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The concept of waste in Moroccan law: from the absence to the legal recognition

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Abstract

At first sight, the concept of waste seems easy to perceive by any individual. Notwithstanding, it is delicate enough, and even probably impossible, to develop a precise legal definition of what is a waste (BONTOXE&LEONE, 1997).

In addition, the term waste returns to a depreciation (DE CONINCK, 1997) of the value of the object. The concept of waste is relative as well in relation to space as to time (DE CONINCK, 1997). The relativity of the concept of waste can also be seen in relation to the technological evolution and the place of production (BONTOXE&LEONE, 1997).

In this article, we are trying, in the first place, to highlight the evolution of the legal apprehension of the concept of waste, to interrogate, in second place, on the criteria for the distinction between the "waste" and the "not waste".

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INTRODUCTION

The concept of waste is at the heart of the debate around which mingle with environmental, economic, strategic, technical and cultural considerations. Depending on the angle through which a given object be analyzed, it will be sometimes a product, sometimes a waste. When "the prisms are mixed, the exercise of qualification achieved a high level of legal sophistication" (HARADA, 2006).

The long time that the legal concept of waste has constantly been subject of exploration of the doctrine. The present article has the ambition to enlighten the waste definition of a new look, comparing the respective developments of comparative law and of Moroccan law (HARADA, 2006) in the framework of the dynamic of change and continuity in Morocco.

In Moroccan law of waste, subject of the presumptiveness of the criterion "residue", the criteria for qualification of the waste remain relatively vague then that the conditions allowing extracting a residue of the qualification of waste have arisen with relative accuracy. In addition, we now know well that a residue is a waste but the conditions which president to the "deskilling" of the residue remain unstable (HARADA, 2006).

As well, it is quite legitimate to query on a legal definition of the concept of "waste" (Part I) and to seek the contours of this definition in establishing the distinction between "waste" and "not waste" (Part II).

I. Overview on the evolution of the legal status of the concept of waste

The delicacy of the definition of waste can being explained by its relative nature bound to two shutters; on one side, the transformation to the status of waste is carried out as soon as an object loses its main function, therefore the waste is dependent on its primary function. And on the other side, what it may be qualified as a waste for loss of its main function may be useful and have therefore a secondary function. In effect, this relativity is independent of the specific definition that we will be able to develop (BONTOXE&LEONE, 1997) even that the value may be regarded as a relative concept (BERTOLINI, 1997).

This said that this is the relative nature of the concept of waste that helps explain why some wastes retain a significant economic value. Then that if a waste loses the value for the person who has produced, it allows you to keep a certain value for the secondary user, the latter who will identify this value (BONTOXE&LEONE, 1997).

1- What is a waste?

The definition of the concept of "waste" varies from one country to another depending on its perception and the degree of technical progress that they are familiar with, has generated several debates, and was the subject of a multitude of judicial affairs (STOOKES, 2005).

Moreover, the concept of waste is also dependent on the evolution of technology and the place of production. For example, the excrements of horse constitute, a hundred years ago, they were considered as a waste in the major cities, but as a fertilizer well useful in rural areas. Today, they have completely disappeared from most of the cities in the wake of technological changes (BONTOXE&LEONE, 1997).

Thus, we do not find in face of a common definition of waste (ABSI-BERRAHOU, 2001) but several definitions that intersect in a few aspects of definition.

According to the waste act, the Act 28-00, is qualified to waste "all residues resulting from a process of extraction, exploitation, processing, production, consumption, use, control or filtration, and in general, any object and material abandoned or that the holder must eliminate not to be prejudicial to the health, to public safety and to the environment".

As well, the definition adopted by the Act 28-00 is close to that adopted by the French legislation and is compatible with those of the advanced countries since it combines all the aspects deemed indispensable for its qualification (ABSI-BERRAHOU, 2001).

