JUDGMENT OF THE COURT (Fifth Chamber)
25 April 2002 *

In Case C-183/00,

REFERENCE to the Court under Article 234 EC by the Juzgado de Primera Instancia e Instrucción no 5 de Oviedo (Spain) for a preliminary ruling in the proceedings pending before that court between

María Victoria González Sánchez

and

Medicina Asturiana SA

on the interpretation of Article 13 of 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),

* Language of the case: Spanish.

THE COURT (Fifth Chamber),

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

Advocate General: L.A. Geelhoed,
Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

— María Victoria González Sánchez, by C. García Castañón, Abogado,

— the Spanish Government, by N. Díaz Abad, acting as Agent,

— the Greek Government, by G. Alexaki and S. Vodina, acting as Agents,

— the French Government, by R. Abraham and R. Loosli-Surrans, acting as Agents,

— the Austrian Government, by C. Pesendorfer, acting as Agent,

— the Commission of the European Communities, by B. Mongin and M. Desantes, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of María Victoria González Sánchez, represented by C. García Castañón, Medicina Asturiana SA, represented by M. Herrero Zumalacárregui, Abogado, the Greek Government, represented by G. Alexaki and S. Vodina, the French Government, represented by R. Loosli-Surrans, and the Commission, represented by B. Mongin and G. Valero Jordana, acting as Agents, at the hearing on 3 May 2001,

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

gives the following

Judgment

1 By order of 13 April 2000, received at the Court on 16 May 2000, the Juzgado de Primera Instancia e Instrucción (Court of First Instance and Preliminary Investigations) no 5 de Oviedo referred to the Court for a preliminary ruling under Article 234 EC a question on the interpretation of Article 13 of 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').

2 That question was raised in proceedings between María Victoria González Sánchez and Medicina Asturiana SA (hereinafter 'Medicina Asturiana') for compensation for damage allegedly caused in premises belonging to Medicina Asturiana in the course of a blood transfusion.

Legal framework

Community legislation

3 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.'

4 The 13th recital in the preamble to the Directive states that 'under the legal systems of the Member States an injured party may have a claim for damages based on grounds of contractual liability or on grounds of non-contractual liability other than that provided for in this Directive'. It goes on to state that 'in so far as these provisions also serve to attain the objective of effective protection of consumers, they should remain unaffected by this Directive' and that 'in so far as effective protection of consumers in the sector of pharmaceutical products is already also attained in a Member State under a special liability system, claims based on this system should similarly remain possible'.

5 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.'

National legislation

6 General Law No 26 of 19 July 1984 for the Protection of Consumers and Users (*Boletín Oficial del Estado* No 176 of 24 July 1984, hereinafter 'Law No 26/84') provides in Articles 25 to 28 thereof for a system of strict liability enabling consumers and users to obtain compensation for damage caused by the use of a thing, product or service.

7 Following accession by the Kingdom of Spain to the European Communities, Law No 22 of 6 July 1994 on civil liability for damage caused by defective products (*Boletín Oficial del Estado* No 161 of 7 July 1984, hereinafter 'Law No 22/94') was adopted in order to transpose the Directive into Spanish law.

8 Article 2 of Law No 22/94 defines the scope of the legislation *ratione materiae* by reproducing the definition of 'product' appearing in Article 2 of the Directive. In its first final provision Law No 22/94 provides that Articles 25 to 28 of Law No 26/84 do not apply to civil liability for damage caused by the defective products mentioned in Article 2 thereof.

Main proceedings and preliminary question

9 María Victoria González Sánchez received a blood transfusion in a medical establishment belonging to Medicina Asturiana. The blood used for the transfusion had been treated by a transfusion centre.

10 She maintains that in the course of that transfusion she was infected by the Hepatitis C virus. Under the general provisions of the Spanish Civil Code and Articles 25 to 28 of Law No 26/84, she sought compensation from Medicina Asturiana for the damage suffered. Medicina Asturiana challenged the applicability of those articles of Law No 26/84 in the light of the first final provision of Law No 22/94.

11 The referring court regards it as established that the facts underlying the dispute come within the scope *ratione materiae* and *ratione temporis* of both Law No 26/84 and Law No 22/94.

12 Following an analysis of those two laws the referring court concluded that the rights which consumers and users may rely on under Law No 26/84 are more extensive than those which the victims of damage may rely on under Law No 22/94 and that, consequently, the transposition of the Directive into internal law under Law No 22/94 operated to curtail the rights enjoyed by the persons concerned at the time when the Directive was notified.

