

Case law

Case Details

National ID: C-430/13

Member State: European Union

Common Name: N/A

Decision type: Court of Justice decision

Decision date: 16/01/2014

Court: European Court of Justice

Subject:

Plaintiff: Baradics and Others

Defendant: QBE Insurance (Europe) Ltd Magyarországi Fióktelepe and Magyar Állam

Keywords: package travel, scope of the Directive, travel, travel organiser

Directive Articles

Package Travel Directive, [Article 4, 2](#). Package Travel Directive, [Article 4, 6](#). Package Travel Directive, [Article 5, 1](#). Package Travel Directive, [Article 5, 2](#). Package Travel Directive, [Article 7](#) Package Travel Directive, [Article 8](#) Package Travel Directive, [Article 9, 1](#). Package Travel Directive, [Article 9, 2](#).

Headnote

(1) Article 7 of Directive 90/314 must be interpreted as precluding national legislation where the detailed rules laid down therein do not achieve the result of ensuring that the consumer is provided with an effective guarantee of the refund of all money paid over and repatriation in the event of insolvency on the part of the travel organiser.

(2) Article 7 of Directive 90/314 must be interpreted as meaning that a Member State has no discretion as regards the ambit of the risks that fall to be covered by the security to be provided by the travel organiser or retailer for the benefit of consumers. It is for the referring court to determine whether the criteria laid down by the Member State concerned for setting the amount of the security have the object or effect of limiting the ambit of the risks that fall to be covered by the security, in which case they would clearly be incompatible with the obligations under Directive 90/314 and would constitute a sufficiently serious infringement of European Union law which, subject to a finding of a direct causal link, might give rise to liability on the part of the Member State concerned.

Facts

In 2009, the appellants in the main proceedings concluded travel contracts with Kontinens Utazási kft. ("the travel organiser"), under which they made payments on account or, in certain cases, paid the travel price in full.

The travel organiser became insolvent prior to the start of the trips at issue in the main proceedings.

Under the insurance policy providing financial security for travel organisers and retailers, which the travel organiser had taken out with QBE Insurance, the latter undertook, should an event insured against occur, to pay compensation in respect of the costs of travellers' repatriation and involuntary overnight stays, as well as – if those costs had not exhausted the insured risks' cover amount – the payments made on account and the prices paid for travel. The parties to that contract had set the maximum cover amount at HUF 40 million.

Because of that cover ceiling, the refunds obtained by the appellants in the main proceedings amounted to only 22% of the payments made on account or the prices paid.

Consequently, they brought an action before the court of first instance seeking an order that QBE Insurance and the Hungarian State pay them by way of compensation the balance of the payments made on account or the prices paid.

They claimed that Government Decree No 213/1996 infringes Article 7 of Directive 90/314, and that, according to the case-law of the Court, the Member States have an obligation to make good damage caused where a directive has not been properly transposed into national law.

The court of first instance dismissed the action. It held in particular that the Hungarian State had properly transposed the directive into national law.

Hearing the appeal lodged by the appellants against the judgment at first instance, the referring court upheld that judgment so far as QBE Insurance was concerned.

Legal issue

(1) Do Articles 7 and 9 of Directive 90/314 preclude legislation of a Member State, which, according to the referring court, sets the amount of the security that a travel organiser or retailer is required to provide simply by reference to a percentage to be determined of net turnover achieved on projected sales of travel packages in the course of the relevant accounting year or to a minimum amount to be determined?

(2) To the extent that Article 7 of Directive 90/314 precludes national legislation under which the amount of the financial security provided by a travel organiser or retailer is to be set at a specified percentage of anticipated net turnover from sales of the travel package or at a minimum amount, does such legislation constitute a sufficiently serious infringement of EU law as to afford a right to reparation?

Decision

(1) Article 7 of Directive 90/314 places the travel organiser under an obligation to have sufficient security for the refund of money paid over and for the repatriation of the consumer in the event of insolvency or bankruptcy, the purpose of that security being to protect consumers against the financial risks arising from the insolvency or bankruptcy of the travel organiser (see Joined Cases C-178/94, C-179/94 and C-188/94 to C-190/94). Thus, the fundamental objective of that provision is to ensure that the repatriation of the consumer and the refund of money paid over are guaranteed in the event of insolvency or bankruptcy on the part of that travel organiser.

The Court recalls that Article 7 of Directive 90/314 imposes an obligation as to result, that result being to guarantee package travellers the refund of money paid over and their repatriation in the event of the travel organiser's bankruptcy, and that such a guarantee is specifically aimed at arming consumers against

the consequences of the bankruptcy, whatever the causes of it may be.

In light of the foregoing, the answer to the first question is that Article 7 of Directive 90/314 must be interpreted as precluding national legislation where the detailed rules laid down therein do not achieve the result of ensuring that the consumer is provided with an effective guarantee of the refund of all money paid over and repatriation in the event of insolvency on the part of the travel organiser.

(2) According to the case-law of the Court, an infringement is sufficiently serious where, in the exercise of its legislative powers, an institution or a Member State has manifestly and gravely disregarded the limits on the exercise of its powers. Factors which the competent court may take into consideration include the clarity and precision of the rule breached (Case C-392/93).

National legislation properly transposes the obligations under Article 7 of Directive 90/314 only if, whatever the detailed rules laid down in that legislation, it achieves the result of providing the consumer with an effective guarantee of the refund of all money paid over and repatriation in the event of the travel organiser's insolvency.

A Member State has no discretion as regards the ambit of the risks that fall to be covered by the security to be provided by the travel organiser or retailer for the benefit of consumers. It is for the referring court to determine whether the criteria laid down by the Member State concerned for setting the amount of the security have the object or effect of limiting the ambit of the risks that fall to be covered by the security, in which case they would clearly be incompatible with the obligations under Directive 90/314 and would constitute a sufficiently serious infringement of EU law, which, subject to a finding of a direct causal link, might give rise to liability on the part of the Member State concerned.

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Result

The court referred the case back to the national court.