

Case Details

Case Details

National ID	HFD 2015 ref. 2
Member State	Sweden
Common Name	link
Decision type	Administrative decision in appeal
Decision date	06/02/2015
Court	Supreme Administrative Court
Subject	
Plaintiff	Ungdomsförbundet Sveriges Flotta
Defendant	Kammarkollegiet
Keywords	organizer, package, package travel

Directive Articles

Package Travel Directive, [Article 2, 1.](#) Package Travel Directive, [Article 2, 1., \(a\)](#) Package Travel Directive, [Article 2, 1., \(b\)](#) Package Travel Directive, [Article 2, 1., \(c\)](#) Package Travel Directive, [Article 2, 2.](#)

Headnote

Sailing camps including education are considered tourist services pursuant to Directive 90/314/EEG.

Facts

The plaintiff, a non-profit organisation, organises, promotes and sells spots to sailing camps. The defendant (the Legal, Financial and Public Procurement Agency) decided that the plaintiff should provide security according to the Travel Guarantees Act (1972:204), as it was deemed that the plaintiff's sailing camps falls under the scope of the Act on Package Tours.

The plaintiff appealed the decision made by the Defendant to the Administrative Court. The plaintiff claimed that since the sailing camps are educational, the camps are not to be considered as tourist services. However, the appeal was rejected by the Administrative Court and as well by the Administrative Court of Appeal. The Supreme Administrative Court decided to take the case to trial.

Legal issue

(i) The court finds that sailing camps are considered a tourist service pursuant to the Directive 90/314/EEG and the Act on Package Tours.

The court firstly states that the term tourist service is defined neither in the Directive 90/314/EEG nor in the Act on Package Tours, which is based on the Directive. Thus, the court must assess whether or not the plaintiff's arrangement of sailing camps falls within the scope of Directive 90/314/EEG and the Act on Package Tours.

The plaintiff claims that, as the sailing camps are educational, they are not to be considered as tourist services under the applicable legislation.

The purpose of Directive 90/314/EEG and the national legislation, the court states, is to give travellers a minimum

protection. When assessing whether or not an arrangement can be exempted from the Directive and national legislation, a strict view must be taken.

In the case C-237/97, the Directive 90/314/EEG was not deemed to be applicable to exchange student programs and furthermore, a service which has the primary function to educate the attendees, is not to be considered a tourist service.

The court however, finds that it cannot be interpreted from this judgment that all activities with elements of education qualifies as such activities that fall outside of the concept of tourist services. For example, an arrangement including education that is carried out in the participant's free time or during school holidays, must be considered a tourist service under the Directive 90/314/EEG and the Act on Package Tours. Further, the court finds that the sailing camps in question are of this kind and, since the sailing camps also include accommodation, they are to be considered as tourist services and within the scope of applicable legislation.

(ii) The second question relates to whether or not the plaintiff is considered the organizer of the sailing camps. As prerequisites to qualify as an organizer, the courts states that (i) it must be a question of arranging packages other than temporarily; (ii) it is found in the preparatory work to the Act on Package Tours that the term "organizer" under national legislation, shall have the same meaning as within the Directive 90/314/EEG; and (iii) the definition "organizer" includes a requirement of a customer relationship between the organizer and the traveller, which means that packages that sport associations arranges for the club's own members fall outside the scope of the definition.

The court finds that Section 3 in the Act on Package Tours shall be construed on the basis of article 2.2 in the Directive 90/314/EEG. The plaintiff has, over a period of several years, organised, marketed and sold packages in the form of sailing camps to hundreds of people. The court therefore finds that the plaintiff is the organizer of said sailing camps. The fact that attending the sailing camps requires a membership does not affect this judgement.

Decision

Should organised sailing camps including education be considered tourist services under Directive 90/314/EEG?

URL: <http://www.hogstaforvaltningsdomstolen.se/Domstolar/regeringsratten/R%C3%A4ttsfall/HFD%202015%20ref.%202.pdf>

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Result

The Court upheld the Administrative Court of Appeal's decisions and ruled in favour of the defendant.