disanchoring, seaworthiness test, tugboats and pilot.

The seaworthiness test was conducted on 20 February 2017 in the Hardanger fjord. The tugboat Eide Fox followed the ship. There were two pilots on board, one of them the witness Gangåssæther. The seaworthiness test went well, and the ship immediately sailed south after having put the last members of the Eide crew ashore in Leirvik, Stord.

Shortly thereafter, the ship's engine broke down and the ship was rescued off the coast of Jæren on 22 February 2017. The ship was towed ashore and moored in Gismarvik. On

24 February 2017, the Norwegian Maritime Directorate banned the vessel from sailing, and on 3 April 2017, the Environment Agency decided that the ship could not leave Norway without permission. The ship was later sent to Turkey after an export licence had been granted.

On 5 July 2019, Wirana was issued a NOK 7 million fine by the prosecuting authority, inter alia for the offence with which the defendant is charged. Wirana accepted the fine in September that year.

3. The principal act

3.1. Initial legal discussion

The charges involve complicity in an attempt to illegally export waste from Norway for recovery to a state that is not a member of the OECD without permission from the Environment Agency.

To convict the defendant of complicity, the owner's attempt to export the ship must constitute an offence, cf. the Penal Code section 15. If a criminal offence cannot be proven there is no statutory basis for punishing the defendant's complicitous acts, even if they were carried out intentionally and with the knowledge that the principal act constituted an offence, cf., inter alia, the Supreme Court HR-2017-1673-A paragraph 26.

Counsel for the defence has argued that there is no statutory basis for punishing the principal act because Council Regulation 1013-2006/EC and related directives have been insufficiently implemented in Norwegian law.

The Pollution Control Act section 79 subs. 3 came into force on 1 January 2015 and reads:

> A fine or imprisonment for a term not exceeding two years will be imposed on anyone that wilfully or through negligence imports or exports waste in contravention of provisions on cross-border shipments of waste in regulations issued pursuant to sections 31 to 32.

The Pollution Control Act sections 31 and 32 regulate hazardous and industrial waste, respectively, and provides statutory authority for the Waste Regulations section 13-1, "Rules concerning cross-border shipments of waste", which reads:

> Annex XX no. 32c to the EEA Agreement (Regulation (EC) no. 1013/2006 as amended by Regulation (EC) no. 1379/2007, Regulation (EC) no. 669/2008, Regulation (EC) no. 308/2009, Regulation (EU) no. 413/2010, Regulation (EU) no. 664/2011, Directive 2009/31/EC, Regulation (EU) no. 135/2012, Regulation (EU) no. 255/2013, Regulation (EU) no. 660/2014, Regulation (EU) no. 1234/2014 and Regulation (EU) 2015/2002) concerning

> shipments of waste apply as regulations with all changes and amendments that follow from Annex XX, Protocol 1 of the agreement and the agreement in general.
> ….
> For shipments of waste under Article 37 of Regulation (EC) No. 1013/2006 to states that do not apply OECD decision C(9239)/final, amended C(200110)7/final, Regulation (EC) No. 1418/2007 as amended by Regulation (EC) No. 740/2008, Regulation (EC) No. 967/2009, Regulation (EU) No. 837/2010, Regulation (EU) No. 661/2011, Regulation (EU) No. 674/2012, Regulation (EU) No. 57/2013 and Regulation (EU) No. 733/2014, apply as regulations.

Regulation EC 1013/2006 on shipments of waste is built on the UN Basel Convention. It is included in the EEA agreement as Annex XX no. 32c, and has, under the Waste Regulations section 13-1, been in force as regulations in Norway since 1 July 2008.

The Shipments of Waste Regulation Articles 36 and 37 regulate export of waste to states to which the OECD Council Decision C(200110)7, cf. C(9239) does not apply. The charges listed in the indictment rest on the assumption that the export of the ship is regulated by Article 37 no. 5 cf. no. 1 b):

> 1. In the case of waste which is listed in Annex III or IIIA and the export of which is not prohibited under Article 36, the Commission shall, within 20 days of the entry into force of this Regulation, send a written request to each country to which the OECD Decision does not apply, seeking:
>
> (i) confirmation in writing that the waste may be exported from the Community for recovery in that country,
> and
> (ii) an indication as to which control procedure, if any, would be followed in the country of destination.
>
> Each country to which the OECD Decision does not apply shall be given the following options:
> (a) a prohibition; or
> (b) a procedure of prior written notification and consent as described in Article 35; or
> (c) no control in the country of destination.
>
> ……
>
> 5. In the case of a shipment of waste not classified under a single entry in Annex III or a shipment of mixtures of wastes not classified under a single entry in Annex III or IIIA or a shipment of waste classified in Annex IIIB, this Article no. 1 b) will apply, provided that that the export is not prohibited under Article 36.

From the reference to Article 35, it follows that when exporting such waste to a state to which the OECD decision does not apply, the same rules apply as for export between EU and EEA states. Article 35 no. 4 a) then provides that:

4. The shipment may take place only if:
   (a) the notifier has received written consent from the competent authorities of dispatch, destination and, where appropriate, transit outside the Community and if the conditions laid down are met,

The Shipments of Waste Regulation Article 2 no. 1 regulates what constitutes waste, referring to the definition in Directive 2006/12, which in November 2008 was replaced by Directive 2008/98.

The export of objects which are waste to states to which the OECD decision does not apply without the necessary permits, is therefore punishable.

As reason for why there is no statutory basis for punishment, counsel for the defence has argued that the scope of Regulation 1013-2006/EC, "the Shipments of Waste Regulation", was not extended to include the European Economic Area when it was implemented as regulation in Norway.

The Court of Appeal disagrees. The Waste Regulations section 13-1 explicitly refers to Protocol 1 of the EEA agreement, which in no. 8 states that every time a legislative act refers to the Community's or the common market's territory, the references shall, for the purpose of the agreement, be understood as a reference to the parties' territory as defined in Article 126 of the agreement, i.e. the European Economic Area. This explicit reference provides a sufficiently clear statutory basis. The examples that counsel refers to where regulations that implement an EU regulation explicitly state that its scope is the EEA area, applies to regulations that are not covered by the EEA agreement. In these cases it is absolutely necessary that the regulation explicitly states that the EU regulation's scope is extended.

Counsel for the defence has also argued that the Waste Regulations and the Shipments of Waste Regulation, as implemented in Norwegian law, does not contain a valid definition of waste because Directive 2006/12/EC, which the regulation refers to for a definition of waste, was rescinded and replaced by Directive 2008/98/EC in November 2008, i.e. after the regulation had been implemented in Norway, and as a result of this, the regulation did not contain a valid definition of waste that had been implemented in Norwegian law.

The Court of Appeal finds that this argument cannot succeed. The Pollution Control Act section 79 subs. 3, was adopted on 29 August 2014 and came into force on 1 January 2015. The penal provision builds directly on the Shipments of Waste Regulation which came into force in July 2008. The condition "waste" in section 79 subs. 3 must therefore be interpreted in conformity with the EEA agreement. The regulation refers to Directive 2006/12 for a definition of waste. This directive was replaced by Directive 2008/98 in November 2008. Contrary to regulations, there is no requirement that directives must be implemented in Norwegian law as such, cf. the EEA Agreement Article 7 a) and b). It is sufficient that Norway ensures that its legislation complies with the directives. In this case, it is the

provisions of the Pollution Control Act and appurtenant regulations that implement the directives, first 2006/12 and later 2008/98. With respect to the regulation's definition of waste, it is the Pollution Control Act section 27 that applies. The rescinding of the first directive and implementation of the latter therefore does not create a break in the statutory basis chain. The statutory basis for the charges does not lack a valid and in-force definition of "waste".

In item 3.3 below, the Court will rule on the specific content of the term waste, whether or not it applies to Eide Carrier and whether or not the specific requirements to statutory basis in criminal law have been met.

