

## Case law

### Case Details

**National ID:** 08B384

**Member State:** Portugal

**Common Name:** AA Lda v. BB Lda.

**Decision type:** Other

**Decision date:** 30/10/2008

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

**Subject:**

**Plaintiff:**

**Defendant:**

**Keywords:**

### Directive Articles

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

### Headnote

The consumer's right to rescind the contract at any time and to be reimbursed by the travel agency in the amount which was paid in advance is provided by DL 209/97, art. 29 and does not apply to the so-called "viagens por medida / custom-made travels" but only to the "viagens organizadas / package travels".

### Facts

BB Ltd engaged the services of AA Ltd (travel agency) to carry out a group travel. The services provided by the agency included in addition to fly tickets, hotel accommodations and a New Year's party with a concert of a famous Brazilian singer. More than a month before the date of the travel BB notified AA that part of the passengers could not travel. However AA negligently failed to communicate the change in the number of air passengers to the airline. AA claimed against BB among other for payment of compensation in an amount to be fixed by the Court, for the damages caused voluntarily and intentionally to the claimant. The defendant alleged in counterclaim that the claimant according to DL 209/97, art. 29 is liable for reimbursement for fly tickets and hotel vouchers that the claimant unlawfully retains, even if the claimant did not use them.

### Legal issue

The Supreme Court ratified the decision of the Court of Appeal of Lisbon in the sense that art. 29 of DL 209/97 is not applicable to the case. This disposition is for the case when the client can rescind at any time, so that the agency has to reimburse the amount paid in advance, with deduction of the burden and expenses to the agency regarding the beginning of the contract performance and the rescission and with deduction also of a percentage regarding the price of the service not superior than 15%. This disposition focuses thus on the so-called "viagens organizadas / package travels" (art. 17 para 2; art. 20). In package travels the travel agency offers a particular travel and takes the risk of its own offer considering for example the number of clients/participants. According to the Court this disposition is not applicable to the so-called "viagens por medida / custom-made travels", i.e. travels that were requested by the clients to satisfy his own desires, when the buyer/client in his own initiative makes his proposal to an agency and takes the risk himself.

### Decision

Full text: [Full text](#)

### Related Cases

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### Legal Literature

No results available

### Result