

JUDGMENT OF THE COURT (Fifth Chamber)

25 April 2002 *

In Case C-154/00,

Commission of the European Communities, represented by M. Patakia, acting as Agent, with an address for service in Luxembourg,

applicant,

v

Hellenic Republic, represented initially by A. Samoni-Rantou, G. Alexaki and S. Vodina, acting as Agents, with an address for service in Luxembourg,

defendant,

APPLICATION for a declaration that, by not providing in the national legislation transposing Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (OJ 1985 L 210, p. 29) for the threshold of EUR 500 laid down in Article 9(b) of that directive, the Hellenic Republic has transposed that provision only partially,

* Language of the case: Greek.

THE COURT (Fifth Chamber),

composed of: P. Jann (Rapporteur), President of the Chamber, S. von Bahr, D.A.O. Edward, A. La Pergola and C.W.A. Timmermans, Judges,

Advocate General: L.A. Geelhoed,

Registrar: Lynn Hewlett, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 20 September 2001,

after hearing the Opinion of the Advocate General at the sitting on 18 October 2001,

gives the following

Judgment

- 1 By application lodged at the Court Registry on 25 April 2000, the Commission of the European Communities brought an action under Article 226 EC for a declaration that by not providing in the national legislation transposing Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning

liability for defective products (OJ 1985 L 210, p. 29, hereinafter 'the Directive') for the threshold of EUR 500 laid down in Article 9(b) of the Directive, the Hellenic Republic has transposed that provision only partially.

Legal framework

Community legislation

The Directive seeks to approximate the laws of the Member States concerning the liability of producers for damage caused by defective products. According to the first recital in the preamble thereto, approximation is necessary because legislative divergences may 'distort competition and affect the movement of goods within the common market and entail a differing degree of protection of the consumer against damage caused by a defective product to his health or property'.

The first paragraph of Article 9 defines 'damage' for the purposes of Article 1 as

'...

(b) damage to, or destruction of, any item of property other than the defective product itself, with a lower threshold of [EUR] 500, provided that the item of property:

(i) is of a type ordinarily intended for private use or consumption,

and

(ii) was used by the injured person mainly for his own private use or consumption.’

4 Article 13 of the Directive provides:

‘This Directive shall not affect any rights which an injured person may have according to the rules of the law of contractual or non-contractual liability or a special liability system existing at the moment when this Directive is notified.’

5 Under Article 19(1) of the Directive, the Member States were to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive by 30 July 1988 at the latest.

National legislation

6 Article 6(6) of Law No 2251/94 on consumer protection (*Official Journal of the Hellenic Republic* 191/A/16.11.1994) provides:

‘The term “damage” in paragraph 1 hereof also covers damage caused by death or personal injury, and damage to or destruction of any item of property, other than the defective product itself, owing to a defective product, provided that the property is of a type ordinarily intended for private use or consumption, and was used by the injured person for his private use or consumption.’

Pre-litigation procedure

7 Taking the view that Law No 2251/94 had not correctly transposed Article 9(b) of the Directive within the period prescribed, the Commission initiated proceedings for failure to fulfil obligations. After placing the Hellenic Republic on notice to submit its observations, the Commission issued a reasoned opinion on 11 August 1999 requesting that Member State to take the measures necessary to comply with the reasoned opinion within two months of its notification. Since the Hellenic Republic did not reply to that opinion, the Commission brought this action.

Substance

- 8 The Hellenic Republic does not deny that Article 6(6) of Law No 2251/94 makes no provision for the EUR 500 threshold mentioned in Article 9(b) of the Directive. None the less, it considers that that law constitutes a correct transposition of the Directive. In general terms it contends that the Directive merely achieves a minimum harmonisation of the legislation of the Member States which allows them to adopt or maintain in force provisions which are more protective of consumers. More specifically, it deploys various arguments which, in its view, preclude transposition of the threshold in question into Greek law.

The degree of harmonisation achieved by the Directive

- 9 In the Greek Government's view, the Directive must be interpreted in the light of the growing importance of consumer protection within the Community, as reflected most recently in Article 153 EC. The wording of Article 13 of the Directive, which uses the term 'rights', shows that it does not seek to prevent achievement of a higher national level of protection. That analysis is also borne out by the fact that the Directive itself enables the Member States to depart in certain respects from the rules which it lays down.
- 10 In that connection it should be pointed out that the Directive was adopted by the Council by unanimity under Article 100 of the EEC Treaty (amended to Article 100 of the EC Treaty, now Article 94 EC) concerning the approximation of such laws, regulations or administrative provisions of the Member States as directly affect the establishment or functioning of the common market. Unlike

Article 100a of the EC Treaty (now, after amendment, Article 95 EC), which was inserted into the Treaty after the adoption of the Directive and allows for certain derogations, that legal basis provides no possibility for the Member States to maintain or establish provisions departing from Community harmonising measures.