3.2. Attempt to export the ship

Based on the evidence presented during the appeal hearing and with due respect to the principle that all reasonable doubt should benefit the defendant, the Court has unanimously found the following facts proven:

When it became clear in November 2016 that Eide Marine Eiendom AS was unable to repurchase the ship, Julia Shipping and its associated companies immediately started planning the take-over and prepare for a one-way voyage to South-East Asia where the ship was to be broken up. When the ship sailed from Høylandsbygd on 20 February 2017, it was clear and had been decided that the ship's final destination would be the beach in Gadani, Pakistan, where it would be broken up. But because the engine broke down, the ship got no further than off the coast of Jæren. On 22 February, the ship was rescued and towed to port.

The Court's conclusion rests on the following assessment of evidence:

Wirana is a large player in the business of purchasing and scrapping of ships. According to the company's website, it is *"one of the largest vessel cash buyers"*. The website does not mention any business activities other than scrapping and recycling. One of the company's brochures, found at Fearnley in December 2017, includes the following text: "*Wirana shipping corporation, the cashbuyer*" and "*Wirana, the ship recycling specialists*". Persons involved in the matter have also described the company as a scrap dealer, e.g. the board of Eide Carrier AS on 8 June 2015. Ingvild Jensen, Director of the NGO Shipbreaking Platform, also testified that Wirana is one of the best-known companies in the business.

On 8 July 2015, Julia Shipping bought Eide Carrier from Eide Marine Eiendom AS. The contract granted Eide Marine Eiendom AS a right to repurchase the ship within eight months. If the ship was repurchased, Wirana would in reality have granted a short-term credit with the ship as security. Wirana, however, had no influence on whether or not the option would be exercised. Wirana had become owner of the ship and would have to realise its value if the option was not exercised.

In July 2015, the ship had been moored in Høylandsbygd for eight years. The defendant and the employees of the Eide Group had been working unsuccessfully all that time to find projects for the ship. That Wirana, with its business profile, would have the intention and ability to get return on its investment from anything other than scrapping, appears very unlikely. This, in combination with the other evidence, lets the Court rule out completely that this was a possible reason for the purchase in July 2015.

On 5 June 2015, Fearnley forwarded an offer from Wirana with a purchase price of USD 5,000,000 on the following terms:

> In case the Sellers does not exercise the Call Options, the Vessel shall be delivered to the Buyers at a port nominated by the Buyers in India or in Pakistan.

The minutes of a board meeting of Eide Carrier AS held on 8 June 2015, express the following opinion of Wirana's interest:

> Eide believe they can close a deal for the ship within the next 12 months. They are looking for a new loan of NOK 36.5 million and are working with a scrap dealer (Wirana Shipping Corporation) to provide such a loan. Wirana is a company headquartered in Singapore. They will be able to provide the loan if they can scrap the ship in India or Bangladesh. This will result in a higher price, but is dependent on the ship being able to sail under its own power.

Reference is made to an email sent from David Wells on 10 June 2015 to Tomas Nystuen, both employees of the consulting and inspection company Aqualis Offshore, in which he wrote:

> Same scrap dealers are looking to purchase and send her own steam til India to beach her. They need a suryev doing to see whether this is feasible or whether it is not viable and must be towed. (last time owners decided they wanted to keep her longer and not let her go to scrap).

Finally, the Court refers to an email of 22 June 2015 from Keyur Dave of Wirana/Julia Shipping to Rogne of Fearnly, writing that it must never be declared that the ship was to be sent for scrapping:

> Also, in view of the green activists etc., vessel NEVER to be declared as going for scrap from its current place.

Because Eide Marine Eiendom AS was unable to exercise the option but wanted an extension, the parties negotiated and signed Addendums 1 and 2 to the contract in March and September 2016. Through the addendums, Eide Marine Eiendom AS accepted a repurchase obligation. At the same time, the repurchase price increased and a variable interest rate was agreed. The result of these negotiations changed the nature of the contract for Wirana/Julia Shipping. From being a purchase of a ship for scrapping with a buy-back

option, it became a predominantly financial transaction. This, however, never became reality as Eide Marine Eiendom AS was unable to repurchase the ship and Wirana/Julia Shipping never took legal action over this. With this development the purpose of the purchase remained unchanged, which was scrapping.

When the deadline for the repurchase obligation in Addendum 2 was approaching, Widing of Fearnley wrote to Keyur Dave of Wirana/Julia Shipping on 14 November 2016 that he had noticed that scrap prices were on the rise. On 17 November, Widing asked for a preliminary offer from an external party for the towing of the ship to India. On 18 November, Keyur Dave wrote to the defendant that it was not yet too late to buy back the ship, but that they would now start preparations for taking over the ship as soon as possible. On 25 November 2016, the defendant wrote back to Keyur Dave that he was convinced that scrap prices had gone up. On 29 November, Dave asked the defendant to forward the ship documentation, inter alia "*vii. Clear copy of Sellers Bunker CLC (New requirement for Alang only)"*. Alang is a city in India where ships are broken up on the beach and where, according to the email, new requirements had been introduced that did not apply elsewhere.

On 20 December 2016, Keyur Dave wrote to the defendant that it was very important that they receive documentation of the weight of the ten lighters so that they could document this to the "*end buyers*". The ten lighters were pledged as security in Addendum 1. Like for the ship, the lighters' weight was only relevant if they were to be scrapped.

This correspondence is incompatible with Wirana/Julia Shipping buying the ship to refit it for servicing a contract, a subject to which the Court will return below.

On 6 January 2017, Trace Carvalho of Nabeel Shipmanagement wrote an email to Sham Gavande of Seaswan Shipping with the subject "*Eide Carrier – preparation for resale*" which included the following:

> Please urgently complete the inspection report and provide all necessary information to Sunil – who will be handling the re-sale- with focus on Gadani market.
> ….
> Re: Ships Destination:
> Please inform all crew & we too should maintain to all concerned (except MWS) that vessel is being prepared for voyage in ballast to Dubai Drydocks – where she will undergo basic SS/DD and then employed om at specific (highly classified) project as a bonded floating warehouse for offshore / drilling stores & equipment off W.C. Africa.
> (any other suggestions on a possible viable project would be welcome – as the LASH market is dead!!).

The Court believes that the subject and content of the email is clear proof that Wirana at this time intended to sell the ship for scrapping in Gadani or elsewhere in South-East Asia but that a different story should be communicated externally. That a cover story was prepared is

substantiated by an email of 25 January 2017 from Carvalho to Nystuen of Aqualis Offshore, in which he wrote, inter alia:

> We will be reflagging the vessel under the Union of Comoros flag and classification with Union Marine Classification (Non AICS).
>
> In view of the Suez transit formalities, the provisional certification issued will not make any reference to a "single voyage for recycling".
>
> Our intention is to convey to authorities that the vessel is headed on a single repositioning voyage to Dubai Dry Docks.

Emails between Keyur Dave and the defendant on 9 February 2017 also show that Wirana/Julia Shipping intended to scrap the ship. The topic of the emails included the financial problems of the Eide group and that they were reluctant to accrue more expenses for the preparation of the ship if they were later held responsible by Wirana for breach of contract. The defendant regretted the situation and wrote that he was convinced that scrap prices had gone up considerably since last spring. Dave replied that he hoped prices would be good when they resold the ship, thereby limiting their loss, and that they therefore did not intend to hold Eide Marine Eiendom AS responsible. The Court cannot see how this can be construed in any other way than that Dave saying that the ship was to be sold for breaking up and that prices were so high that they would not hold Eide Marine Eiendom AS responsible for breach of contract. Dave's reply also contradicts the story that the ship was going to sail to Dubai and then into employment.

The Court also finds it proven that it had been decided before the ship left Høylandsbygd that it would sail to Gadani, Pakistan, to be broken up on the beach there.

