CHAPTER THREE
LIABILITY FOR ONE'S OWN CONDUCT

3.1. ACTS AND OMISSIONS

3.1.4. GREEK AND DANISH LAW

Introductory Note

a) As stated in the General Introduction, Greek tort law has followed German and to an even greater extent Swiss law. According to Art. 914 of the Greek Civil Code anyone is liable for injury which he has unlawfully inflicted by his fault. As opposed to the BGB, but in accordance with the Swiss Civil Code, no specifically protected *Rechtsgüter* are enumerated. The general character of Art. 914 has facilitated subsequent developments in the case law and in legal writings, whereby it was turned into a general clause. For one thing, the concept of unlawfulness was enlarged to mean not only acting or failing to act in violation of a specific legislative or regulatory prohibition or order, but also acting or failing to act in violation of a general duty to act reasonably in accordance with the general spirit of the legal order, as shown in the cases reproduced below. Further, the number of personality rights has been multiplied, excessively according to some commentators.[1]

b) It would seem that the law of Nordic countries has had no difficulty either in developing a general concept of unlawfulness which encompasses acts and failures to act infringing a general duty to act with care. Such duty is understood in an objective sense, and accordingly children and the mentally ill can also be held liable for having acted culpably. Moreover, it would appear that Nordic law has developed the concept of risk creation earlier than elsewhere, which underpins risk-based liability regimes, where consequently no distinction between acts and omissions is made.[2] Even if this followed mainly from special Acts, courts have nonetheless recognized *strikt ansvar* (strict liability) as a general basis for liability, following the Norwegian example. A Danish case concerning injury caused by asbestos to workers in an Eternit-plant is reprinted below as a recent illustration.

[1] See for references, von Bar I at 28, para. 19. See also K.D. Kerameus and P.J. Kozyris, *Introduction to Greek law* (Deventer: Kluwer, 1993) at 114-117.

[2] Von Bar I at 275-6, para. 249.

Areios Pagos 1891/1984[3] **3.GR.6.-7.**
and
Areios Pagos 81/1991[4]

OMISSIONS

A failure to act gives rise to liability under Art. 914 of the Civil Code if the defendant was bound to act by virtue of an Act or a contract, if he or she violated the principle of good faith as understood in society or if he or she violated the general spirit of the legal order, a principle derived from Art. 5(1) of the Constitution which requires everyone to organize his or her conduct in such a way that it is not contra bonos mores.

A. Areios Pagos 1891/1984 **3.GR.6.**

Incubator without power

Facts: The plaintiff, a poultry farmer, operated an incubator which depended for its proper functioning on the continuous supply of power. The defendant power utility was contractually bound to the owner of the land which the plaintiff was leasing for its operations, but not to the plaintiff itself. As a result of a power cut which was made without the customary prior notice, the plaintiff lost 60 % of the eggs that were in the incubators at the time of the power cut. He brought a claim in tort against the defendant.

Held: The court of appeal allowed the plaintiff's claim. The Areios Pagos upheld the judgment of the court of appeal.

Judgment: "According to Art. 914 of the (AK) Civil Code, anyone who unlawfully causes damage to another person through a violation of the law is liable in damages. According to the aforementioned provision, tort and therefore the obligation to compensate requires, apart from the existence of the damage itself, that the damage was caused by the defendant in violation of the law; intention is also required in the form of either purpose or negligence (Art. 330 AK). The unlawful behaviour of the defendant must consist in an act or omission and finally there must be a causal link between the harmful act or omission and the damage itself. The damage thus caused is unlawful when a right of the injured person which is protected by law — in this case ownership (Art. 973, 1099 AK) — is breached by an act or omission of the defendant. An intentional omission gives rise to an obligation to compensate damage when the defendant was bound to act by virtue of the law, a juridical act or the principle of *good faith* as understood in society, especially when he was the one who created a harmful situation, while he was under an obligation to take all the necessary measures in order to avoid causing any damage to a third party, before or after creating

[3] Ephimeris Nomikon 52/1985, 754. Translation by P. Giotopoulos.
[4] Elleniki Dikaiosyni 32/1991, 1215. Translation by P. Giotopoulos.

the harmful situation.

Accordingly, the supplier of power to a third party is obliged to give timely notice, in case it causes a power cut, however temporary, since a power cut can undoubtedly cause damage, not only to the persons to whom it is contractually bound but also to the consumers of electricity in general, whether they have signed a relevant contract or not. The latter category includes lessees of buildings where power is supplied [by the lessor as part of the lease]. The supplier knows that power is used by others besides the persons with whom it has a contractual relationship and therefore, in the case of a power cut, it must take all the necessary measures in order to avoid causing damage to them too; those [measures] must be in accordance with the principle of *good faith* as understood in society. The obligation to take such measures exists for the benefit of, and can be invoked by, not only the one to whom the supplier is bound by contract, but by anyone who can potentially suffer damage. This obligation cannot be revoked, even if the contracting parties have agreed otherwise. Such a clause, if included in the contract between the supplier and the lessor [of the building], leads to the illegality of the contract."

B. Areios Pagos 81/1991 **3.GR.7.**

Pesticide

Facts: The plaintiff bought a pesticide manufactured by the defendant. He followed the instructions on the product label and sprayed the product on his trees. The toxicity of the pesticide was such that it caused damage to the trees and their fruit. The plaintiffs brought a claim in tort against the defendant.

Held: The court of appeal allowed the plaintiff's claim. The Areios Pagos upheld the judgment of the court of appeal.