11 Nor can Article 153 EC, likewise inserted into the Treaty after the adoption of the Directive, be relied on in order to justify interpreting the Directive as seeking a minimum harmonisation of the laws of the Member States which could not preclude one of them from retaining or adopting protective measures stricter than the Community measures. In fact, the competence conferred in that respect on the Member States by Article 153(5) EC concerns only the measures mentioned at paragraph 3(b) of that article, that is to say measures supporting, supplementing and monitoring the policy pursued by the Member States. That competence does not extend to the measures referred to in paragraph 3(a) of Article 153 EC, that is to say the measures adopted pursuant to Article 95 EC in the context of attainment of the internal market with which in that respect the measures adopted under Article 94 EC must be equated. Furthermore, as the Advocate General noted at point 43 of his Opinion in two cases in which judgment is given today (Case C-52/00 *Commission v France* [2002] ECR I-3827 and Case C-183/00 *González Sánchez* [2002] ECR I-3901), Article 153 EC is worded in the form of an instruction addressed to the Community concerning its future policy and cannot permit the Member States, owing to the direct risk that would pose for the *acquis communautaire*, autonomously to adopt measures contrary to the Community law contained in the directives already adopted at the time of entry into force of that article.

12 Accordingly, the margin of discretion available to the Member States in order to make provision for product liability is entirely determined by the Directive itself and must be inferred from its wording, purpose and structure.

- 13 In that connection it should be pointed out first that, as is clear from the first recital thereto, the purpose of the Directive in establishing a harmonised system of civil liability on the part of producers in respect of damage caused by defective products is to ensure undistorted competition between traders, to facilitate the free movement of goods and to avoid differences in levels of consumer protection.
- 14 Secondly, it is important to note that unlike, for example, Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29), the Directive contains no provision expressly authorising the Member States to adopt or to maintain more stringent provisions in matters in respect of which it makes provision, in order to secure a higher level of consumer protection.
- 15 Thirdly, the fact that the Directive provides for certain derogations or refers in certain cases to national law does not mean that in regard to the matters which it regulates harmonisation is not complete.
- 16 Although Articles 15(1)(a) and (b) and 16 of the Directive permit the Member States to depart from the rules laid down therein, the possibility of derogation applies only in regard to the matters exhaustively specified and it is narrowly defined. Moreover, it is subject *inter alia* to conditions as to assessment with a view to further harmonisation, to which the penultimate recital in the preamble expressly refers. An illustration of progressive harmonisation of that kind is afforded by Directive 1999/34/EC of the European Parliament and of the Council of 10 May 1999 amending Council Directive 85/374/EEC (OJ 1999 L 141, p. 20), which by bringing agricultural products within the scope of the Directive removes the option afforded by Article 15(1)(a) thereof.

- 17 In those circumstances Article 13 of the Directive cannot be interpreted as giving the Member States the possibility of maintaining a general system of product liability different from that provided for in the Directive.
- 18 The reference in Article 13 of the Directive to the rights which an injured person may rely on under the rules of the law of contractual or non-contractual liability must be interpreted as meaning that the system of rules put in place by the Directive, which in Article 4 enables the victim to seek compensation where he proves damage, the defect in the product and the causal link between that defect and the damage, does not preclude the application of other systems of contractual or non-contractual liability based on other grounds, such as fault or a warranty in respect of latent defects.
- 19 Likewise the reference in Article 13 to the rights which an injured person may rely on under a special liability system existing at the time when the Directive was notified must be construed, as is clear from the third clause of the 13th recital thereto, as referring to a specific scheme limited to a given sector of production.
- 20 It follows that, contrary to the arguments put forward by the Hellenic Republic, the Directive seeks to achieve, in the matters regulated by it, complete harmonisation of the laws, regulations and administrative provisions of the Member States (see *Commission v France*, paragraphs 14 to 24, and *González Sánchez*, paragraphs 23 to 32, both cited above).
- 21 The arguments relied on by the Hellenic Republic in its defence must be examined in the light of those considerations.