Also emerges from the definition that the residues referred were not stripped of any economic value. In addition, the abandonment in question can be interpreted as "a non-use which may be temporary since the objective is the transformation and enhancement of the waste" (PRIEUR, 2001).

In addition, the act in question has ambition to preserve the community or the environment of all nuisances generated by waste.

In deduction, we can remember that the definition of waste in the Moroccan law reconciles between the economic and environmental dimensions (ABSI-BERRAHOU, 2001).

2- Two different approaches in the definition of waste

In general, the waste designated, to the current language, the loss that a thing experienced in its volume, its value in a few of his qualities (TOURE, 2006). As well, the definition mentioned above insisted on this mention of loss, depreciation.

The first blow, the wastes are as source objects of many conflicts of interest, this situation is due in large part to interpretations of the jurisprudence, which has tried to delineate progressively the contours of the concept of waste¹.

The legal design, we can deduce two other designs: subjective and objective.

The objective conception of the concept of waste is waste, whose qualification does not depend on or an act or of the will of the holder, but an objective cause, such as the danger of the environment or, more broadly, a legal obligation (FLUECKIGER, 1999).

According to this design, the waste is a well whose management is controlled for the protection of the public good and of the environment. The will of the owner did not played here any role. These are the criteria external to the person which require the controlled management of an object, which is no longer to be used in its original purpose, and which threatens the well-being of the community; no matter that for the owner of this property has still not been

¹ On the concept of waste, see in particular : C. LONDON, "Waste: non-waste: a debate without end? ", LPA, may 9, 1999, No. 90, p. 25 ; P. STEICHEN, "Be or not be a waste", right of the environment, 2001, 91, p. 213 ; M.P. LAVOILLOTTE, "Reflections on the definition of the concept of waste: the debate continues ", right of the environment, 2002, 103, p. 273 ; N. OF SADELEER, " The waste, residues and by-products, a trilogy ambiguous ", RDUE, 2004, No. 3, p. 457; cited by: C. VIAL, op. cit., p 201.

an economic value. This design highlights the fact that one material constitutes a waste of when that is the question of recycling and reuse of the elimination itself (TOURE, 2006).

In effect, and therefore, of this design, the illustration of the question raised given previously is different: a well is a waste even when it can be the subject of a reuse economic. By return, the good of the community, which is at the basis of this design, requires that the thing in question is a subject to special rules of the fact of the threat that it presents. Even if the objects or substances, which their holder discards, offer opportunities to reuse economic, it does not exist at least a public interest in the control of essential phases of their management (TOURE, 2006).

In other words, the main characteristic of a waste recovery operation lies in the fact that its ultimate goal lies in the useful function that can fill the waste, in replacing other materials which would have had to be used for the purpose of meeting this need, what consequences would be to preserve the natural resources (VIAL, 2006).

In addition, the qualification of waste as dangerous goods for the environment has no link with their recoverable nature or consumable (VIAL, 2006).

The objective conception of waste was designed to limit the freedom of the holder of an object in the case where the latter would be harmful to the environment or to public order; they are sometimes qualified by the doctrine of 'waste forces' (FLUECKIGER, 1999).

Therefore, in the event of disappearance of the public interest, the holder has, in principle, all the freedom of the fate of the object, which he holds as a waste product, in the instance of "throw it out". From this case of figure, it is then the subjective meaning of the concept of waste (FLUECKIGER, 1999).

As to the subjective conception of the concept of waste, it refers to things, which the qualification of waste depends on the act to get rid, as well as to the determination to undo (FLUECKIGER, 1999).

According to this design, the waste is being considered as any well abandoned by its owner. This qualification of waste is dependent on the willingness of the owner of the object in question and not to its objective value. This definition is inspired by the concept of "res derelictae" of civil law, which designates the thing forsaken voluntarily by its holder, that is to say something that came to the abandonment and no longer belong to anyone (ABSIBERRAHOU, 2001).

In the subjective sense, the concept of waste designated the case or the holder of a well to defeat or express the desire to get rid; the term pivot in this design is "divest" (FLUECKIGER, 1999).

