

Case law**Case Details****National ID:** no. 460/1999**Member State:** Italy**Common Name:** Ist. italo cinese scambi economici e cult. v. Soc. Turisanda**Decision type:** Other**Decision date:** 19/01/1999**Court:** Corte di cassazione (Supreme court)**Subject:****Plaintiff:****Defendant:****Keywords:****Directive Articles**Package Travel Directive, [Article 1](#)**Headnote**

The Brussels Convention of 23 April 1970, brought into force by Law no. 1084 of 27 December 1997 - which provides the rules on the travel contract in a double kind, contract of tour operator and contract of travel intermediary - does not require that one of the contractual party is the traveller-customer. In fact, having regard to the systematic interpretation of the travel intermediary as an agent with representation and, consequently, to the legal effects of the contractual negotiation transferred from the intermediary to the traveller, the Brussels Convention shall be applied even to a contract between tour operators and travel intermediaries.

Facts

The "Istituto italo-cinese per gli scambi economici e culturali" has brought an action before the Corte di cassazione asking the judges to determine whether the Brussels Convention is to be applied to contracts concluded between entrepreneurs.

As to the decision of Corte di Appello di Milano that reversed the previous sentence of Tribunale di Milano, the limitation under Brussels Convention at Art. 30 had been applied to the credit for lire 8.898.161 of "Istituto italo-cinese per gli scambi economici e culturali" against the company Turisanda S.r.l.

Legal issue

The Brussels Convention of 23 April 1970, brought into force by Law no. 1084 of 27 December 1997 which provides the rules on the travel contract in a double kind, contract of tour operator and contract of travel intermediary does not require that one of the contractual party is the traveller-customer.

Whilst the notion of organiser and travel intermediary (as the habitual exercise of organising and intermediating in travel contracts) presents some problems of qualification because it is not associated with the requirement of the professional activity, the tour operators and the travel intermediaries have been interpreted to be entrepreneurs.

According to Art.17 by which each contract concluded by the travel intermediary is considered as concluded by the traveller, the travel intermediary has been interpreted as an agent with representation.

That interpretation grants the intermediary from the non fulfilment of the travel operator, for which he is liable only for negligence of professional care, while the traveller can pursue remedies directly against the travel operator.

Consequently, if the legal effects of the contractual negotiation are transferred from the intermediary to the traveller, the Brussels Convention shall be applied even to a contract between tour operators and travel intermediaries.

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