Alleged incompatibility of the threshold with the principles of Greek law

- 22 The Hellenic Republic claims that it is clear from Article 9 of the Directive that the concept of ‘damage’ does not come within its scope and falls to be interpreted in the light of national law. The obligation to afford restitution under Greek law is an obligation to provide full compensation.
- 23 Although determination of the specific content of the types of damage referred to in Article 9 of the Directive is left in part to the national legislatures, that provision expressly covers damage to, or destruction of, an item of property and, in the latter case, the damage must be of an amount exceeding EUR 500 whilst the item damaged must be of a type ordinarily intended for private use or consumption and must have been used as such by the injured person (Case C-203/99 *Veedfald* [2001] ECR I-3569, paragraphs 26 and 27).
- 24 To the extent to which that threshold is incompatible with the principles of Greek law, suffice it to state that under the Court’s settled case-law recourse to provisions of domestic law to restrict the scope of the provisions of Community law would have the effect of undermining the unity and efficacy of that law and cannot consequently be accepted (see, *inter alia*, Case C-473/93 *Commission v Luxembourg* [1996] ECR I-3207, paragraph 38, and *Commission v France*, cited above, paragraph 33).

Possible revision of the Directive

- 25 The Hellenic Republic contends that its interpretation of the Directive is borne out by the fact that in its Green Paper of 28 July 1999 on liability for defective products (COM(1999) 396 final) the Commission proposes that the threshold of EUR 500 be abolished.
- 26 On this point, suffice it to recall that the fact that the Commission, with a view to possible amendment of the Directive, decided to consult the interested parties as to the expediency of abolishing the threshold provided for in Article 9(b) of the Directive cannot dispense the Member States from the obligation to comply with the provision of Community law currently in force (see, in particular, Case C-236/88 *Commission v France* [1990] ECR I-3163, paragraph 19, and today's judgment in *Commission v France*, cited above, paragraph 34).

The alleged incompatibility of the threshold with general principles of Community law

- 27 The Hellenic Republic considers that the threshold creates unfair inequality as between consumers and, by depriving the victim of a right of action, infringes the fundamental right of access to the courts, as guaranteed by Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950.

- 28 Since that argument questions the legality of the threshold provided for in the Directive, it should be remembered in the first place that the system of remedies set up by the Treaty distinguishes between the remedies provided for in Articles 226 EC and 227 EC, whereby a declaration that a Member State has failed to fulfil its obligations may be sought, and those provided for in Articles 230 EC and 232 EC, which seek judicial review of the lawfulness of measures adopted by the Community institutions or of the institutions' failure to adopt measures. Those remedies serve different purposes and are subject to different rules. In the absence of a provision of the Treaty expressly permitting it to do so, a Member State cannot, therefore, properly plead the unlawfulness of a decision addressed to it as a defence in an action for a declaration that it has failed to fulfil its obligations arising out of its failure to implement that decision. Nor can it plead the unlawfulness of a directive which the Commission alleges it to have infringed (Case C-74/91 *Commission v Germany* [1992] ECR I-5437, paragraph 10).
- 29 Moreover, as the Advocate General noted at points 66 to 68 of his Opinion in the abovementioned cases *Commission v France* and *González Sánchez*, to which he refers in point 10 of his Opinion in this case, the limits set by the Community legislature to the scope of the Directive are the result of a complex balancing of different interests. As is apparent from the first and ninth recitals in the preamble to the Directive, those interests include guaranteeing that competition will not be distorted, facilitating trade within the common market, consumer protection and ensuring the sound administration of justice.
- 30 The consequence of the choice made by the Community legislature is that, in order to avoid an excessive number of actions, in the event of minor material damage the victims of defective products cannot rely on the rules of liability laid down in the Directive but must bring an action under the ordinary law of contractual or non-contractual liability.

- 31 In those circumstances the threshold provided for in Article 9(b) of the Directive cannot be regarded as affecting victims' rights of access to the courts (today's judgment in *Commission v France*, cited above, paragraph 31).
- 32 Similarly, the fact that different systems of liability apply to the producers and victims of defective products does not constitute an infringement of the principle of equal treatment where the differentiation dependent on the nature and amount of the damage suffered is objectively justified (see in particular Case 8/57 *Aciéries Belges v High Authority* [1958] ECR 245, at p. 256, and today's judgment in *Commission v France*, cited above, paragraph 32).
- 33 In the light of all the foregoing considerations the Commission's action is well founded.
- 34 Accordingly, it must be held that, by not making provision in the national legislation transposing the Directive for the threshold of EUR 500 referred to in Article 9(b) of the Directive, the Hellenic Republic has failed to fulfil its obligations under that provision.

Costs

- 35 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for. Since the Commission applied for costs against the Hellenic Republic and the latter has been unsuccessful, the Hellenic Republic must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. Declares that, by not making provision in the national legislation transposing Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products for the threshold of EUR 500 referred to in Article 9(b) of the Directive, the Hellenic Republic has failed to fulfil its obligations under that provision;
2. Orders the Hellenic Republic to pay the costs.

Jann

von Bahr

Edward

La Pergola

Timmermans

Delivered in open court in Luxembourg on 25 April 2002.

R. Grass

P. Jann

Registrar

President of the Fifth Chamber