In effect, and therefore of the imprint of subjectivity, since attached to the behavior of its holder, the literal definition of the waste product appears difficult to distinguish and it is encountering a design objective which would take into account the value of the substance or the rejected object by its holder (LANGLAIS, 2012).

Thus, the answers vary depending on the design that we adopted; these two designs are not contradictory, but complementary (TOURE, 2006)

II. Toward a clarification of aspects of the legal definition of waste

From the above definition, the first observation to deduce is the difficulty of defining the outline of the concept of waste (VIAL, 2006). This is due in large part to the lack of clarification of some aspects of the definition of waste, and that however we cannot isolate them for their lack of clarity.

On the one hand, the ambivalent nature of the waste makes it difficult to distinguish between the rebus to eliminate and the resource to enhance (BERTOLINI, 1992).

Thus, the concept of the waste is relative since it is dependent on the time, place, and the possibility of reuse. For example, the rocks "sterile" extracts from the coal mines stored long in the slag heaps without prospect of use were used later to build highways. The cans, the wooden crates, used tires become materials to manufacture of useful objects. Therefore, the recycling and recovery are unborn in the garbage from real mines of raw materials (LE MAITRE, 2009).

On the other hand, the current definition of recovery is not clear and does not reflect the environmental reality.

In effect, the definition of waste deserves clarification of these aspects (under Part 1) and to deduce the qualification criteria (under Part 2).

1- Is it possible to award the contours of the concept of waste?

The concept of waste is faced on one side, to the distinction between recovery and disposal, and on the other, to the determination of the precise moment when a waste ceases to be, and to a lesser extent, of the distinction between sub-products depending on whether they are or not of waste.

Of by the legal order erected by the regulation of waste, an object is not of qualified office waste; it is fundamentally something else preceding its abandonment, which cut back to this qualification (BEAUNE, 1999). However, this label, "waste", is variable and is no longer final; if it is attached to the desappropriation and rejection, it may take another form, resource or sub-product.

In the etymological sense, the term "waste" refers to the revocation and referred to the loss of value in use. It is always linked to that which is set aside, neglected. In effect, the concept of waste is not linked, of origin, to the nature of the substance or material, but to the abandonment of this substance or material (GUILLOT, 2010).

In addition, the legal definition of this term is not far from this design that combines the residue, which remains, and abandonment as label of waste. From this moment, the abandonment, we are not talking about waste that if the rejection, the divestiture of the object in question, is voluntary. A default, it is not waste, but wreckage²: the object that a fortuitous dispossession is always subject to appropriation and may be sought by the "versus dominum", his true master (BEAUNE, 1999).

In other words, any element that is abandoned is a waste. This is not to say that this element is unusable, in the state or after modification. Only waste of qualified ultimate are unusable and must be stored to avoid pollution of the environment.

The definition of waste contained in the third article of the Act 28-00 assumes a willingness to abandon on the part of the holder. In this case, the waste is limited to "res derelictae" and who also intends submit to the regulation of waste all the activities relating to waste presenting a risk to the environment, even that these wastes are destined for recovery, operation which seems less compatible with the abandonment.

This contradiction has been exploited to the criminal courts by defendants who challenged, sometimes with success, the qualification of waste assigned to a substance collected or sold to be reused (LITTMANN-MARTIN, 1992).

In contrast, the dereliction of the object makes him lose his master, its first occupant, by possession, by occupation. That is the way the "res derelictae" of civil law (BEAUNE, 1999).

Moreover, the design chosen by the Act 28-00 has ruined this civil law approach to the waste: the waste is legally any abandoned object³, and any object that its holder -which is not legally the owner sends to the abandonment.

The nuances in respect of the delimitation of the contours of the legal definition of the concept of waste have caused the emergence of the deskilling of some waste in the qualifier of "not waste".