First, the Court refers to the insurance certificate of 26 January 2017 that was presented at the inspection of the vessel after it broke down. From the certificate it is apparent that the ship was going to sail from Høylandsbygd to Gadani via Suez. In that connection, the Court also refers to the minutes drafted by insurance broker Austgulen, who inspected the ship together with Basthus of Skuld on 9 February 2017. From the minutes, it is apparent that they during the last year have insured more than 30 ships for a last voyage to a destination for scrapping, but that this was the first time they had opportunity to inspect one of the ships and learn more about how Wirana operated. The minutes state that the ship was being prepared for a last voyage to the beaches of either Pakistan or India. It does not contain any information about repairs at a yard in Dubai or future employment. The argument that the destination Gadani was incorrectly provided to the insurance agent and company to obtain a lower premium can therefore be rejected. It is also noteworthy that the insurance agent's and the insurance company's inspection on board the ship on 9 February took place two days after the alleged contract with Great Nigerian Tankers was supposedly signed on 7 February. The Court will revert to this.

Second, the Court refers to reports and certificates issued by the consulting company Aqualis Offshore, whose representative Neil Davison inspected the ship on 19–20 February 2017. The Certificate of Approval (CoA) of 20 February 2017 states:

> The undersigned herewith issues this Certificate of Approval for the single voyage from Høylandsbygd, Norway to Gadani Beach, Pakistan…..

Attached to the CoA was a sailing route with final coordinates directly west of Gadani.

This is also apparent from Aqualis' report of 6 March 2017 with the same attachments.

Attached to Wirana/Julia Shipping's appeal to the Norwegian Environment Agency of 11 April 2017 were a number of documents allegedly showing that the ship was not destined for scrapping, among them a CoA issued by Aqualis stating Dubai as its destination. The Court is in no doubt that this is an incorrect document without evidentiary power. The Court refers to the evidence assessed above, especially seen in combination with the email of 14 February 2017 from Wells to other employees of Aqualis from which the following is quoted:

> Pls can you send him [Neil Davison, the Court's addition] word copies of the previous report, make up a COA for the voyage from Norway to Gadani Beach, Pakistan. This will be the main COA.
>
> A second COA will also need to be issued to Dubai (for refurbishment) and left on the vessel for Suez Canal purposes (if they hear of a scrap ship then they become difficult)

This strongly substantiates that Dubai is a cover story and that the ship was destined for Pakistan. Other documents and declarations have been presented which content indicate that the ship was destined for Dubai. The Court will assess these below. The email referred to shows clearly, however, that external and presumably independent parties also played an active role in preparing the cover story and that preparation of incorrect documents was a part of this.

Third, the Court refers to internal email exchanges in Wirana which make it clear that it had been decided in early February 2017 that the ship was destined for Gadani. The same goes for emails written and voyage itineraries prepared after the ship broke down to the effect that the ship, after Norwegian authorities had returned it to the company, would be destined for Gadani.

Fourth, the Court refers to Ingvild Jensen's testimony that it is common practice to own ships destined for scrapping on the beaches of South-East Asia through companies registered in Saint Kitts and Nevis, to equip them with a new name and flag and create a cover story about

refurbishment at a yard, often located along the route to the ship's true destination. In this connection, the Court refers to an internal Aqualis email of 25 January 2017 from Wells to Nystuen, in which he replied:

> Flag state does not matter (any will do and they are all mickey mouse), nor Class. Accept both..

The defendant and several of the witnesses have testified that they believed the ship was destined for Dubai and then to service a contract off the coast of West Africa, and that they were informed of this by Carvalho and other Wirana representatives in a meeting on 7 February 2017. They have referred to a number of documents and declarations to support this. Also, the defendant and employees of Fearnley have testified that Wirana was active in other businesses than just purchase of ships for scrapping. This, it has been argued, are circumstances that create doubt as to whether the ship was being exported for scrapping in Gadani.

The Court, in addition to the discussion above, wishes to comment on these testimonies and documents to show that they cannot introduce any doubt.

There is no contradiction between Wirana's main business activity, scrapping, and other business activities. The contractual relationship that this case involves shows the close relationship. Also, when offering financing with security in the ship, the purpose was scrapping if the ship was not repurchased.

To the extent that the defendant and others present at the meeting on 7 February 2017 with representatives of Wirana were informed that the ship was going to be refitted for service of contract, this was part of the preparation of a necessary or expedient cover story. In addition to external parties, the cover story was also presented to the crew, e.g. in the email of 6 January 2017 from Carvalho referred to above.

On behalf of Julia Shipping, after the Environment Agency on 3 April 2017 banned the ship from leaving Gismarvik, a contract was presented with Great Nigeria Tankers dated 7 February 2017 along with documents containing offers of yard and port stays in various places in the Middle East and the above-mentioned Certificate of Approval with Dubai as destination. Declarations have also been presented from Robert Knutzen of Great Nigeria Tankers and David Palmer of Pareto Securities Pte Ltd (hereinafter: Pareto Singapore), that the plans for refitting and the contracts were genuine. Furthermore, statements have been presented from Neil Davison of Aqualis that Gadani was entered in the sailing route because this was stated in the insurance papers, and from the ship's captain that it was destined for Dubai for repairs.

The Court agrees that this information and documents are of great importance in the assessment of evidence, but in the opposite direction of the intended purpose of presenting

them. They substantiate very strongly that there never existed any real plans or contracts to repair and employ the ship. This follows from the contents of the documents and how they were prepared, and their relationship to the other evidence in the case, particularly the documentation presented by Pareto Securities AS (hereinafter: Pareto Norway).

The presented contract between Julia Shipping and Great Nigeria Tankers is dated 7 February 2017. Declarations have been presented from David Palmer of Pareto Singapore and Robert Knutzen of Great Nigeria Tankers that the contract was negotiated from December 2016 and signed on 7 February 2017. However, there is no trace of the negotiation and signing of this contract in emails and other evidence from this time period. Nor are there any grounds for believing that a binding contract valid from 7 February was entered into after this date. All the evidence and all correspondence relating to the presented contract is from April 2017 and later, i.e. after the ship broke down, the investigation was launched and decisions were issued by Norwegian authorities. In this correspondence the subject is the content and wording of the contract.

Pareto Norway operates Pareto Singapore's IT systems. In a letter of 13 July 2018, Pareto Norway writes that they in their systems have not found any contracts, engagement letters or invoices issued during the relevant time period between Robert Knutzen/Great Nigeria Tankers Ltd and Julia Shipping/Wirana. Nor has Pareto Singapore had any income from any of these companies. This is incompatible with the contracts and declarations presented by Julia Shipping after the breakdown.

Furthermore, the disclosed material shows that David Palmer of Pareto Singapore, Robert Knutzen and Keyur Dave of Wirana did not use their work emails in this connection. Instead they used Gmail, Hotmail and similar accounts. All the emails were written after the breakdown. Attached to the emails are, inter alia, declarations with blank fields. David Palmer received the declaration he made from Keyur Dave as a more or less finished product. The only thing he had to do was copy it to Pareto Singapore's stationery, fill in a few blank fields and sign it. The same was done for and by Robert Knutzen. It is also noteworthy that remuneration to Palmer and Knutzen for this service was discussed in the correspondence. This would make no sense if the contract was genuine. It is also conspicuous how, after the breakdown caught media attention, Keyur Dave was called on to help prepare a statement about what services the ship was going to perform for Great Nigeria Tankers.

Based on the above, the Court concludes that the presented contract, statements and declarations can be disregarded completely.

The same goes for the statements from Davison and the ship's captain due to their content and taken in conjunction with the other evidence in the case.

With respect to the presented information and documents about yard repairs, they appear to be just offers, not signed contracts. To the extent that they were obtained before the breakdown, the Court finds it proven that this was done to support the cover story.

The Court has also taken into account that Wirana accepted the fine it was issued.

Information that Pakistan during the relevant time period had prohibited import of ships for breaking up on the beach at Gadani cannot introduce any doubt as to the purpose of the attempt to export the ship.

