

Case law

Case Details

National ID: 141/2002

Member State: Spain

Common Name: Mateo V. M, Antonio V. S., José M. P., María G. F., José Luis R. v “Oci, Educación y Cultura, S. L.”

Decision type: Other

Decision date: 11/03/2002

Court: Audiencia Provincial (Appellate court, Balears)

Subject:

Plaintiff:

Defendant:

Keywords:

Directive Articles

Package Travel Directive, [Article 1](#) Package Travel Directive, [Article 2, 1.](#)

Headnote

A contract for a study trip to learn a language being hosted by a family in a different country cannot be considered a package travel within the law, in accordance with the judgment of the European Court of Justice of 11th February 1999, for the different services provided are considered secondary to the main one, and therefore there are not at least two of the services required by law.

Facts

In June 1999 several parents contracted a 4 weeks study trip in the United States so that their children could learn English within a host family. To that purpose, they signed a contract so that the organizer of that trip booked the flights, the hours of lessons with a tutor, selected the host families, decided about the excursions that they would have, and so forth. In the opinion of the parents, the contracting party, there was a failure in providing some of the services agreed by contract (lack of information in advance about the host families, several Spanish people hosted in the same house, lessons provided in a basement and not in a high school, lack of interaction within the lessons, cancellation of some excursions, excessive pricing for the flight tickets, and so forth.). In the judgment, of all those, it was only considered as proved, after a detailed examination of the evidence, the lack of information on the host families in some specific cases. Due to the supposed infringements the contracting party demanded a full refund (1,977 euros), which was totally dismissed in the judgement on different grounds.

Legal issue

The law 21/1995, of 6th July meant the incorporation of the Directive 90/314/EEC into the Spanish Law on package travels, which as well as harmonizing legislations intends to increase the protection of the consumers. This law, in as much as it establishes rules that affect the improvement, effectiveness and execution of the package travel contract, it has a bearing too on general rules of contract contained in the Civil Code and in the Commercial Code, as it happens with the scope of the law and in the definition of package travel.

From the definition of the law (art. 2.1) and the Directive results that “the package travel should count with, at least, two main services of the ones mentioned, what implies that there will not be a package travel if one of the two only services is secondary to the other one, the main one, to which it is functionally subordinated. There will be package travel when the services provided are of equal relevance and have value in themselves; moreover, all these services have to have been offered to the traveler as a package, as a unitary product, being the agency the one to manage its coordination and organization, being the usual practice that the combined trip is offered for an overall price”.

The court does not consider this visit to learn a language as a package travel, since as it is expressed by ECJ in judgment of 11th February 1999, the visit of a student to a host family where he is going to be treated as one more member of that family, its length and characteristics without charge, makes it impossible to be identified as “accommodation” in the sense established by the Directive. Besides, “the choice of school on the part of the organizer of the package travel cannot be considered in itself neither as a tourist service in the sense that the law establishes, since the specific purpose of this service, offered to the students that take part in international student’s exchanges, consists on the training of these students. The choice of a host family for the time of the visit, is an accessory service that does not belong to the concept of other tourist services, in as much as the preparation of the necessary documents to visit and stay in another country and the courses that the students undertake with their parents before the trip in order to prepare themselves for life abroad are not either, because they do not fulfill the criteria of representing a significant part of the package travel”.

To conclude, the contractual liability in this case has to be examined according to the civil code and the general contract law, where whoever incurs in fraud or negligence in the performance of their duties is subjected to compensation (arts. 1101 and 1104 civil code). Although there was an irregular performance regarding the right of information, the judgment considers that they were very isolated cases, that the students were not neglected at any time and that the defendant acted promptly on the face of unforeseen events, so the petition for full refund is rejected. It was not proved either, as the law requires, the existence of the damage and its quantity, so this negligence does not involve compensation for the defendants, although it does justify that the costs of the hearing are not imposed in the first instance nor in the appeal.

Decision

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