In addition, the jurisprudence, in attempting to find clues for the qualification of the waste, has been led to set aside a number of grounds raised by the economic actors. Finally, it will only accept disqualify the waste for the quality of by-product that if rather special circumstances are met (Harada, 2006). Thus appears the concept of sub-product that triggers the end of the status of waste. This is not only the term used to mark the end of the status of waste, but others which are used, for example the "second hand goods" (GILLET, 2002).

The fact, the waste, in a desire to fight against the waste of energy and raw materials, have the tendency to be considered as a potential "secondary raw material" (ROCHER, 2008).

This trend toward the de-skilling of waste draws its foundations in the search to achieve a key objective of the waste legislation. It refers to the reduction of the use of natural resources and to move toward "a recycling society" by inviting businesses to retrain or enhance in their manufacturing processes of waste, sometimes in such proportions

² The wrecks are, according to article 717 of the civil code French, "the lost things which the master does not present".

³ In law, the situation of the holder is born of a legal situation by which is recognized the right of the real owner, detention and property that cannot be met on the same head. The owner has always through the holder. The latter cannot therefore legally not accomplish an act of disposal as the abandonment (see on this point Mazeaud et al. , Lessons of civil law, the property, t. II, vol. 2, Montchrestien, 1989, 7th ed. , no. 1410). The act of 1975 is moving away from here, therefore the civil law without, however, defining what is meant by holder.

that these wastes will become real raw materials "secondary" in some industries (for example, manufacture of paper, glass, cement, foundries etc.) (GRINFOGEL, 2011).

Notwithstanding, the qualification /deskilling of waste require of Nature criteria to establish the distinction between "waste" and "not waste ".

2- Has the search for criteria for qualification of waste

Any exercise of legal qualification implies a privileged choice, which is necessarily accompanied by the exclusion of other possible choices. The selection criteria of qualification is the result of a permanent conflict between actors claiming practical interests opposed (Harada, 2006).

All the problems presented above show how much can be the crucial distinction between waste and non-waste for all partners. On the one hand, there is a legitimate concern on the part of the legislator, which aims to ensure a proper management of waste, avoiding the harmful effects on the environment and public health (that is to say, by reducing the risk). On the other hand, the legislation must promote the recovery of resources and obey the international obligations.

In addition, the recoverable nature or not of the waste material is dependent on the cost that includes the recovery and the profitability of the envisaged reuse, to this that the assessment relating thereto is subjective and linked to unstable factors (VIAL, 2006).

In effect, there are criteria of qualification/deskilling of waste, inoperative and Nature.

For the characters inoperative, there are three criteria considered inoperative for disqualify the waste: the economic value, the danger to the environment and the status of immovable property.

For this which is argument of the economic value of the object, the Community judge the ousted in motivating its decision by two reasons. On one side, because the economic value of the waste has no influence on the obligation on States to take "appropriate measures to promote the prevention, recycling and processing of waste, the extraction of raw material and possibly of energy" (Dir. no. 75/442, 15 July 1975, s. 3). On the other side, and especially, because the term "divest" does not draw a distinction according to the intention of the holder, who defeated the thing (ECJ, march 28, 1990, aff. attachments C-266/88, C-207/88 and C-359/88, Vessoso and Zanetti (Harada, 2006).

As regards the fact that the residue does no harm to the environment has not been also retained for the deskilling of a waste. The ECJ has in effect judge that a waste is not necessarily in itself of the environmental hazards (Harada, 2006).

In addition, if the protection of the environment is at the base of the legislation on waste, it is commonly admitted that she has had up to now a positive effect on the environment. On the other hand, in the face of its increasing complexity, the protection of the environment may be deteriorated. It would seem that in some Member States are of the opinion that the waste collected for recycling purposes should be defined as secondary raw materials (non-waste) in order to be able to compete with the virgin raw materials in a manner commercially competitive. This could present the economic and environmental benefits (BONTOXE&LEONE, 1997).