The Court has also assessed the importance of inquiries that could have been made but that the prosecuting authority have not made. For example, counsel for the defence has stated that the Court has not heard the testimony of several key witnesses, particularly persons linked to Wirana, Palmer of Pareto Singapore and Knutzen of Great Nigeria Tankers. It is argued that the investigation is inadequate and that important information has not been presented before the Court.

This issue must be assessed based on the requirement in the Criminal Procedure Act section 294 that the Court has a responsibility to ensure that the matter has been "fully clarified". It is clear that it is possible to call these persons to testify and that this would have provided the Court with more information. It follows, however, from judicial precedent that the provision cannot be taken literally, as this in many cases would be impossible, unnecessary or impractical. The requirement that the matter must be "fully clarified" must be interpreted and applied in a practical and concrete manner in each case. The Court must ensure that it has been presented with as much evidence as possible subject to what is reasonably and practically possible and economically feasible, taking into account the importance of the evidence, the seriousness of the matter, its importance for the defendant and the ensuing loss of time that a delay would cause. A total assessment may lead to a decision that no more evidence needs to be presented or heard, even though it may be assumed that this would provide more information, cf. i.a. the Supreme Court HR-2020-206-U paragraph 9 etc.

Also, the rules of criminal law regarding the burden and strict standard of proof must be taken into account.

The Court finds that it can rule out that testimonies from these witnesses and the additional documentation that they may have been able to present, could influence the outcome of the case. The Court refers to the fact that the prosecuting authority in other ways has obtained and presented the results of a very thorough investigation. The police have conducted a large number of searches and seized and obtained a large amount of evidence through production orders, i.a. from the ship, the companies in the Eide Group, Fearnley, agents and brokers, and, not the least, from Pareto Norway. In the Court's assessment, the evidence presented

leaves no room for reasonable and relevant doubt to arise from the inquiries and evidence requested by the defence.

No permit had been obtained from the Environment Agency to export the ship. The Court has also been informed that no permits are granted for the export of ships to India, Pakistan and Bangladesh for breaking up.

3.3. Application of law

The issue is whether or not the penal provision cited in the charges covers the attempt to export the ship, particularly whether or not the ship is "waste".

Because the Pollution Control Act section 79 subs. 3 is built directly on the Shipments of Waste Regulation, the Court bases its deliberation on the assumption that the Act's definition of waste conforms with that which applies in the EEA. The deliberations must therefore take the regulation's definition as its starting point. If the ship is covered by the regulation, the issue is then whether or not it has been implemented in national legislation. Because of the somewhat peculiar construction in that the Regulation Article 2 no. 1 refers to the definition in Directive 2006/12, which was replaced by Directive 2008/98, this does not rest on an interpretation of the Regulation as it applies as a Norwegian regulation, but on an interpretation of the Pollution Control Act section 27, which is the national provision that implements the directive that the regulation refers to. An additional issue is whether the penal provision is sufficiently accessible and clear as to provide statutory basis for punishment.

Ship dismantling is referred to in the Regulation's preamble, item 35. The directives that the Regulation Article 2 no. 1 refers to are worded as follows:

> Directive 2006/12, Art. 1 No. 1 a): ‘waste’ shall mean any substance or object in the categories set out in Annex I which the holder discards or intends or is required to discard
>
> Directive 2008/98, Art. 3 No. 1: ‘waste’ means any substance or object which the holder discards or intends or is required to discard

This means that both under the regulation and the directives, the foundation is that any substance or object is waste if someone has discarded, intends to discard or is required to discard it. In the Court's opinion, there is no doubt that ships are covered by the definition.

Effective from 9 December 2016, the Pollution Control Act section 27 subs. 1 was amended to the following:

> By waste is meant moveable property and substances that someone has discarded, intends or is required to discard. Waste water and exhaust gases are not considered waste.

Linguistically, the definitions in the act and the directives are more or less identical. Based on a plain understanding of the wording, ships intended for scrapping is covered by the definition. Subs. 2 and 3 contain limitations and exceptions without bearing on the matter at hand.

Through the amendment of the Act, the definition of waste in section 27 was substantially widened. However, Parliamentary Bill no. 89 L (2015-2016) makes it clear that the changes are only clarifications to harmonise national rules with Directive 2008/98. No change in law was intended. The Cabinet took the same view in its implementation memorandum of 2 October 2013.

In Norwegian Law Comments, note 131 to the Pollution Control Act section 27, Hans Chr. Bugge writes that through the amendment, the definition of waste was widened and is now in line with Directive 2008/98. With respect to shipwrecks, Bugge comments specifically that while it was unclear before the amendment whether or not shipwrecks were covered by the definition, it is now clear that they are. The reason for this lack of clarity was the former section 28 subs. 1 second sentence, which has now been abolished.

The Court is satisfied that the ship, when the attempt was made to export it from Norway, was covered by the definition of "waste" under the Pollution Control Act section 79 subs. 3, as Wirana was going to discard it. We note in this connection that there is no doubt that the ship contained considerable amounts of asbestos and the other objects and substances listed in the charges. That the ship was going to sail under its own power is irrelevant.

OECD Council Decision C(200110)7, cf. C(9239) does not apply to Pakistan. The necessary permits from Norwegian authorities had not been granted.

The attempt to export the ship to Pakistan in February 2017 is therefore covered by the Shipments of Waste Regulation Article 37 no. 5, cf. no. 1 b), cf. Article 35 no. 4 a).

It has been argued on behalf of the defendant that the provisions in question are not sufficiently clear and accessible as to provide basis for punishment, ref., inter alia, the Supreme Court Rt-2009-780 and Rt-2014-752.

The Court takes as a starting point for its assessment Supreme Court HR-2020-955-A, in which the Supreme Court writes the following about the requirements for penal provisions' clarity and accessibility:

> (22) … The requirement established by law sets out that the penal provision in question must be accessible to the public. Furthermore, it must be worded so clearly that in most cases there can be no doubt that an act will violate the rule, and that it is possible to predict that a violation of the rule may result in punishment.

I refer to Supreme Court Rt-2009-780 paragraph 21, Rt-2012-752 paragraph 26, Rt-2014-238 paragraphs 15–18 and HR-2016-1458-A paragraph 8, all with further references.

(25) The legislative technique used in this case is quite standard: The threat of punishment is contained in the special act, where it is apparent that violations of both the act and its regulations are punishable. This technique meets with the clarity requirements of the Constitution section 96 and the ECHR Article 7. The reference to section 77 does, however, cloud the overview of the legal sources somewhat, not the least because that provision does not contain any information about what laws, with appurtenant regulations, the provision refers to. This makes it hard for most people to understand the rules. I cannot, however, see how this can be decisive. In a specialised field like this one, businesses have the opportunity to seek legal advice in advance if they have any doubts about the legal framework for their business activities, see the European Court of Human Rights' plenary ruling of 12 February 2008 in Kafkaris vs. Cyprus [ECHR-2004-21906] paragraph 140. The judgment passed by the Court of Appeal also makes clear that the persons responsible at Barlindbotn Settefisk AS were fully aware that the draining was illegal. The company's arguments on this issue cannot succeed.

In Supreme Court HR-2020-2019-A concerning a simple traffic violation, the clarity requirement is formulated as follows:

(16) The clarity requirement implies that the courts, in their interpretation and application of penal provisions, must ensure that criminal liability is limited only to the concrete acts covered by the wording of the provision. If an act is not covered by the wording, the fact that Parliament clearly wanted the act in question to be punishable or that the act merits punishment, cannot remedy this. I refer to the rulings in HR-2016-1458-A Haxi paragraph 8 and Rt-2014-238 Hønsehauk paragraph 18, both with further references. (...)

(17) Nevertheless, penal provisions must be interpreted, generally following standard juridical methods. The clarity requirement in ECHR Article 7 does not prevent this. It does, however, require that the result of the interpretation must have sufficient basis in the act itself, to ensure that the predictability requirement is met.

