

Case law

Case Details

National ID: No. 2343/04

Member State: Italy

Common Name: link

Decision type: Other

Decision date: 09/02/2005

Court: Giudice di pace (Others, Pozzuoli (Napoli))

Subject:

Plaintiff:

Defendant:

Keywords:

Directive Articles

Package Travel Directive, [Article 5, 1](#). Package Travel Directive, [Article 5, 2](#).

Headnote

The decision of the Giudice di Pace di Pozzuoli (Naples) concerns the interpretation of the article 5 of the Council Directive of 13 June 1990 on package travel, package holidays and package tours (90/314/EEC).

He clarified that the notion of damage of the Directive 90/314/EEC includes both the economic damage and the moral prejudice occurred to the consumers due to the non-performance of a contract for a package holiday.

The decision is in accordance with the Judgment of the European Court Justice in Case C-168/00, Simone Leitner v. TUI Deutschland GmbH & Co KG.

In such case, the Court of first instance awarded the claimant damages only for the physical pain and suffering caused by the food poisoning and dismissed the remainder of the application, based on the damage caused by loss of enjoyment of the holidays - a different kind of non-material damage - because there is no express provision in Austrian law for compensation for damage of that kind.

Facts

The plaintiffs have bought a 9 days package holiday to visit the island of "Ranveli" (Maldives). They paid the whole amount of the holiday to the travel agent. Nevertheless, when the plaintiffs arrived in Ranveli, they discovered that the type of accommodation (including the swimming pool and the disco) the island itself were far from the pictures provided in the brochures.

The travellers claimed the economic and non-economic (i.e. danni morali) damages arising from the non-performance of the contractual services.

Legal issue

The Giudice di Pace di Pozzuoli (Naples) interpreted the article 5 of the Council Directive of 13 June 1990 on package travel, package holidays and package tours (90/314/EEC).

The judge considered the following paragraph of the article 5: "In the matter of damage other than personal injury resulting from the non-performance or improper performance of the services involved in the package, the Member States may allow compensation to be limited under the contract. Such limitation shall not be unreasonable".

The decision also mention the rules provided by the Legislative Decree 17 March 1995, n. 111 that has implemented the Directive in the Italian Legal System. The Legislative Decree has been published in the Official Journal 14 April 1995, n. 88.

The Giudice di pace di Pozzuoli stated that this case falls under the definition of "package holiday" in accordance with the definition of the Council Directive of 13 June 1990 on package travel, package holidays and package tours (90/314/EEC).

Under such provisions, consumer any person who takes or agrees to take the package.

Then, the judge concluded and clarified that the notion of damage of the Directive 90/314/EEC includes the moral prejudice occurred to the consumers due to the non-performance of a contract for a package holiday. He liquidated the moral prejudice in the sum of € 1.000,00.

Decision

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