

Case Details

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National ID	Fővárosi Ítéltábla 3.Pf.20.182/2014/2.
Member State	Hungary
Common Name	link
Decision type	Court decision in appeal
Decision date	19/11/2014
Court	Capital Court of Appeal
Subject	
Plaintiff	unknown
Defendant	Defendant I: unknown; Defendant II: State of Hungary
Keywords	insurance policy, transposition, travel

Directive Articles

Package Travel Directive, [Article 7](#)

Headnote

The maximum amount of the security referred to in Article 7 of Directive 90/314/EEC may not be directly or indirectly limited by the implementing national laws. If the system created under such national legislation does not ensure the refund of money paid by consumers in case of the organizer's insolvency, then the state concerned had failed to implement the Directive properly, and shall compensate the consumers for any damage arising directly out of such failure.

Facts

Plaintiffs entered into identical travel contracts with a travel agency for the same journey. Before the journey, however, the travel agency became insolvent and the journey was cancelled. However, as a result of a cap determined with respect to the insured sum, only 22% of the full amount of the deposits and fees paid by the plaintiffs had been refunded to them. The cap, which was based legally on the applicable national laws implementing the Directive, allowed defendant I, as a contractual insurance company to refund only a fragment (22%) of the deposits and fees.

The plaintiffs demanded compensation from the defendants stating that defendant I infringed the applicable laws by not refunding the full amount, and that defendant II infringed EU laws by implementing the Directive improperly.

The first instance court rejected the claims, stating that defendant I acted in line with applicable laws, and that the implementation measures applied by defendant II were sufficient.

Plaintiffs appealed the first instance decision, but the second instance court upheld the decision against defendant I. However, the second instance court reversed the first instance judgement against defendant II. The second instance court held that the national laws implementing the Directive had allowed the limitation of the security referred to in Article 7 of the Directive, but such limitation is incompatible with the purpose of the Directive. By allowing such system, defendant II had not implemented the Directive properly, infringed EU laws, and caused direct harm to the plaintiffs. Therefore, the second instance court held that defendant II shall compensate the plaintiffs for the damage arising directly out of the improper implementation of the Directive.

Legal issue

The court rules that the Directive does not contain any reference stating that the security referred to in Article 7 may be limited. The purpose of this article is to ensure that every amounts paid by consumers are refunded in the event of the organizer's insolvency, so the court rules.

The court states next that the national implementation of this article, irrespective of the actual detailed rules, must therefore ensure the realization of such purpose. The court concludes by stating that a national law that does not ensure this right effectively is not in conformity with Article 7 of the Directive.

Decision

Is it in line with the purpose of Article 7 of Directive 90/314/EEC if the implementing national law enables the limitation of the security for the refund of money in the event of insolvency? If no, may the state concerned be required to compensate the consumers for any damage arising directly out of such improper implementation of the Directive?

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Result

The second instance court upheld the decision against defendant I, but reversed the decision against defendant II, requiring defendant II to pay compensation to the consumers.