In the Court's view, the threat of punishment is to a certain extent already apparent from the Pollution Control Act section 79 subs. 3 cf. section 27 subs. 1. The reference to the Waste Regulations section 13-1, "Rules on cross-border shipments of waste", which references the Shipments of Waste Regulations explicitly, must also be considered understandable for anyone inquiring about the law, and quite unproblematic for a business person in a specialised field like waste handling of very large ships.

The Shipments of Waste Regulation Articles 35, 36 and 37 are complex and difficult to understand. However, this must be seen in relation to the fact that the act and regulations clearly state that export of waste can be prohibited and punishable, and that this is specified in the EU Regulation that has been adopted as a regulation in Norway. A person in the

business of waste handling of large ships and who finds the rules and regulations unclear and difficult to understand, has reason and a strong incentive to seek legal assistance.

Anyone seeking assistance will be made aware that there is no doubt that the provisions in question cover the ship as waste and the attempted export that this case concerns. The evidence presented has also demonstrated that the export prohibition was well known in the industry. Employees in the Eide Group were also aware of this, at least since 2014.

Based on the above, the Court finds the penal provision sufficiently clear and accessible.

It is not necessary for the Court to form an opinion on whether or not there was statutory basis for punishment before the amendment on 9 December 2016 as the attempt to export the ship took place after this. This also applies to complicity.

4. The defendant's complicitous acts

4.1. Actual assistance provided

The charges involve practical assistance to reactivate the ship, assistance that the defendant provided himself or instructed others to provide.

For practical assistance to be punishable, there must be a causal link between the assistance provided and the principal act. In HR-2020-1681-A paragraph 14, the Supreme Court writes:

> Nor is it a requirement that the offender's act was necessary for the outcome, it only requires a causal link, cf. Johs. Andenæs, Alminnelig strafferett [General Criminal Law], 6th edition pages 328–329. Exactly how strong link is required may in some cases be uncertain. Like the corresponding provision in the Penal Code of 1902 (section 162 subs. 5), the general accessory provision in section 15 of the new Penal Code of 2005, does not specify a lower threshold for what constitutes complicitous acts. In cases of doubt, it may be decisive that the act is of such character and scope that it is natural to assign criminal liability to it, cf. Matningsdal, Straffeloven Alminnelige bestemmelser [The Penal Code, General Provisions], annotated edition (2015) page 107.

The Court is split in its opinion of what complicitous acts it finds it proven that the defendant has committed.

The majority, appeal court judges Klausen and Raanes and lay judges Pletten, Halsteinslid and Boge, have, based on the evidence presented, found that the following facts have been proven:

In November 2016 it became clear that Eide Marine Eiendom AS would not be able to buy back the ship. The company had defaulted on its obligations to Wirana/Julia Shipping and

could under the contract be held financially liable for an ever-increasing amount. In this situation, the defendant promised Wirana/Julia Shipping on 25 November that he and his employees would do their utmost to assist in readying the ship for departure. He later repeated and followed up on this promise by instructing his employees to assist wherever needed. This happened in the latter half of December 2016 and after the defendant had become seriously ill and hospitalised. Due to his illness, the defendant was incapacitated for 1–2 weeks but after that he was in contact with his employees through visits, meetings, telephone calls and emails, during and through which he instructed them to assist Wirana/Julia Shipping in the ways they actually did.

As a result of the defendant's promises and instructions to his employees, Wirana/Julia Shipping received extensive help to prepare the ship for departure. The crew employed by the Eide Group remained on board until departure and assisted and trained the new crew. Assistance was provided to obtain offers for oil, fuel, parts, other goods, repairs and other services. The defendant's employees transported goods and persons to and from the ship. They helped with disanchoring – moving the ship from where it was laid up to a temporary anchoring place. The employees also assisted at inspections, with taking samples and certification. They also obtained a tugboat for disanchoring and the seaworthiness test. The assistance ended when the last of the crew was put ashore at Leirvik, Stord, and the ship set course for Pakistan.

Wirana paid for goods and services delivered by external suppliers, but was not invoiced nor paid for the manhours and services provided by the Eide Group companies or for the cost of the tugboat. Most of the work was done by Lindholm and Sivertsen. In Lindholm's case, the work he performed during this period to help prepare the ship for departure took at least 40% of his working time with Eide Marine Logistics AS.

As a result of the assistance provided, the ship was reactivated and could leave Høylandsbygd far earlier and at a much lower cost to Wirana/Julia Shipping than if they had had to perform or acquire these services themselves.

The Court's majority bases its conclusions on the following assessment of the evidence:

What assistance was actually provided is only partially disputed. The Court particularly refers to Arto Lindholm's testimony. Lindholm had technical responsibility for the ship. His testimony that assistance was provided as described above, is supported by a large number of emails. Lindholm testified that without the assistance provided by himself and the other employees of the Eide Group, preparing the ship for departure would have taken much longer and cost a lot more.

With respect to the defendant's role and the assistance he provided, the *Court's majority* has noted his position in the Group and that he in all manners was ultimately responsible for the

ship. Furthermore, Lindholm testified that he had been instructed to assist in the reactivation. It was inconceivable that he had decided this on his own, but he could not remember who the instruction came from. *The majority* finds it proven that it was the defendant who made the decision that Lindholm, Sivertsen, other employees and the crew would assist in the reactivation.

The Court refers to the fact that the defendant promised extensive assistance, inter alia when he on 25 November 2016 wrote the following in an email to Keyur Dave of Wirana/Julia Shipping:

> We regret very much the situation and the vessel difficulties we do causing for you.
>
> We are however content that the scrap-prices has increased. In addition we are aware that the 10 lash barges offered to you as compensation for any non-fulfilment of obligation will be taken over by you together with the vessel.
>
> Furthermore we will do our utmost to assist you in connection with preparing the vessel for the voyage. We will still work hard to obtain the finance for re-purchase the vessel, but can not guarantee the outcome of that at this moment, within the given dates.
>
> Hopefully it will be possible to formalize an agreement between us securing a smooth and safe departure of the vessel.

Email exchanges between the defendant and persons linked to Wirana during the weeks thereafter demonstrate that the defendant followed up on his promise. On 19 December there was a meeting in Høylandsbygd between the defendant and representatives of Wirana about the reactivation. The day after, Keyur Dave sent an email to the defendant asking him to appoint one of his employees to assist in all operational issues in connection with the reactivation. This task was given to Lindholm, and *the majority* finds it proven that it was the defendant who gave him this instruction.

The various acts of assistance were mainly performed in January and February 2017, and the defendant testified that he during this time was unable to speak, eat and perform any of the acts with which he is charged as a result of the stroke he had suffered. There is no doubt that the defendant was indisposed for some time as a result of his illness. The defendant had, however, during the weeks before he became ill, done most of the preparations for the assistance that was provided to Wirana. Further, *the majority* finds, based on emails and other information, that the defendant was only indisposed and unable to work and instruct his employees for a little over one week.

The Court refers to an email of 12 January 2017 from Advocate Lorentzen to Wirana with copy to the defendant which demonstrates that the defendant was able to work and ensure that assistance was provided. Among other things, Lorentzen wrote:

> Consequently Eide Marine Eiendom AS is not in position to cover any costs in connection with the preparation of the vessel for the transfer from Norway. Eide Marine Eiendom AS has no employees and Mr. Eide should personally carry out the necessary assistance to you. Now he must ask for assistance from his previous employees in the companies which are now bankrupt and the relevant persons are engaged in another company with other dominating owners.
>
> Mr. Eide does however has control over some equipment necessary for prepare the vessel for the voyage. He will also try to obtain assistance from the companies in the area.
> He will do his utmost to assist you in the best possible way from his position as patient at the hospital and his friends Mr. Mehammer and Mr. Sivertsen has promised to assist as best as they can.
>
> We regret very much the situation and difficulties this is causing for you.
>
> May we suggest that we as soon as possible arrange a meeting to be held in Høylandsbygd for the purpose of making arrangement for taking care of all your needs regarding preparation of the vessel for the sail off and a smooth departure however taking into consideration that Eide Marine Eiendom AS does not have any available cash.