In addition, the Community judge believed it was important to characterize the waste as goods regardless of their recoverable nature even if there is difficulty in establishing the distinction between the recyclable waste and those non-recyclable, especially during the transaction control operates at the border (VIAL, 2006). However, this qualification is likely to be prejudicial to the protection of the environment, given that they are acting to objects of a particular nature that their accumulation, even before they become hazardous to health, may constitute a danger to the environment (VIAL, 2006).

As regards the criterion related to the fact that the object in question is an immovable property, it presents no obstacle to the qualification of waste. Although the waste is recognized of habit as a well furnished, of contaminated land have been qualified to waste" of the sole fact of their accidental contamination by hydrocarbons" (Harada, 2006)⁴.

⁴ See J. -P. Boivin, J. RICOUR, Sites and polluted soils, Ed. The Monitor, 2005. p. 145. Cf., also, A. MOUSTARDIER, " The specific powers of the mayor in relation to the regeneration of sites and polluted soils, In: BDEI no. 4/2005, p 4 " and N. FURNACE, A. HOURCABIE, " Sites and polluted soils: reconditioning, waste and competent authorities", In: BDEI no. 3/2005, p. 4.

In addition, the Moroccan law of waste has adopted the "residue" as a dominant criterion for the legal characterization of the waste. Under this legislation, a residue is presumed to be a waste. This definition is empty based on the concept of "get rid" that his "scope of application depends on the meaning of the latter" (Harada, 2006).

In effect, and in the absence of definition of this concept, it is income to the jurisprudence to delineate progressively the contours. To do this, it has traditionally followed a purposive reading of the definition, consisting of taking account of the objective of the directive. It is in this context that has emerged from the criterion "residue" as dominant criterion for the legal characterization of the waste.

Under Moroccan law, two proposals coexist in the definition of waste, separated by the comma that follows the word "filtration". If the reading of the two proposals is independent (read dualist) (Harada, 2006), "all residues of a process of extraction, exploitation, processing, production, consumption, use, control or filtration" should be considered a waste, regardless of its subsequent fate. The qualification is then based on the data purely objective. Alternately, a substance that is not a residue but that its holder abandoned or has the obligation to eliminate must also be qualified to waste. This is the subjective portion of the definition dualistic. However, if it must be read together the two proposals (read monistic) (Harada, 2006), then the waste will exist only if there is residue and if this residue is abandoned or should be eliminated.

In addition, the ECJ has enabled us to examine many means to subtract a given substance to the category of waste. She has thus assesses the relevance of the various criteria that might qualify - or of disqualify - the waste and has inferred that a substance must be qualified to waste when the existence of a number of indices will be able to be verified. In this research the harness of indices, the criterion "residue" plays a pivotal role (TICKET, 2003).

Moreover, in the stop "Inter-environment Wallonie"⁵ and the case "Palin Granit Oy" relating to the qualification of debris of stone⁶, the ECJ⁷ has asked a first line of demarcation between waste and by-products by establishing three conditions to extract a residue of the category of "waste". At the first, the intent of the holder to reuse or not the residue, than the absence of processing before reuse of the residue and finally the continuity of the production process (Harada, 2006).

Thus, in the light of the aforementioned case "Palin Granit Oy", the first two conditions are well verified since "the petroleum coke is fully used in such a manner as certain as fuel in the production process". The third is also: the absence of prior transformation will of itself since the residue is the result of a technical choice" in view of the use of a specific fuel". By constructing as well the legal category of sub-products, the Community judge has filled a legal vacuum important (Harada, 2006).

The waste thus becomes an "undefined legal concept" (Harada, 2006), shaped by external considerations variable in time and in space.

Conclusion

In conclusion, the problem of the definition of waste is a good illustration of the difficulty to find a point of balance between protection of the environment and economic issues and/or strategic.

Indeed, the importance of the definition that is given of a waste is crucial in the waste sector of the fact that the definition mean the regulations that will be applicable, on his transfer, on its elimination, as well on an eventual taxation (SERANI&CANSELL, 2009).

