

## Rechtssachenbeschreibung

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Nationale Kennung	6 Ob 295/98w
Mitgliedstaat	Österreich
Gebräuchliche Bezeichnung	link
Art des Beschlusses	Sonstiges
Beschlussdatum	25/03/1999
Gericht	Oberster Gerichtshof
Betreff	
Kläger	
Beklagter	
Schlagworte	

### Artikel der Richtlinie

Package Travel Directive, [Article 1](#) Package Travel Directive, [Article 2, 1.](#) Package Travel Directive, [Article 2, 2.](#) Package Travel Directive, [Article 2, 3.](#)

### Leitsatz

1. Die Vercharterung einer Segelyacht zu Vergnügungsreisen auf dem Meer ist dann Personenbeförderung zur See und keine Vermietung der Yacht, wenn der Bootseigentümer selbst (hier mit seiner Mannschaft) die Navigation als Kapitän übernimmt; dies gilt auch dann, wenn der Vercharterer als Reiseveranstalter nach § 31b KSchG zu qualifizieren ist.
2. Da der Vercharterer unabhängig von der Größe des Betriebes ein Grundhandelsgewerbe betreibt, steht ihm beim Verkauf der Segelyacht der Einwand der laesio enormis (§ 934 ABGB) nicht zur Verfügung (§ 351a HGB).
3. Ein Reiseveranstaltungsvertrag ist ein Vertrag sui generis, der wegen seiner Rechtsbehalte einem Werkvertrag ähnelt.
4. Die Bestimmung des § 31b KSchG, die auf die Pauschalreise-RL 90/314/EWG zurückgeht, dient dem Konsumentenschutz.

### Sachverhalt

The plaintiff sold the defendant a yacht for 1.4 million Austrian Schillings. Prior to the sale, he had used the vessel, inter alia, to transport paying guests on the Mediterranean Sea for rest and relaxation. He also provided the skipper and crew for these tours, though the passengers were free to decide upon the trip destination. The plaintiff's lawsuit claimed first and foremost for payment of 950,000 Austrian Schillings over and above the 1.4 million, because, in his view, a purchase price of 2.35 million Austrian Schillings had been agreed. In event he objected that he had lost more than half of the real value (laesio enormis) in accordance with § 934 ABGB and demanded that the yacht be returned to him. As grounds for invoking § 934 ABGB, he argued that the boat's real value was 3 million Austrian Schillings and that he had therefore only received under half of the yacht's actual value. The defendant applied for the case to be dismissed, stating that the agreed purchase price was 1.4 million. With regard to the contingency claim, the defendant argued that the plaintiff should be regarded as a trader as per § 1 para 2 line 5 HGB and was therefore not entitled to invoke laesio enormis (the fact that he had lost more than half of the real value) under § 351a HGB.

The Court of First Instance made clear that 1.4 million Austrian Schillings was indeed the agreed purchase price. It thus rejected the principal claim. With regard to the contingency claim, it concurred with the defendant's arguments. The Court of Appeal upheld the ruling.

#### Rechtsfrage

#### Entscheidung

The plaintiff's appeal to the OGH was unsuccessful.

The OGH had to determine whether the plaintiff should be regarded as a trader as per § 1 para 2 line 5 HGB on the basis that he chartered the yacht. If he was to be regarded as a trader, he could not, under § 351a KSchG, invoke *laesio enormis*. Alongside several other issues, the OGH explored the question of whether characterising the plaintiff as a tour operator under § 31b KSchG meant that he could not be categorised as a trader as per § 1 para 2 line 5 HGB. Following extensive consultation of the relevant literature, the presiding judges ruled that, in view of the "difficulties in categorising dogmatically the different types of contract developed in practice through private sales", there was no sound argument as to why chartering the yacht should not be characterised as a commercial activity if the person chartering the yacht actively transports passengers himself. Even the supplementary services offered by the supplier that make him a tour operator, as well as the fact that the business is a free-time activity, do not mean that this should not be viewed as a commercial activity. There can equally be no serious doubts that a city tour by bus or taxi constitutes transporting people on land. Thus, there was no logical reason as to why a similar tour by boat should be viewed differently. The variety of travel services on offer does not alter the fact that transportation is part of the overall contract (whether a travel or charter contract), meaning that the plaintiff is (legally) acting as a trader. From the legal definitions contained in § 31b KSchG, it is clear that transporting travellers is a key service provided by a tour operator. This applies equally in the case of chartering a yacht for a sailing cruise at sea. In summing up, the presiding judges ruled that the supplementary services offered by the supplier (in addition to transporting the guests) did not mean that he should not be regarded as a trader as per § 1 para 2 line 5 HGB.

Volltext: [Volltext](#)

#### Verbundene Rechtssachen

Keine Ergebnisse verfügbar

#### Rechtsliteratur

Keine Ergebnisse verfügbar

#### Ergebnis