



CONSUMER PROTECTION

Product Liability: While Europe Expects Guidance on the Product Liability Directive, Greece Debates On the Notion “Consumer”

The Information Age and the rapid shift from traditional industrialization to economies based on AI and technology will have such large impact on our societies that it will no-doubt affect jurisprudence too. It is foreseen that the courts will soon be forced to re-interpret the existing legal framework, or apply a new one in order to establish liability arising from new technologies. The European authorities are already familiar with this upcoming need and adaptive measures have been taken.

In this respect, following its 5th Report (one every 5 years) on the application of the Directive 85/374/EEC, the European Commission has established an Expert Group composed of two formations: (a) The New Technologies Formation & (b) The

Product Liability Directive (PLD) Formation. The former is composed solely of independent academic experts and practitioners, gathering to assess whether the overall liability regime is adequate to facilitate the uptake of new technologies, whilst the latter is composed of representatives from member States, industry, consumer organisations, civil society and academia, assisting the Commission in interpreting, applying and possibly updating the PLD. Further developments and actions at EU level are expected within 2019 as the New Technologies Formation is expected to deliver its report by mid-2019, while the Commission is expected to issue a final Guidance Document on the Product Liability Directive (a respective preliminary

concept paper has already been drafted) within this year, as well.

Meanwhile, at a national level, Greece has recently introduced minor changes on the Greek Consumer's Protection Law (Greek Law 2251/1994, which adopted the Directive 85/374/EEC) through Greek Law 4512/2018; the greatest of these changes was the alteration of the definition of consumer (i.e. the person eligible for protection under the Greek Consumer's Protection Law), explicitly excluding from the Law's scope, any natural person who acts for professional purposes (relating to his trade, business, craft or freelancing profession).

Since Greek Law 2251/1994 (Consumer's Protection Law) came to force, there has been a difference of opinion in Greek case law due to the broad definition of the notion "consumer" (prescribed as "the final recipient of the product" prior to above Greek Law 4512/2018), debating whether any person acting for professional purposes is deemed a "consumer" or not. Following the adoption of Greek Law 4512/2018 which expressly excluded any person acting for professional purposes from the scope of Greek Consumer's Protection Law, it was expected that the Greek Courts would henceforth exclude any person acting for professional purposes from "the final recipient of the product".

However, under the recent ruling of the Supreme Court n. 1359/2018 (one of the

first to examine the notion "consumer" after the adoption of Greek Law 4512/2018 albeit without referring to this law), it was adjudicated that even a person acting for professional purposes may be deemed a "consumer" as long as he/she is the "final recipient of the product".

Under the factual background of the case that was only recently made public, a naval officer was injured as a result of the malfunction of the launching gear of the vessel's rescue boat, which caused a sudden drop of the rescue boat in the water. Following this incident, the naval officer along with the ship-owning company, appealed to the Greek Court, claiming compensation for the damage inflicted on the officer, claiming that the malfunction of the launching gear (and thus the injury of the naval officer) was due to the defectiveness of its design.

The above ruling came to the conclusion that the malfunction of the launching gear (and thus the injury of the naval officer) was due to the defectiveness of its design and was the first to decide that a third-party, unrelated to the defective product (the naval officer) was able to claim compensation for the damage that he suffered, which was due to the defective product, even though he did not meet the definition of a "consumer", clarifying that even "non-consumers" (referred to as "innocent bystanders") may apply for protection under the provisions of the Greek Consumer's Protection Law,

regarding product liability. Furthermore, pursuant to prior case law, the above ruling came to the conclusion that the selection of the applicable rule should be made on the basis of the time the damage was suffered (and not on the basis of the time the defective product was released to the market).

This interpretation made by the Supreme Court practically means that injuries or damages caused by a defective product to a person acting for professional purposes deemed a “consumer” at a time before the adoption of Greek Law 4512/2018 (January 2018), shall be subject the provisions of the Greek Consumer’s Protection Law, regarding product liability.

This development, in conjunction with the explicit acceptance of the inclusion of non-consumers third-parties (“innocent bystanders”), expands the scope of the producer’s liability for defective products. To the contrary, after the latest modification of the Greek Consumer’s Protection Law, a natural person who acts for professional purposes (relating to his trade, business, craft or freelancing profession) cannot be deemed a “consumer”, anymore.

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