13 Taking the view that the dispute thus raises a question concerning the interpretation of Article 13 of the Directive, the Juzgado de Primera Instancia e Instrucción no 5 de Oviedo decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Must Article 13 of 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 be interpreted as precluding the restriction or limitation, as a result of transposition of the Directive, of rights granted to consumers under the legislation of the Member State?'

Preliminary question

14 By its question the referring court is essentially seeking to ascertain whether Article 13 of the Directive must be interpreted as meaning that the rights conferred under the legislation of a Member State on victims of damage caused by a defective product may be limited or restricted as a result of the Directive's transposition into the domestic law of that State.

Admissibility

15 The Spanish Government contends principally that the request for a preliminary ruling is inadmissible inasmuch as the order for reference does not state the matters of fact enabling it to be established whether Law No 22/94 is applicable, the only situation in which the question raised would be pertinent.

16 In that connection it is settled case-law that, in the context of the cooperation between the Court of Justice and the national courts provided for by Article 234 EC, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. The Court may not decline to give a ruling on a question referred to it by a national court unless it is quite obvious that the interpretation of Community law or the consideration of the validity of a Community rule sought by that court bears no relation to the facts of the main action or its purpose (see, in particular, Case C-318/98 *Fornasar and Others* [2000] ECR I-4785, paragraph 27, and Joined Cases C-223/99 and C-260/99 *Agorà and Excelsior* [2001] ECR I-3605, paragraphs 18 and 20).

17 In the present case the referring court has set out the reasons why interpretation of Article 13 of the Directive is necessary for it in order to resolve the dispute before it and it does not appear that the question raised bears no relation to the facts or purpose of the main action.

18 It follows that the request for a preliminary ruling is admissible.

Substance

Observations submitted to the Court

19 The Spanish Government and the Commission maintain that the purpose of the Directive is to harmonise the legal orders of the Member States in regard to liability for defective products. Article 13 of the Directive cannot be interpreted as enabling the victim of damage to rely, in regard to the products coming within the Directive's scope, on a system of liability more favourable than that provided for by it.

20 María Victoria González Sánchez and the Greek, French and Austrian Governments advocate a different interpretation of Article 13 of the Directive.

21 In their view the harmonisation brought about by the Directive is incomplete. Article 13 thereof should be interpreted as meaning that the Directive does not alter the provisions of national law relating to contractual or non-contractual liability or even relating to a special system of liability in force on the date of the Directive's notification to the Member States, which provisions are often more

favourable to the victim of damage. It would plainly be contrary to the Directive's objective for its transposition to result in less protection for the victim.

22 That interpretation of Article 13 of the Directive is, they contend, corroborated by subsequent developments in consumer protection, as reflected most recently in Article 153 EC, which provides in paragraph (1) that the Community is to act to ensure a high level of consumer protection and, in paragraph (5), that the measures adopted in that connection may not prevent a Member State from maintaining or introducing more stringent protective measures.

Findings of the Court

23 It should be noted 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.

24 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, 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 law.

25 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.

26 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.

27 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.

28 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.

29 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.

30 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.

31 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.

32 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 (see judgments of today in Case C-52/00 *Commission* v *France* [2002] ECR 3827, paragraphs 13 to 23, and Case C-154/00 *Commission* v *Greece* [2002] ECR 3879, paragraphs 9 to 19).

33 Conversely, a system of producer liability founded on the same basis as that put in place by the Directive and not limited to a given sector of production does not come within any of the systems of liability referred to in Article 13 of the Directive. That provision cannot therefore be relied on in such a case in order to justify the maintenance in force of national provisions affording greater protection than those of the Directive.

34 The reply to the question raised must therefore be that Article 13 of the Directive must be interpreted as meaning that the rights conferred under the legislation of a Member State on the victims of damage caused by a defective product under a general system of liability having the same basis as that put in place by the Directive may be limited or restricted as a result of the Directive's transposition into the domestic law of that State.

Costs

35 The costs incurred by the Spanish, Greek, French and Austrian Governments, and by the Commission, which submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the question submitted to it by the Juzgado de Primera Instancia e Instrucción no 5 de Oviedo by order of 13 April 2000, hereby rules:

Article 13 of 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 must be interpreted as meaning that the rights conferred under the legislation of a Member State on the victims of damage caused by a defective product under a general system of liability having the same basis as that put in place by the Directive may be limited or restricted as a result of the Directive's transposition into the domestic law of that State.

Jann von Bahr Timmermans

Delivered in open court in Luxembourg on 25 April 2002.

R. Grass

Registrar

P. Jann

President of the Fifth Chamber