

Case law

Case Details

National ID: III CZP 79/2010

Member State: Poland

Common Name: Anna S. I Szymon S. v. „A.S.” Biuro Podróży I.S.S.S. sp.j

Decision type: Other

Decision date: 19/11/2010

Court: Sąd Najwyższy (Supreme court)

Subject:

Plaintiff:

Defendant:

Keywords:

Directive Articles

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

Headnote

The provision of Art. 11a of the Act of 29 August 1997 on Tourists Services (single version Dz.U.2004.223.2268 with amend.) may be a legal basis for liability of the tour organizer against the client for non-material damage in a form of wasted holiday.

Facts

The plaintiffs Anna S. and Szymon S. concluded with a defendant „A.S.” Biuro Podróży I.S.S.S. sp.j. a contract for tourist services - the package tour to Egypt from 2 to 9 October 2007 against the price of 1890 zlotys per person.

Plaintiffs found out upon arrivals to Egypt that the defendant does not booked the hotel place. They attempt unsuccessfully contact to a resident in Poland and Egypt. After several hours they were transported to another hotel and housed in a room for a hotel staff. The room was located in a basement, dirty, with used bedding, and a view to a slope. On the second night tourists were moved to another room, which was meting contractual standards, but they were accommodated with another couple which was held a honeymoon in a room equipped with marriage-bed, sofa and additional bed. The conditions do not guarantee any privacy or quiet. Both couples were embarrassed. Finally on the last day plaintiffs were relocated to a separate double room, but not in a contracted hotel.

During the stay in Egypt plaintiffs reported a complaint, confirmed in written on 9 November 2007. They required reimbursement of an amount of 2/3 package price and a compensation for non-material damage 5000 zlotys pro person. In a lack of respond from a tour agent, they decided to claim a reimbursement and compensation.

The Court of First Instance (the District Court) adjudged reimbursement of an amount of 945 zlotys and in a dismissed the claim in a remaining part. The court explained that compensation for non-material damage is not of a contractual character, but the defendant's liability in this case results from a contract. Both parties appealed from the judgment. Plaintiffs pointed out an infringement of Art. 11a Act of 29 August 1997 on the tourist services (further: ATS) and Art. 23, 24 and 448 PICC. The Court of Second Instance conceived serious doubts and directed a legal question to a Supreme Court.

Legal issue

The Supreme Court considered a legal question concerning a legal basis of a travel agent liability for a non-material damage expressed as “wasted holiday”, which might be Art. 11 a.1 Act on Tourist Services or Art. 448 in conjunction with Art 24 § 1 Polish Civil Code.

The Supreme Court noticed an increasing number of claims for compensation for non-material damage being a result of non-performance or improper performance of a package travel contract. A non-material character of an infringement resulting from a contract causes in the Polish system a legal problem. There is a view prevailing in the Polish legal system that the compensation for non-material damage should be provided by law. And damages for non-material infringement are provided by a tort regime not by a contractual regime. However, the contracting parties may provide liability for non-material damage resulting from failure of performance of a contract (art 3531 PICC – freedom of contract).

It should be noted the exceptional character of the protection of personal interests. Mechanisms of their protection should be implemented with a due care and restraint and without an artificial expand of a catalogue of personal interests. It is generally accepted, that personal interests arise from an intangible values closely related to a man, including his physical and mental integrity, creativity, fulfilment of human individuality, dignity, position among other people. Each personal interest combines, moreover, two elements – a protected value and a right to require other to respect it. Against this background it is not allowed to construct a right of an undisturbed rest as a personal interest.

It is justified, instead, to refer to the provisions of the Act on Tourist Services. A issue of travel contract is subject to a Directive of 13 June 1990 on package travel, package holidays and package tours (further: "Directive No 90/314/EEC"), implemented by Poland to an Act on Tourist Services. Art. 5 para 1 and 2 of the Directive 90/314/EEC was a subject of a judgement of the European Court of Justice of 12 March 2002 on Simone Leitner (ECJ Case C-168/00), where the ECJ concluded that the aforementioned provision should be interpreted as referring to material, as well as non-material damage causing from the loss of enjoyment of the holiday. The Supreme Court emphasised, that the obligation of EU Member States to implement the Directives are considered, by the European Court of Justice, in accordance with the principle of loyalty. The effects of the transposed provisions of Directives are binding to the national law. Hence, the Art 11a of the Act of Travel Services creates a legal basis for a liability of the organiser of the holiday travel for material and non-material damage caused to a client as a result on non-performance or improper performance of a contract. The interpretation resulting from EU case law does not harm provisions of the Polish system.

Decision

Full text: [Full text](#)

Related Cases

No results available

Legal Literature

No results available

Result