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Case Details

National ID: 6 R 57/06h

Member State: Austria

Common Name: 6 R 57/06h

Decision type: Court decision in appeal

Decision date: 21/03/2006

Court: Regional Court Ried

Subject:

Plaintiff: Unknown

Defendant: Unknown

Keywords: inaccurate information, liability, package travel

Directive Articles

Package Travel Directive, [Article 4, 7](#).

Headnote

If the services of a package holiday were not provided adequately, damages may be claimed under either general tort law, general warranty law or the special warranty regulation as defined under article 4(7) of Directive 90/314 (implemented into Austrian law by § 31e of the Consumer Protection Act).

Facts

The plaintiff purchased a package holiday to Jordan for a period of fourteen days from the defendant, a tour operator. The package holiday consisted of a bicycle tour through Jordan with sightseeing and a beach holiday in Aqaba afterwards.

According to the defendant's tour brochure, the bicycle tour should have a total of about 270 km to be pedalled. Due to local difficulties (terrain, traffic, physical fitness of cyclers) only 80 km were covered. The beach holiday in Aqaba was provided properly.

The court of first instance awarded damages for the insufficient services which were provided during the bicycle tour.

Legal issue

The appellate court qualified the defendant as a tour operator and not merely as a travel agent. Amongst others, the reason was that the defendant did not explicitly declare itself as a travel agent in the travel brochure or in the booking confirmation. Because of the defendant being a tour operator, the court said that he is also responsible for the behaviour of his sub-contractors, in particular the company performing the bicycle tour.

The considerably shortened length of the bicycle tour was qualified by the appellate court as a significant defect in regard to the contract. The tour operator is liable for all damages arising out of insufficient services of a travel holiday pursuant to the special warranty regulation as defined under article 4(7) of Directive 90/314 (implemented into Austrian law by § 31e of the Consumer Protection Act), this in accordance with the general warranty law. Furthermore, a tour operator is liable for damages pursuant to general tort law if he has caused damage to the travel holiday.

The loss of enjoyment of a holiday has to be compensated by the defendant as well, but only regarding the bicycle tour as the beach holiday was provided free from defects.

Decision

Which basis of liability can be claimed if the services of a package holiday are not provided sufficiently?

URL: https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JIT_20060321_LG00469_00600R00057_06H0000_000

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Result

The appeals were partly granted.

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