Finally, it must exceed the only logic of the protection of the environment and is open on the other dimensions of sustainable development, namely the economic and the social.

Reference

- ABSI-BERRAHOU, H., (2001): "Sustainable development and waste management in Moroccan law", under the direction of KINANA Said and COLSON Jean-Philippe, (doctoral thesis of state supported in November 2001, University Cadi Ayyad, Marrakech).
- BEAUNE, J. C., (1999): The waste, the scrap, the nothing, Seyssel: Field Vallon, Lyon.

⁵ ECJ, Dec 18. 1997, Aff. C-129/96, point 33

⁶ ECJ, Apr 18. 2002, Aff. C-9/00, point 35

⁷ ECJ, Sep 11. 2003, Aff. C-114/01, point 40, ECJ, Apr 18. 2002, Aff. C-9/00, Palin Granit Oy, point 34

- BERTOLINI, G., waste: scrap or resources?, In: economics and statistics, No. 258-259, October-December 1992.
- BONTOTX, L., and LEONE, F., (1997) : The legal definition of waste and its impact on the management of waste in Europe, EOPOCE, Brussels.
- DE CONINCK, P., (1996) : A systemic approach to the integrated management of wastes and residues, In: RUPTURE, Vol. 3, no. 1, Montreal.
- DE SADELEER, N., (2004): "Waste, residues and by-products, a trilogy ambiguous ", RDUE.
- FLUECKIGER, (1999) : "The legal distinction between waste and non-waste", In: The right to the environment in practice, vol. 13, No. 1.
- GRINFOGEL, L., (2011) : "Toward a new doctrine in administrative matters of waste treatment facilities", In: BDEI, 33, May 2011.
- GUILLOT, Ph. Ch. -A, (2010) : Environmental Law, Ellipses Edition, 2nd Ed., Paris.
- HARADA, L. N., (2006) : Legal qualification of the waste: in search of lost criteria, (first part), In: BDEI, No. 2, March 2006
- HARADA, L. N., (2006) : Legal qualification of the waste: in search of lost criteria, (second part), BDEI, No. 2, May 2006
- LANGLAIS, (2003): "What legal status for the agricultural waste? ", Ruralia [Online], 10/11/2012, posted on 25 June 2003, consulted the September 19, 2014.
- LAVOILLOTTE, M.P., (2002) "Reflections on the definition of the concept of waste: the debate continues ", Environmental Law, 103.
- LE MAITRE, S., (2009) : "Management of household waste: the consumer to the "actor-citizen" between coercion and persuasion", under the direction of Mr. Antoine de Soubeyran and Mr. Hubert STAHN, doctoral thesis sustained the June 15, 2009, UNIVERSITY OF THE MEDITERRANEAN (AIX-MARSEILLE II), Faculty of Economic and Management Sciences, Marseille.
- LITTMANN-MARTIN, M. J., (1992) : "The criminal law of waste in France", In: International Review of comparative law. Vol. 44 NO. 1, January-March 1992.
- PRIEUR, M., (2001) : Precise of environmental law, Dalloz, 4th edition, Paris.
- ROCK, L., (2008): "The contradictions of the integrated management of urban waste: incineration between energy recovery and social rejection", In ; Flow 4/ 2008 (No. 74).
- SERANI, A. and CANSELL, F., (2009) : "Characterization of waste" In: R. MOLETTA, (coord.), the treatment of waste, Lavoisier, 2009, Cachan Cedex.
- STEICHEN, P., (2001)) : "Be or not be a waste ... ", Environmental Law, 2001, 91
- STOKES, P., (2005) : A practical approach to environmental law, Oxford, New York.
- TOURE, G., (2006) : The environment policy in African capitals: the case of the city of Abidjan in Cote d'Ivoire, Editions Publibook.
- VIAL, C., (2006) : Protection of the environment and free movement of goods, Bruylant, Brussels.