

## Case law

### Case Details

**National ID:** link

**Member State:** Lithuania

**Common Name:** 3K-3-201/2010

**Decision type:** Other

**Decision date:** 10/05/2010

**Court:** Supreme Court of the Republic of Lithuania (Supreme court)

**Subject:**

**Plaintiff:**

**Defendant:**

**Keywords:**

### Directive Articles

Package Travel Directive, [Article 3](#), 1. Package Travel Directive, [Article 4](#), 7. Package Travel Directive, [Article 5](#), 2.

### Headnote

No headnotes available for this decision.

### Facts

Dispute between the parties arose because of the undue performance of the tourism service contracts (package travel). According to the contracts, concluded between the travel organizer and tourists, claimants (three couples) purchased trips to Crete (transportation and seven or twelve night stay in a three-star hotel). After the arrival it emerged that the hotel and the beach attached to it did not meet the requirements for a three-star category hotel, i. e. basic hygiene and safety standards. As the tourists were not satisfied with the quality of accommodation, they were proposed to stay in the five-star hotel (no other three-star hotel was available), the price difference for which had to be paid by the plaintiffs themselves. Plaintiffs claimed that the defendant was responsible for the unexpected costs, because of which they were forced to change their holidays' plans, to reject already planned trips and excursions, suffer stress, nervous tension and humiliation. The tourists claimed for pecuniary and non-pecuniary damage compensation.

### Legal issue

The Supreme Court of the Republic of Lithuania noted that contractual relations, arising from tourism services agreement are regulated by Articles 6.747–6.755 of the Civil Code of the Republic of Lithuania and Law on Tourism, implementing the provisions of the Package Travel Directive (90/314/EEC). When providing tourism services, according to the tourist (consumer) rights' priority principle, set by the Directive 90/314/EEC, obligation to provide information is regulated by specifying the data, which the travel organizer must provide: Art. 6.748 para 2 of the Civil Code establishes a tour operator's responsibility prior the conclusion of the tourism services contract to provide the tourist with the statutory form and content of comprehensive information. It was noted that the particularity of information provided has to be assessed individually, taking into account the travelling experience of the tourist, his preferences and other individual characteristics (e. g. whether the tourist travels for the first time, what are his expectations for accommodation, food, hotel environment), and cannot be identified (made identical) only with the provision with mandatory information set by the law.

Arguments that by specifying the category of the hotel (three stars) in the tourism services contract tourists were provided with all necessary information were rejected stating that the organizer, acting in good faith had to provide plaintiffs (consumers) with the information not only regarding the category of the hotel, but also about its main features (e. g. that in Greece (Crete) requirements for a three-star hotel are usually lower than in other countries), because this information in the case at issue could have a substantial importance for the plaintiffs, when deciding to conclude a contract or not. It was concluded that the organizer did not offer the accommodation services in a way to make the nature of his proposal clear – did not provide the plaintiffs not only with comprehensive, but even with mandatory information about the actual accommodation conditions. The court together stated that arguments that plaintiffs, as average consumers, had to obtain all necessary additional information themselves were unsound, because average consumer concept is related with the ability to perceive the information received, rather than with the ability to get it himself, what is more – such an obligation distorts the balance between parties' to the contract rights and obligations.

Arguments that plaintiffs, after moving to the higher category hotel, had to pay for the accommodation services were rejected as unsound. According to the court, organizer is responsible for the due performance of the obligations, arising from the tourism services contract, so additional costs, necessary for the proper performance of his contractual obligations shall not be transferred to the tourist. On the basis of the above mentioned argumentation it was concluded that the plaintiffs were reasonably awarded of the pecuniary damages of the amount of money, which was paid for the accommodation at a higher category hotel. In addition it was stated that taking into account the fact that one night accommodation service at a three-star hotel was provided inappropriately, the plaintiffs were also awarded of the reimbursement of pecuniary damages, incurred for paying for this service.

Concerning the compensation of non-pecuniary damage, the court stated that in spite that the plaintiffs in a poor quality hotel were forced to stay only for one night, their negative experiences lasted longer than one day, because instead of recreation they had to experience inconveniences and financial concerns. The court stated that the lower instance courts improperly applied norms regulating non-pecuniary damage compensation awarding all plaintiffs the compensation equal to one trip costs. The court drew attention to the fact that all plaintiffs experienced the same kind of negative experiences and inconvenience, so they have to be awarded the same amount of non-pecuniary damage (in spite that the price for the seven and twelve night stay was different). According to this non-pecuniary damage of 2000 LTL was awarded to each family.

### Decision

Full text: [Full text](#)

### Related Cases

No results available

### Legal Literature

No results available

### Result