

Case law

Case Details

National ID: Court of Justice (Third Chamber), Judgement C 578/19

Member State: European Union

Common Name: Kuoni Travel

Decision type: Court of Justice decision

Decision date: 18/03/2021

Court: Court of Justice

Subject:

Plaintiff:

Defendant:

Keywords: package travel, consumer contract, travel organizer, liability, compensation, supplier, exemption

Directive Articles

Package Travel Directive, [Article 5, 2](#). Package Travel Directive, [Article 5, 2.](#), - Package Travel Directive, [Article 5, 2.](#), - Package Travel Directive, [Article 5, 2.](#), - Package Travel Directive, [Article 5, 2](#). Package Travel Directive, [Article 5, 2](#). Package Travel Directive, [Article 5, 2](#).

Headnote

ECLI identifier: ECLI:EU:C:2021:213

A package travel contract was concluded between a travel agency and a couple. During their stay at the hotel, one of them was assaulted by one of the employees, for which he subsequently sued the travel agency, claiming compensation for the damages suffered. The agency claimed exemption from liability, which was accepted until it reached the Supreme Court, which referred a question to the CJEU for a preliminary ruling on the interpretation of Article 5.2 of Directive 90/314/EEC.

Facts

A couple arranged a package holiday with a company. The company, according to the contract, was responsible for any problems caused by it and by the other companies contracted through it but was not responsible for any problems caused by the consumers. During her stay at the hotel, the woman was assaulted and raped by a hotel employee. The couple sued the travel agency, demanding compensation for damages. The company argued that it was not responsible for the behaviour of the employees of the contracted hotel. Both the Court of First Instance and the Court of Appeal ruled in favour of the travel agency. The Supreme Court did so too, although a dissenting opinion was raised, which led to a preliminary ruling before the CJEU.

Legal issue

The Supreme Court decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

Where there has been a failure to perform or an improper performance of the obligations under the contract of an organiser or retailer with a consumer to provide a package holiday to which Directive 90/314 applies, and that failure to perform or improper performance is the result of the actions of an employee of a hotel company which is a provider of services to which that contract relates:

is there scope for the application of the defence set out in the second part of the third alinea to Article 5(2) of Directive 90/314; and, if so, by which criteria is the national court to assess whether that defence applies?

Where an organiser or retailer enters a contract with a consumer to provide a package holiday to which Directive 90/314 applies, and where a hotel company provides services to which that contract relates, is an employee of that hotel company himself to be considered a “supplier of services” for the purposes of the defence under Article 5(2), third alinea of Directive 90/314?

Decision

The Court held that the third indent of Article 5(2) of Directive 90/314 cannot be relied on in order to exempt organisers from their obligation to make reparation for the damage suffered by consumers as a result of the non-performance or improper performance of obligations arising from package travel contracts concluded with those organisers, where those failures are the result of acts or omissions of employees of suppliers of services performing those obligations.

In the light of all the foregoing considerations, the answer to the questions referred to is that the third indent of Article 5(2) of Directive 90/314, in so far as it provides for a ground for exemption from liability of an organiser of package travel for the proper performance of the obligations arising from a contract relating to such travel, concluded between that organiser and a consumer and governed by that directive, must be interpreted as meaning that, in the event of non-performance or improper performance of those obligations, which is the result of the actions of an employee of a supplier of services performing that contract:

that employee cannot be regarded as a supplier of services for the purposes of the application of that provision, and

the organiser cannot be exempted from its liability arising from such non-performance or improper performance, pursuant to that provision.

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Result

The third indent of Article 5(2) of Council Directive 90/314/EEC in so far as it provides for a ground for exemption from liability of an organiser of package travel for the proper performance of the obligations arising from a contract relating to such travel, concluded between that organiser and a consumer and governed by that directive, must be interpreted as meaning that, in the event of non-performance or improper performance of those obligations, which is the result of the actions of an employee of a supplier of services performing that contract:

that employee cannot be regarded as a supplier of services for the purposes of the application of that provision, and

the organiser cannot be exempted from its liability arising from such non-performance or improper performance, pursuant to that provision.