

## Case law

### Case Details

**National ID:** link

**Member State:** Spain

**Common Name:** Community of Madrid v "Travelplan S.A."

**Decision type:** Other

**Decision date:** 08/10/2001

**Court:** Tribunal Supremo (Supreme court)

**Subject:**

**Plaintiff:**

**Defendant:**

**Keywords:**

### Directive Articles

Package Travel Directive, [Article 5, 1.](#)

### Headnote

1. There is no strict liability in the system for civil liability of organizers and retailers regarding the breach of contractual duties in connection to package travels. The non-performance has to be due to fraud or negligence of the person accused.
2. The criterion for civil joint and several liability of organizers and retailers that can be kept within an interpretation of the art. 11 of the law 21/1995 of transposition of the Directive, does not embrace the power to sanction that the Administration has. This should sanction only those who act with negligence or bad faith, and is a separate liability.

### Facts

Due to the cancellation without reason of the flight between Madrid and Miami and its delay until the following day, the organizer, "Travelplan S.A." was sentenced to pay 1.500 euros by the General Department for Tourism of the Community of Madrid on the grounds of breach of the contract and its clauses, in application of the art. 39.1 of the law 8/1995, of 28th March, on tourism in the Community of Madrid. "Travelplan S.A." asked the Administrative Court for the invalidation of this resolution, which was granted by the court. The Community of Madrid made an appeal before the Supreme Court asking for the correct legal doctrine to be established in connection with art. 11 of the law 21/1995 on package travels, in the sense that the liability of the organizer agency can cause the intervention of the Administrative authority to sanction, if an administrative irregularity takes place, independently from the potential further actions of the consumer before the civil jurisdiction. The agency, "Travelplan S.A." claimed that although the Administration can impose sanctions to the agencies if they breach an administrative rule, this administrative liability cannot be joint and several in the sense of art. 11.1 of the law 21/1995, that is only concerned with civil liability, which only the consumer can apply to.

### Legal issue

The Supreme Court rejects the possibility that the administrative bodies sanctioned a travel organizer agency on the grounds of the delay of a flight, because the ius puniendi of the State is ruled by the principle of negligence of the offender, without it, it is not possible to accuse a person.

According to this judgment, the Additional Provision first of the law 21/1995 on combined trips establishes a punishing regime for the lack of compliance to the duties of organizers or retailers that have to respond to fraud or culpability of the subject accused "since there is no system of strict liability independent from the negligence at present, as it is clearly stated on the article 130 of the law 30/1992, of 26th November, on common administrative procedures". Therefore the art. 11 of the law 21/1995 cannot be interpreted against those principles; this article does not establish a system of objective strict liability in the area of punishment, but refers to the civil liability of both, making possible that the consumer can claim damages against any of them without prejudice of the action of reimbursement of whoever pays against the real person who breach his duties. This is not opposed neither to art. 51 of the Constitution nor to the exposition of reasons of the aforementioned Law 21/1995, since the protection of the consumers which both declare is within the general limits that the code imposes to the administrative powers.

"This does not mean that the legal personality cannot be sanctioned for the non performance to their duties. The travel agencies as well as the transport companies or hotels, being individuals or legal entities, will be liable for the non performance of their duties, but their liability within the area for sanctions will be only if it is down to it the action that breaches the law".

### Decision

Full text: [Full text](#)

### Related Cases

No results available

### Legal Literature

No results available

### Result