Email exchanges from 1–7 February 2017 between the defendant and Eide Marine Service AS' estate in bankruptcy about the defendant's purchases of assets from the estate, proves that the defendant was not indisposed and unable to work due to illness during this period.

The majority assigns particular weight to a meeting held in Høylandsbygd on 7 February 2017, the minutes of the meeting and the manner in which the meeting was followed up on. Among the persons present were the defendant, Trace Carvalho, Lindholm and Sivertsen. The defendant's, Lindholm's and Sivertsen's testimonies that the defendant only popped in as a courtesy to say hello and did not really attend the meeting, are statements *the majority* find can be ignored completely. Directly after the meeting, Carvalho sent an email to the defendant with a summary of the meeting and a list of the reactivation tasks to be performed from 8 February until departure. In closing, he wrote:

> Finally, we wish to thank you, Georg for taking the time to drive all the way from Bergen to meet with us today, despite your illhealth and along with your excellent team have provided the required assistance / solutions, as per your earlier assurances.

The defendant replied to this email on 9 February 2017 writing, inter alia, the following:

> We make reference to the pleasent meeting yeasterday and as ekspressed in the meeting we like to help you to get a smoot departure of the ship. We however come back to the facts described in the meeting and also what we have been described during earlier correspondence …
> We regret very much the development and the difficulties we are causing for you.

> We are however content that the scrap-prices has increased a lot since last spring. In addition we are aware that the 10 lash barges offered to you as compensation for any non-fulfilment of obligation will be taken over by you together with the vessel.
>
> We have got an agreement to pay for the use of the cranes and tugs, but we can not take on this commitments if the intention is to fight us after the vessel have left. As we have expressed in the meeting yeasterday, we have lost everything and there is no free cash in Eide Marine Eiendom AS. We very much like to help you and have lined up to carry out the assistance that we where planning yeasterday in the meeting, over the nexst days. If the plan is to claim Eide Marine Eiendom AS after the vessel is departed, then we can not hire the vessels to help you risking that the 3rd party will not get paid. As we have described earlier there is no funds available in Eide Marine Eiendom AS and we simply have to let the company into banckrupcy if a claim is rised.
>
> Hopefully it will be possible to formalize an agreement between us securing a smooth and safe departure of the vessel. We are looking forward hearing from you, before we add on costs.

This demonstrates that the defendant was an active participant before, during and after the meeting, and that it was he who ensured that Wirana/Julia Shipping received assistance to reactivate the ship. Even though no formal agreement about this was signed like the defendant wanted, the emails demonstrate that there was agreement about what assistance should be and was provided. Lindholm testified that these emails give an accurate account of what was discussed at the meeting and the assistance provided.

Based on the above, it can be ruled out that Lindholm, Sivertsen and other employees who assisted in preparing the ship, were acting on what they assumed was expected of them in their jobs under the circumstances, without involvement from the defendant.

The Court's majority finds that there is a causal link between the assistance that it has been proven that the defendant and others whom he instructed provided, and the attempt to export the ship. It was not a necessary condition, but there is a close connection between the extensive assistance provided and the attempt to export the ship. The assistance provided made it possible for Wirana/Julia Shipping to ready the ship for departure much faster and at a much lower cost than if they had had to do it themselves with their own employees and external suppliers. Basically, the assistance provided is therefore of such a nature, scope and worthy of punishment, that it is natural and necessary to assign criminal liability to it. There is, however, a connection between this assessment and the illegality requirement which *the majority* will revert to in item 4.3.

In closing, it is mentioned that equipment belonging to third parties was offloaded from the ship before departure. These acts do not have a causal link to the export of the ship and are therefore irrelevant.

The minority, lay judges Høgholm and Hegg, finds that the defendant should be acquitted. Like the majority, the minority finds that Wirana received considerable assistance in reactivating the ship, but the minority does not find it proven beyond reasonable doubt that the defendant carried out such acts himself or instructed others to perform such acts or assisted in other ways. One, there is no concrete evidence demonstrating or substantiating that the defendant gave such instructions to his employees. Two, the defendant was indisposed due to illness during a substantial part of the time when the assistance was provided. Three, it cannot be ruled out that Lindholm, Sivertsen and others acted on their own initiative in the defendant's absence because they assumed that this was expected of them in their jobs under the circumstances. Four, how long the defendant attended the meeting on 7 February and whether he played an active part during and after the meeting, is uncertain.

4.2. The defendant's intent

For the defendant to be punished, he must have demonstrated intent with respect to the facts that make the principal act a punishable offence under the provision cited in the charges, and he must through his acts have assisted in to its commission.

Appeal court judges Klausen and Raanes and lay judges Pletten, Halsteinslid and Boge have, based on the total evidence, found it proven that the defendant at least believed it most probable that Wirana attempted to export the ship to a state to which the OECD Council Decision C(200110)7, cf. C(9239), does not apply, and that he through his acts assisted in this.

This conclusion rests on the following assessment of evidence:

The defendant testified that he was never told nor at any time understood that Wirana was going to scrap the ship. His single focus was to obtain financing and employment for the ship and he therefore had no need to know anything about Wirana or make any inquiries about the company, neither before the contract negotiations in July 2015, nor during the renegotiations in 2016 or before the ship was handed over in 2017. What he knew about Wirana was that the company was active in several lines of business – purchase of ship for sale to scrap dealers, financing and real estate property. At the meeting on 7 February 2017, he was told that the ship was destined for Dubai and then to service a contract off the coast of West Africa. Before that he had received indications of the same. He had no reason to doubt this information.

The Court's majority has concluded that the sum of the evidence and other circumstances make it possible to rule out that the defendant's testimony is correct.

The Court first refers to the assessment of evidence above to the extent that this ties the defendant to Wirana's activities and the circumstances surrounding the ship's departure from Høylandsbygd.

During the time when the defendant's companies owned or controlled the ship, he never made any decision to scrap it. He worked, unsuccessfully, until November 2016 to obtain financing and find employment for the ship. The ship had, however, been laid up since 2007, was of an obsolete type and in need of a substantial upgrade. As late as 18 November 2016, Wirana clearly expressed that the defendant could take over the ship immediately after he paid. Seen in isolation, it appears unlikely that Wirana in the course of a few weeks would be able to obtain employment for the ship.

Due to the Eide Group's financial difficulties, selling the ship for scrap had been one of several alternatives that the defendant had been considering from at least as early as 2013. This is supported by a large number of documents and emails to and from the defendant and employees of the Eide Group. In March 2014, Tore Røysheim, at the time project manager for Eide Marine Services AS, wrote to Nordea that they had started the process to scrap the ship and that they had received an indicative offer. The defendant stated that he at the time reacted strongly to Røysheim writing this to the bank because it had not been cleared with him. The Court's majority, however, believes Røysheim's testimony that the email was sent with the defendant's consent. After March 2014, the employees of the Eide Group made repeated inquiries about the ship's scrap value and the cost of towing it.

In spring 2015, Wirana appeared as a potential buyer of the ship, with a repurchase option. The majority finds that it can ignore completely the defendant's testimony that he neither before the contract negotiations in 2015, the re-negotiations in 2016 or the departure in 2017, received or acquired knowledge that Wirana's main business activity was purchase of obsolete ships for resale to scrap dealers. The Court refers to the defendant's experience in and knowledge of the business, emails he received in 2014 and 2015 that Wirana is one of the world's largest buyers of ships for scrapping, and that they wanted to inspect the ship and asked for information about its weight. The Court considers it proven that the defendant already at the time of the signing of the contract in July 2015, knew that Wirana was a large buyer of ships for scrapping and that this most probably was their reason for buying Eide Carrier.