Judgment: "From Art. 5 of the Constitution, in conjunction with Art. 200, 281, 297, 298 and 914 AK (Civil Code), a general principle of law is derived according to which any act or omission which causes damage or gives rise to liability, as long as (in general) it was a result of the fault [act or omission] of the person causing the damage, violates not only this specific provision [Art. 914 AK] but also the general spirit of the legal order, which requires anyone to organize his or her conduct in such a way that it is not *contra bonos mores.* Liability for damages arises if this requirement is not met, even though there may be no contract between the person who causes the damage and the victim.

According to the aforementioned provisions, a manufacturer (i.e. the one who manufactures and releases its products) is liable for damages caused to the final consumer or to a third person as a result of a defect in its product arising during its use. Consequently, the manufacturer, according to *boni mores*, is under a general obligation to take all the appropriate and necessary measures to protect any third person from the risks caused by the release of its product. It is also under an obligation to examine whether its product is defective. If it fails to do so, such omission is to be considered as the manufacture of a defective product which, provided other requirements of tort liability are met, gives rise to liability for damages."

Note

In the first case reproduced above, it is worth noting that the Areios Pagos used the obligation to give notice as a precise basis to establish a link between plaintiff and

defendant and so impose liability on the latter.[5] It appears that the law is not settled on the more general issue of liability for "pure economic losses".[6]

As to the second case, see also Directive 85/374 on Product Liability.[7]

Højesteretsdom, 27 October 1989[8] **3.DK.8.**
Dansk Eternit Fabrik Ltd. v. *Möller*

LIABILITY FOR OMISSIONS

Asbestos in the workplace

An employer is liable in damages to workers for the illness which they suffered, having allowed them to be exposed to asbestos in the workplace over a long period of time.

Facts: The defendant, Dansk Eternit Fabrik Ltd, founded in 1927, produced eternite as of 1928 at its factory in Aalborg, in the shape of tiles for covering roofs and house fronts. For some time during the period fire-resistant tiles (or slacks) (Navilite) were produced for use in the construction and shipping industry. Except for the period 1941-45, the products have been made of between 10 and 40% asbestos. From around 1975, asbestos was gradually replaced by other materials, so that since 1 January 1988 the production has been taking place without use of asbestos at all. In the period during which asbestos was used in the fabrication of Eternite, the defendant's employees were subjected to inhalation of asbestos dust; some of them, having contracted asbestosis and in some cases cancer, sued the factory for compensation in addition to the compensation they already received from the insurance for accidents at work.

Held: While the court of appeal decided the issue of liability from a *culpa* perspective, the Højesteret found the defendant liable on the basis of the following criteria: the business activities of Dansk Eternitfabrik was considerable, management was familiar with the dangers of the production, the affected workers suffered serious complications and use of asbestos in the business' production eventually had to stop.

Judgment: "**Liability**

[5] That sets the above case apart from the cable cases included *supra*, Chapter II, **2.E.36.**, **2.G.37.** and **2.F.41.-42.**, where the alleged fault lay in the very cutting of a power cable or gas main.

[6] K.D. Kerameus and K. Roussos, "Confines and limitation of damages under the Greek law of tort" (1995) 48 RHDI 253 at 245.

[7] *Infra*, Chapter VI, **6.EC.33.**

[8] UfR 1989A, 1108 with a comment of Judge Pedersen in UfR 1990B, 241. See von Bar I at 277, para. 250, who also cites the *Aalborg monastery* case (HD, 10 January 1968, UfR 1968A, 84), relating to the liability of the owner of a piece of land for damage caused as a result of foundation work on the land. Translation by M. Ducoulombier and M. Tranälv.

The appellant is a large manufacturing undertaking, which over many years used large amounts of asbestos in the manufacture of its products; its workers were, to a large extent, submitted to inhalation of asbestos dust. It has been known for a long time that prolonged submission to asbestos dust can cause serious occupational diseases with significant risks for life and health. The management of the undertaking knew about this at an early stage; it had every now and then to submit reports about cases of asbestos in connection with accident and worker compensation law. The steadily growing knowledge about the dangers of asbestos has led the appellant to change its production [process] so that the use of asbestos ceased as of 1 January 1988.

Under these conditions the *Højesteret* finds that the appellant ought to be liable for the consequences of illnesses that the workers employed by the undertaking may be presumed to have contracted through the impact of asbestos dust.

Prescription

According to the declaration from the *Retslagerådet* (medico-legal council) dated 4 May 1988, a period of 10 to 20 years usually passes before it is possible to show clear changes in the lungs by means of X-rays in the case of asbestosis, and asbestos-conditioned cancer illnesses have only rarely been seen after less than 20 years of exposure. Indeed, according to the *Retslagerådet* declarations concerning the individual claimants in the case, it is clear that, with a few exceptions, the exposure causing injury has taken place before 1970. The 20-year statutory limitation pursuant to Danske Lov 5-14-4 would therefore often have as a consequence that claims for compensation for such health damage would be meaningless unless the statutory limitation is suspended to allow that the limitation period only runs from the moment in time when the damage is established. As the wording of Danske Lov's statutory limitation does not exclude such suspension of the limitation period, the Højesteret accepts that any claims which the claimants may have cannot be considered time-barred, whether in part or in full.

Causation

On the basis of the case before it, the Højesteret finds no reason to vary the decision taken by the court of appeal as regards causation, including the court of appeal's assessment of the judgment made by the doctors with respect to the importance of a possible consumption of tobacco as a contributory cause of the injury to health that has been established.

Contributory Negligence

The Højesteret considers that there have been no circumstances linked to the claimants which could justify the denial or the reduction of compensation..."