

Product Liability - Austria

Product Liability from Organizational Shortcomings

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Sometimes even small things can have a big impact. In a recent case a screw on a circuit breaker that was not tightened properly (costing approximately €550) led to a chain reaction of failures, resulting in damages of €27,116.50 (partly for damaged equipment and partly for loss of income) and a groundbreaking Supreme Court decision.⁽¹⁾

The plaintiff operated a business at a fair. The defendant manufactured circuit breakers, producing thousands of units each year. No cases of incorrectly tightened screws on circuit breakers had been reported in the last five years.

In its decision the Supreme Court decided not to investigate some interesting legal problems relating to the defendant's possible contractual liability (eg, whether a valid exclusion of liability for slight negligence agreed between the manufacturer and the first retailer was also legally binding on a third party), arguing that the defendant was liable in tort.

Expanding on this argument, the court affirmed that a manufacturer's tortious liability is based on the concept of duty to take care. Therefore, manufacturers are obliged to ensure the safety of their products within the bounds of possibility and reasonability by means of proper organization of their businesses. For the assembly and examination of low-value units such as the circuit breaker in question, the defendant used only a single employee. This employee first fastened the screws with a regular screwdriver and then used a torque wrench to tighten the screws to a pre-set value. The employee then performed a voltage metering which showed whether the screws had been correctly fastened with the normal screwdriver. However, whether the screws had been properly tightened with the torque wrench was not examined, since such a check would have required a second employee.

Corporate bodies can be held liable for any damaging conduct resulting from any of their organs or any employee who holds a managerial, leading or supervisory position. However, liability for the misconduct of other employees is triggered only if such employee can be considered to be 'incapable' or 'dangerous' under Article 1315 of the Civil Code.

The Supreme Court ruled that although the requirements of Article 1315 had not been met, the defendant was still liable for breach of duty to take care since neither its organs nor its supervising employees (whom the court collectively regarded as 'experts' under Article 1299 of the Civil Code) had ordered the examination of the proper tightening of the screws by a second employee, despite the "significant dangers" emanating from faulty circuit breakers.

Finally, the court decided that the plaintiff was entitled to sue the defendant for damages because even though it was not the owner of the circuit breaker, it was a user of the device. Furthermore, the circuit breaker had been installed at the expense of the plaintiff (among others).

This decision shines a light on production and the importance of proper and adequate organization. However, it does not mean that from now on, manufacturers must take every possible step to check and recheck their products to avoid being held liable for breach of the duty to take care. Rather, the Supreme Court explicitly stated that the requirements regarding examination and control need to be considered in relation to the feasibility of additional measures and the probability of a faulty product being a source of danger. In this case feasibility was easily accepted because the defendant had never suggested that having a second employee check the screws would be unfeasible. However, the court's view that faulty circuit breakers would generally be the source of "significant dangers", disregarding the facts that the measure in question would prevent defects only from improperly tightened screws and that no such fault had occurred with the defendant's products in the last five years, does render this decision

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somewhat problematic.

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Endnotes

(1) Decision 6Ob 108/07m, February 27 2009.

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