When the contract was renegotiated and Addendum 1 signed on 13 March 2016, ten lighters were pledged as security for the repurchase obligation. The lighters were obsolete and only had scrap value. This supports the conclusion that the defendant knew that Wirana was in the business of buying ships for scrapping.

The Court further refers to the email cited above in item 4.2., that the defendant sent to Keyur Dave of Wirana/Julia Shipping on 25 November 2016, in which he wrote that he was convinced that scrap prices had gone up.

When it comes to evidence of the defendant's intent that Wirana was going to scrap the ship in a state to which the OECD decision does not apply, the Court first refers to the fact that Wirana's first offer during the negotiations before the contract was signed on 8 July 2015, was for delivery in India or Pakistan. In his testimony to the District Court, the defendant stated that he was aware of the offer but that he was going to buy back the ship and that delivery in Asia was out of the question in any case. On 12 June 2015, the defendant also received a copy of the task description Wirana had given Acqualis, which stated, inter alia, that they were to "*Confirm if vessel whether or not is possible to be reactivated to proceed for preparation of a single voyage to Alang, India via Suez*". Alang is a place where ships are broken up on the beach, something the Court considers proven that the defendant knew. This shows that the defendant received information about Wirana's plans.

Also, the Court refers to an email from Keyur Dave of Wirana to the defendant of 29 November 2016, from which it appears that "*Sellers Bunker CLC"* is a new demand that only applies to Alang. The defendant received the same email from Widing of Fearnley and forwarded it to Arto Lindholm. The majority considers it proven that he read the email.

On 17 January 2017, the defendant received a copy of an email from Trace Carvalho to Arto Lindholm with the following content:

> Kindly note for single delivery voyage to Dubai Dry Docks, Owners will be reflagging vessel under Comoros Flag – with Non AICS Class Union Marine Classification (UMS).
>
> Their head office is in Dubai - so please ask divers company to route any inquiry / query via our office & we will assist in getting Class response.
>
> Many thanks for your assistance with this matter.

Seen in isolation, this email appears to supports the defendant's statement and give rise to doubt as to his intent, regardless of whether he read it or not. But when seen in context with the email to which it is a reply, a request from an external diving company for information about the ship, it does not. It was precisely for such cases that the cover story about Dubai was intended. Also, the email must be seen in context with the other evidence and all other information the defendant received about Wirana's intentions with the ship and what he himself said in connection with the reactivation of the ship.

The defendant has also changed his statement about when he became aware that the ship was destined for Dubai. To the police, he stated that he first heard about it around Christmas. That Wirana, a company that specialises in purchasing ships for scrapping, in one month

would have been able to find employment for the ship after the defendant had tried unsuccessfully for eight years, appears so remarkable that it must be expected that the defendant would have a clearer memory of this.

Also, reference is made to the above-mentioned email of 9 February 2017 from the defendant to Wirana/Julia Shipping in which he wrote that he was convinced that scrap prices had gone up since spring and referred to the ten lighters that were now part of the deal. *The majority* finds that it can rule out the possibility that the defendant would have written this if he believed that the ship most probably was destined for a shipyard and future employment.

The Court has been informed that it was common knowledge in the business, and in the Eide Group an accepted fact, that export of the ship for scrapping required prior permission from the Norwegian Environment Agency. The same applies to permission to export ships to Pakistan, India and Bangladesh. On this basis, the Court considers it proven that the defendant held it most probable that no permission had been granted.

Based on the above, *Appeal Court Judges Klausen and Raanes and lay judges Pletten, Halsteinslid and Boge* finds it proven that the defendant intentionally assisted in the attempt to export the ship.

4.3. Illegality requirement

Alternatively, counsel for the defence has argued that the defendant's actions are so respectable and ordinary that they are not illegal and therefore do not merit punishment.

In most cases, complicitous acts are further removed from the principal acts covered by the penal provision, and they are often of a more normal and innocent nature than the acts described in the penal provision. This may indicate that they should go unpunished. In addition to the limitations of the scope of criminal liability that follows from the requirements of causal relationship and intent, it also follows from judicial precedent that it in some cases is necessary to limit the scope of criminal liability even more with basis in the illegality requirement. However, there is a long list of obviously punishable complicitous acts which, taken out of context, are quite ordinary and legal. Whether or not the illegality requirement has been met must be subject to a concrete assessment in each individual case, cf. the Supreme Court in Rt-1996-956. The fundamental issue in assessing whether or not the illegality requirement has been met, is how much freedom of action can be allowed an accomplice before his or her actions violate the legislator's intentions. The guiding principle is whether the complicitous act constitutes an unacceptable risk and is particularly blameworthy. Reference is made to Husabø, Jacobsen and Grøning in Frihet, Forbrytelse og Straff [Freedom, Crime and Punishment], 2nd edition p. 333 et seq, and the Supreme Court 2019-1743 paragraphs 55–56.

Judicial precedent and literature also show that there is a close connection between the illegality requirement and the causal relationship requirement, and that assessment of the two do not coincide entirely.

The complicitous acts committed or instructed by the defendant are in themselves ordinary and legal. On the other hand, the defendant and his companies had long and close ties to the ship and good knowledge of the planned scrapping and the issues related to such illegal export of waste. Furthermore, the acts were committed in the course of business activities within a specialised field. The general considerations of freedom of action on which the illegality requirement rests are not present in the same degree in cases like this. It is also evident that there is a close connection between the defendant's assistance to reactivate the ship and the attempt to export it. His assistance made it possible to commit the principal act with large time and cost savings. The defendant acted intentionally with respect to the purpose of the export and he assisted in it. Although the assistance provided in itself consists of ordinary and legal acts, they are, due to their nature and proximity to the principal act, particularly blameworthy and punishable.

It is of no importance to the assessment of the illegality requirement that Eide Marine Eiendom AS was in default to Julia Shipping and that the assistance provided for the reactivation of the ship was financially and contractually well founded. The contents of the contract cannot reduce the scope of criminal liability. The defendant's complicity must be assessed independently of the repurchase obligation in the contract and responsibility in default of contract. The contract does not award the defendant increased freedom of action with the consequence that the nature of the complicitous acts is changed. The same applies to the contractual obligation that Eide Marine Eiendom AS had to keep the ship in such good shape that it could pass a seaworthiness test. This obligation had been neglected. This enlarged the scope of the reactivation works more than it should have and was primarily Eide Marine Eiendom AS' risk and responsibility. Nor can this circumstance absolve the complicitous acts from being particularly blameworthy and punishable.

The defendant's complicitous acts violate the law and are punishable.

In accordance with the majority opinion, that of *appeal court judges Klausen and Raanes and lay judges Pletten, Halsteinslid and Boge*, the defendant is convicted of violation of the Pollution Control Act section 79 subs. 3 cf. section 31 cf. section 32, cf. the Waste Regulations section 13-1, cf. (EC) no. 1013/2006 Article 37 no. 5 cf. no. 1 b) cf. Article 35 no. 4 a) cf. the Penal Code section 16 cf. section 15.

5. Sentencing

Under the Criminal Procedure Act section 32 subs. 2, all judges on the panel must together fix a sentence for the offences that the majority has convicted the defendant of.

