

Case C-300/95

Commission of the European Communities

v

United Kingdom of Great Britain and Northern Ireland

(Failure to fulfil obligations — Article 7(e) of Directive 85/374/EEC —
Incorrect implementation — Defence precluding liability for defective
products — State of scientific and technical knowledge)

Opinion of Advocate General Tesouro delivered on 23 January 1997 I - 2651
Judgment of the Court (Fifth Chamber), 29 May 1997 I - 2663

Summary of the Judgment

Approximation of laws — Liability for defective products — Directive 85/374 — Defence to liability — Condition — State of scientific and technical knowledge not such as to enable the defect to be discovered — Concept — National implementing provision — Infringement not made out

(Council Directive 85/374, Article 7(e))

In order for a producer to incur liability for defective products under Directive 85/374, the victim does not have to prove that the

producer was at fault; however, in accordance with the principle of fair apportionment of risk between the injured person and the

producer set forth in the seventh recital in the preamble to the directive, the producer has a defence if he can prove certain facts exonerating him from liability, including 'that the state of scientific and technical knowledge at the time when he put the product into circulation was not such as to enable the existence of the defect to be discovered'. Whilst the producer has to prove that the objective state of scientific and technical knowledge, including the most advanced level of such knowledge, without any restriction as to the industrial sector concerned, was not such as to enable the existence of the defect to be discovered, in order for the relevant knowledge to be successfully pleaded as against the producer, that knowledge must have been accessible at the time when the product in question was put into circulation.

A national implementing provision to the effect that the producer has a defence if he can prove that the state of such knowledge was 'not such that a producer of products of the same description as the product in question might be expected to have discovered the defect if it had existed in his products while they were under his control' is not manifestly contrary to that Community rule. The argument that such national provision permits account to be taken of the subjective knowledge of a producer taking reasonable care, having regard to the standard precautions taken in the industrial sector in question, selectively stresses particular terms used in the provision without demonstrating that the general legal context of the provision at issue fails effectively to secure full application of the directive.