

## Rechtsprechung

### Rechtssachenbeschreibung

**Nationale Kennung:** 4 Ob 130/09k

**Mitgliedstaat:** Österreich

**Gebräuchliche Bezeichnung:** 4 Ob 130/09k

**Art des Beschlusses:** Beschluss des Obersten Gerichts

**Beschlussdatum:** 29/09/2009

**Gericht:** Oberster Gerichtshof

**Betreff:**

**Kläger:** Unknown

**Beklagter:** Unknown

**Schlagworte:** information obligation, precontractual information, travel

### Artikel der Richtlinie

Package Travel Directive, [link](#)

### Leitsatz

Travel agencies are obligated to inform consumers about possible dangers at a travel destination before making the booking, if those dangers are not commonly known and are of importance when choosing the destination.

### Sachverhalt

The plaintiff purchased from the defendant a package holiday to Yucatan (Mexico) taking place in late October. An important criterion for the selection of the travel destination was beach weather.

The area of Yucatan is known for the danger of hurricanes. The season for hurricanes starts in early July and ends in late November. At no time was the plaintiff informed about this by the defendant.

A day after the plaintiff had arrived in Yucatan a hurricane occurred. It lasted for several days which made leaving the hotel and hotel room impossible. Once the hurricane had stopped, the defendant arranged the return of the plaintiff within several days.

The plaintiff requested the paid travel price back, as well as additional compensation for the loss of enjoyment of the holiday and telephone costs.

The court of first instance and appellate court both awarded part of the travel price and compensation for the loss of enjoyment of the holiday and telephone costs.

### Rechtsfrage

Do travel agencies have a pre-contractual obligation to inform the consumer about possible, not commonly known dangers at the travel destination (e.g. hurricane season)?

### Entscheidung

The Court determined that the defendant had the pre-contractual obligation to inform the consumer about possible, not commonly known dangers of the travel destination, in particular if they may influence the selection of the travel destination made by an average consumer.

Even if it may be commonly known that the area of Yucatan is threatened by hurricanes, the duration of the hurricane season is certainly not a commonly known fact. The possibility of an actual hurricane occurring exactly at the time of the travel is - mathematically speaking - not very high. Nevertheless, the occurrence of a hurricane is massively threatening to both health and property. That means that information about it is crucial for an average consumer when choosing a travel destination. Therefore, the defendant was obligated to inform the plaintiff.

According to the Court, a failure to inform stipulates a reason to claim compensation.

URL: [https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JIT\\_20090929\\_OGH0002\\_00400B00130\\_09K0000\\_000](https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JIT_20090929_OGH0002_00400B00130_09K0000_000)

Volltext: [Volltext](#)

### Verbundene Rechtssachen

Keine Ergebnisse verfügbar

### Rechtsliteratur

Keine Ergebnisse verfügbar

### Ergebnis

The appeal was dismissed.