

France – Conseil d'État – Judgment No 327449 – 04/10/2010

Non-contractual liability of hospital services – Application of Council Directive 85/374/EEC of 25 July 1985 concerning liability for defective products – Matter presenting serious difficulties – Reference for a preliminary ruling

Article 1 of Council Directive 85/374/EEC of 25 July 1985 sets down the general principle that manufacturers are liable for damage caused by defects in their products. However, by way of exception, Article 13 of the same directive allows victims to apply the system of contractual liability or the system of non-contractual liability.

During a hospital stay, a patient suffered severe burns caused by the heated mattress on which he was placed during surgery.

Although the hospital was not at fault, the administrative court of appeal ordered it to compensate the patient for the damage caused, thus applying a principle derived from a Conseil d'État judgment that found the public hospital service to be liable for any harmful consequences caused to users by defects in the healthcare appliances and products it uses, even if the hospital service was not at fault.

In the case in point, the Conseil d'État had to reconcile this solution (non-contractual liability without fault) with the legislation on defective products, which stipulates that the manufacturer should be held liable.

The issue at hand is that of knowing whether the exception provided for in Article 13 of the directive could be applied to a system of liability without fault for the public hospital service, which has a specific basis differing from that of the system of liability for defective products set down by the directive.

Consequently, the Conseil d'État decided to stay proceedings and refer the following questions to the European Court of Justice (Case C-495/10):

Having regard to the provisions of Article 13 thereof, does Directive 85/374/EEC of 25 July 1985 permit the implementation of a liability system based on the special situation of patients in public health establishments, in so far as it recognises, inter alia, that they have the right to obtain from such establishments, even in the absence of fault on the part of those establishments, compensation for injury caused by the failure of products and equipment which they use, without prejudice to the possibility for the establishment to seek indemnity from the producer?

Does Directive 85/374 limit the possibility for Member States to define the liability of persons who use defective equipment or products while providing services and, in so doing, cause damage to the recipient of those services?