The maximum penalty for violation of the Penal Code section 79 subs. 3 is 2 years' imprisonment. Until the amendments that came into effect on 1 January 2015, a fine was the only punishment for this type of violation. Parliamentary Bill 67L (2013-2014) says the following about the reasons for the amendment:

> **2.1 Background**
> …
> It is a well-known fact that every year large amounts of hazardous and other waste are shipped illegally from Europe and other western countries to countries in Asia and Africa. Most common are electric and electronic waste (EE waste), scrapped vehicles and vehicle parts, and discarded batteries. Waste is shipped illegally from Norway as well. The dangers of a single shipment will normally be limited, but the total amount leads, in many countries, to serious pollution of the soil and waterways, endangering peoples' health. Many of the recipient countries lack the necessary handling facilities, and smelting of metals and other forms of waste treatment is done without protective gear or for purpose facilities. It is therefore important to reduce the total amount of illegally shipped waste. This can be done by increased efforts to stop individual shipments.
>
> Waste has developed into a commodity for the waste handling industry. Financial gain may motivate some actors to export waste for treatment in countries with lower requirements for handling of hazardous waste. EE waste, for example, contains dangerous substances that are costly to destroy. EE waste also contains valuable resources like precious metals and rare earth elements. Financial gain as a motivational factor justifies a higher maximum penalty for violation of the regulations.
>
> The present maximum penalty for violation of the regulations concerning cross-border shipment of waste is fines, cf. the Waste Regulations section 19-7, cf. the Pollution Control Act section 79 subs. 2. In the Ministry of Climate and Environment's opinion, the present maximum penalty does not adequately reflect the seriousness of the environmental crime that some of the violations represent. Also, the present maximum penalty is not in line with the much harsher penalties for other types of environmental crime.
>
> **7.2 Assessments – the Pollution Control Act [about section 79]**
> …
> The Ministry of Climate and Environment wants a penal provision where the maximum penalty is commensurate with the seriousness of illegal cross-border shipment of waste. With this amendment, the Ministry wishes to enhance the provision's general deterrent effect and facilitate the prosecution of this type of crime.
> ...

> The low maximum penalty for violation of the Shipments of Waste Regulations indicates that it is not proportional to the seriousness of the crime. The Ministry of Climate and Environment believes that this disproportionality substantiates that the maximum penalty must be increased.

In its recommendation 248 L (2013-2014) the committee writes the following:

> In the committee's view, illegal import and export of waste constitutes a serious environmental problem in many countries and a serious crime that must be combatted. The committee refers to the fact the current maximum penalty is not consistent with the maximum penalties for other types of environmental crime.

The Court takes this as a clear signal that Parliament considers cross-border shipments of waste to be a serious environmental problem and crime that merits strict punishment. There is a need for strong general deterrence. In the context of sentencing levels in environmental crime cases established through judicial precedence, both generally and in cases concerning waste handling, it is clear that a starting point in this case must be a custodial sentence of some length.

No directly comparable judicial precedent exists. The sentence in Supreme Court HR-2020-1353 was fixed at 45 days' imprisonment. That case concerned blasting in the protected 100m zone along the Norwegian coast. Paragraph 53 contains the following passage of relevance when fixing sentences for environmental crime:

> I *summarise* my opinion so far: The reason for the increased maximum penalty in the new Planning and Building Act is the act's importance in protecting the environment, and the maximum penalties in this act and in the environmental legislation in general both reflect the fact that Parliament takes a strict view of environmental crime. The importance of protecting the environment is reflected in section 112 of the Constitution. The maximum penalty in section 32-9 subs. 3 of two years' imprisonment is a clear signal from Parliament that aggravated violations of the act must be punished severely. Sentences for violations of the Planning and Building Act must take into account the above and the generally strict view on environmental crime, and in fixing sentences their effect as general deterrence must play a central role.

The Supreme Court's decision cited in HR-2015-791-A concerns waste handling in the form of illegal storage of discarded vehicles. The maximum penalty was three months' imprisonment. The Supreme Court fixed the sentence to 45 and 30 days' imprisonment, which – under some doubt – was made suspended. The Court also refers to Supreme Court decisions Rt-2012-65, Rt-2011-631 and Rt-2004-1645. In short, these cases involve less serious violations, and several of them carry a much milder less severe maximum penalty.

Before taking into account extenuating circumstances, the Court is of the opinion that the defendant's actions qualify for a prison sentence of around nine months. In its assessment,

the Court has assigned particular weight to the seriousness of the principal act, its damage potential and the complicitous acts' close proximity to it.

The ship was 263 metres long, 37 metres wide and weighed more than 21,000 tons, i.e. it constituted a very substantial amount of waste. The ship also contained hazardous materials, e.g. asbestos, a large quantity of oil and other substances and objects that are considered hazardous waste. It is also clear that breaking up the ship on the beach at Gadani would be hazardous to the environment and the health and safety of the workers. The defendant had detailed knowledge of the ship and the amount of waste it constituted. He also knew that Wirana's business activities were based on environmental crime. It is further of importance that the assistance provided by the defendant resulted in substantial time and cost savings in the commission of the principal act.

The defendant's complicity has therefore been the subject of a concrete assessment. The sentence would have been stricter if he had been the owner of the ship and responsible for exporting the ship himself. The Court assumes, however, that it might be reasonable to reduce the distinction between accomplice and principal offender a bit more than usual in cases where the accomplice is the ship's former owner. Whether a shipowner sells a ship directly to a scrap dealer on the beach in Gadani or uses an intermediary like Wirana and assists in exporting and scrapping the ship, will hardly affect to what degree the act merits punishment.

In this case, the defendant sold the ship to Wirana 18 months earlier, not for scrapping but for financing purposes with the intention of buying it back later. Even if he at the time acted with the intention that Wirana was going to scrap the ship if he didn't buy it back, the sale of the ship is far removed from the later attempt to export it. This may merit a substantial reduction in sentence from what is indicated above. However, through the considerable assistance the defendant provided in preparing the ship for departure, he became closely connected with the attempt to export the ship for scrapping. Still, the concrete and particular chain of events, in the Court's opinion, gives reason for reducing the sentence somewhat.

The defendant was complicit in an attempt, cf. the Penal Code section 80 b). The extenuating circumstance must be subject to a concrete assessment. The principal act's full damage potential did not come to pass, but the defendant's many complicitous acts had been completed when the attempt failed because the engine broke down. That the offence was merely an attempt is therefore of limited importance.

That the defendant's company was in financial and contractual difficulties can only have scant significance for the length of the sentence. The same goes for the fact that he became seriously ill during the period when the offence was committed and today is strongly hampered by the aftereffects and other health issues.

More than five years have passed since the commission of the offence without this being attributable to delays caused by the prosecuting authority or the courts. The police launched an investigation shortly after the events and have conducted an extensive investigation. The defendant was indicted for trial in December 2019. The trial was originally scheduled for April 2020, but was postponed to October 2020 at the request of the defendant. An account is given at the beginning of the judgment of the trial procedure. There has been no downtime or long periods of slow progress, but the prosecution of the case has taken a long time and the Court will let this benefit the defendant to some extent.

Based on the above, the Court unanimously concludes that the sentence should be fixed at six months' imprisonment**.**

There are no circumstances linked neither to the offence nor the defendant himself that can indicate that the sentence or a part of it should be suspended. The defendant cannot be considered permanently unfit to serve a sentence. It will be up to the Prison and Probation Service to assess his health while incarcerated.

* * *

The prosecuting authority has submitted a claim for the defendant to be sentenced to pay costs in according with the general rule in the Criminal Procedure Act section 436. Due to the defendant's health, circumstances in life and his personal finances, the Court finds – under some doubt – that an exception is warranted and absolves the defendant of costs. This absolution also includes the costs imposed by the District Court.

* * *

The judgment was passed with the dissenting opinions described item 4.1.

CONCLUSION

1. Georg Eide, born 08.02.1966, is convicted of violation of the Pollution Control Act section 79 subs. 3 cf. section 31 cf. section 32, cf. the Waste Regulations section 13-1, cf. (EC) no. 1013/2006 Article 37 no. 5 cf. Article 37 no. 1 b) cf. Article 35 no. 4 a), cf. the Penal Code section 16 cf. section 15, and sentenced to 6 – six – months' imprisonment.

2. No costs are imposed.

Roar Klausen Jan-Inge Wensell Raanes

Stig Høgholm Marit Johanne Sørgjerd Hegg Janne Pletten

Hilde Halsteinslid Marianne Magdelen Boge