

## Case Details

### Case Details

National ID	2006/2008-7
Estado-Membro	Portugal
Common Name	Consumers v. Travel Agency T. S.A.
Decision type	Outro
Decision date	24/06/2008
Tribunal	Tribunal da Relação
Assunto	
Requerente	
Requerido	
Palavras-chave	

### Directive Articles

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

### Headnote

The differentiation between the services of “viagens organizadas / package travels” and “viagens por medida / custom-made travels” as stated in DL 209/97 (art. 17, para 2 and 3) is imperative in order to determine which liability regime is applicable to the travel agencies.

### Facts

Five consumers contracted with the travel agency T. S.A. a so-called “pacote turístico / package tour”. However some unexpected events occurred, such as delays in the flight (2 hours) and flight back (48 hours) and impossibility to stay in the location contracted due to overbooking in the hotel. The consumers claimed compensation for the damages in consequence of these events and requested the dispositions of Directive 90/314 to be applied.

### Legal issue

### Decisão

Based on the proven facts in this case, the Court held that:

- The travel agency is not liable for the delay in the flights in this case, as this case handles not a package tour, but a custom-made package as foreseen in DL 209/97, art. 17, para 2 and para 3. The fact that the claimants opted for a flight and for a particular hotel, which were included in the travel catalogues of the touristic operator, does not remove the custom-made characteristic of the tour, as it was organized according to the needs of the consumers (the travel tour acquired by the claimants was requested having the catalogue as a reference, but the travel tour was custom-made and only had in common with other possible package travels the same flight and same hotel);

- According to Decree-Law 209/97, art. 39 (applicable to the generality of contracts between travel agencies and their clients), the travel agency is liable for defective performance of the contract if it fails to ensure the stay of claimants during a given period at a certain hotel. However there is a distinction between “package travel / viagens organizadas” (DL art. 17 para 2) and “viagens por medida / custom-made travel” (DL art. 17 para 3), which is relevant for liability matters. In this decision, the Court said that the liability of the defendant is based in the Civil

Code, art. 799 (presumption of negligence) and in DL 209/97, art. 39, para 5 (applicable to other touristic travels as e.g. the custom-made travels), so that the agencies are liable for the negligent choice of service providers if these were not suggested by the clients, thus liability for the choice of the hotel that was overbooked in the given period. Compensation for material damages as well for immaterial damages (“dano das férias estragadas”) were granted.

- Furthermore there is no legal ground to the direct application of Directive 90/314 as requested by the consumers. The requirements to direct application of a European directive were not fulfilled in this case. Apart from this, the rules of the Directive “are not enough clear or precise”, resulting in implementation difficulties for the Member States as the adoption of different notions for the concepts of package travel (“viagem organizada”).

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