

JUDGMENT OF THE COURT (Fifth Chamber)

14 May 1998 *

In Case C-364/96,

REFERENCE to the Court under Article 177 of the EC Treaty by the Bezirksgericht für Handelssachen Wien for a preliminary ruling in the proceedings pending before that court between

Verein für Konsumenteninformation

and

Österreichische Kreditversicherungs AG,

on the interpretation of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours (OJ 1990 L 158, p. 59),

THE COURT (Fifth Chamber),

composed of: C. Gulmann (Rapporteur), President of the Chamber, M. Wathelet, J. C. Moitinho de Almeida, J.-P. Puissochet and L. Sevón, Judges,

* Language of the case: German.

Advocate General: G. Tesauro,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

- Verein für Konsumenteninformation, by H. Kosesnik-Wehrle, Rechtsanwalt, Vienna,
- Österreichische Kreditversicherungs AG, by F. Marschall, Rechtsanwalt, Vienna,
- the Austrian Government, by C. Stix-Hackl, Gesandte in the Federal Ministry of Foreign Affairs, acting as Agent,
- the Greek Government, by F. Georgakopoulos, Assistant Legal Adviser to the Council of State, and A. Rokofyllou, Special Adviser to the Assistant Minister for Foreign Affairs, acting as Agents,
- the French Government, by C. de Salins, Head of Subdirectorate in the Legal Affairs Directorate of the Ministry of Foreign Affairs, and R. Loosli-Surrans, Chargé de Mission in the same Directorate, acting as Agents,
- the Commission of the European Communities, by Ulrich Wölker, of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Verein für Konsumenteninformation, represented by H. S. Langer, Rechtsanwalt, Vienna, of Österreichische Kreditver-

sicherungs AG, represented by M. Hasberger, Rechtsanwalt, Vienna, of the Greek Government, represented by F. Georgakopoulos and A. Rokofyllou, of the French Government, represented by R. Loosli-Surrans and of the Commission, represented by U. Wölker, at the hearing on 13 November 1997,

after hearing the Opinion of the Advocate General at the sitting on 4 December 1997,

gives the following

Judgment

- 1 By order of 21 October 1996, received at the Court on 14 November 1996, the Bezirksgericht für Handelssachen Wien (District Commercial Court, Vienna) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty a question on the interpretation of Article 7 of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours (OJ 1990 L 158, p. 59, hereinafter 'the Directive').
- 2 The question has been raised in proceedings between Verein für Konsumenteninformation and Österreichische Kreditversicherungs AG concerning reimbursement of the costs of accommodation which purchasers of a package holiday paid to a hotelier following the travel organiser's insolvency.
- 3 Article 7 of the Directive provides that the organiser of the package tour or holiday is to provide 'sufficient evidence of security for the refund of money paid over and for the repatriation of the consumer in the event of insolvency'.

- 4 That article was transposed into Austrian law by Regulation 881/94 (BGBl. No 881 of 15 November 1994, p. 6501), Paragraph 3 of which provides that the travel organiser must, by entering into a contract of insurance with an insurance company authorised to conduct business in Austria, guarantee the holidaymaker a refund of money paid over by him, in so far as the whole or any part of the services are not provided as a result of the organiser's insolvency, and of the costs of repatriation incurred as a result of the organiser's insolvency.
- 5 Mr and Mrs Hofbauer booked a package holiday in Crete from 9 to 16 September 1995 with Karthago-Reisen GmbH, established in Vienna, the package including the return flight and half-board accommodation. The price of the holiday was paid in full before departure.
- 6 On 15 September 1995, the owner of the hotel in which Mr and Mrs Hofbauer and a number of other Karthago-Reisen customers were staying learned that Karthago-Reisen had become insolvent and demanded that those holidaymakers should pay the full cost of the nights spent in his hotel. According to the holidaymakers, he physically prevented them from leaving the hotel.
- 7 In order to be able to catch their return flight, Mr and Mrs Hofbauer paid for their hotel accommodation, the bill coming to DR 157 542.
- 8 On their return, Mr and Mrs Hofbauer and the other holidaymakers concerned instructed the Verein für Konsumenteninformation, whose object is in particular to enforce compliance with consumer protection laws, to assert their rights against Österreichische Kreditversicherungs AG, Karthago-Reisen's insurers.

- 9 When the insurer refused to refund to the holidaymakers the accommodation costs paid to the hotel owner, the Verein für Konsumenteninformation brought an action on 16 January 1996 before the Bezirksgericht für Handelssachen Wien.
- 10 That court, taking the view that the outcome of the dispute depended on the interpretation of the Directive, decided to stay proceedings and has referred the following question to the Court for a preliminary ruling:

‘Is Article 7 of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours to be interpreted as meaning that the sums paid by a consumer to the provider of services (for example, a hotelier) at the holiday resort because that person would have prevented him from returning home if that payment had not been made are included within the protective scope of that provision as “security for the repatriation of the consumer”?’

- 11 By its question, the national court is essentially asking whether Article 7 of the Directive is to be interpreted as covering a situation in which the purchaser of a package holiday who has paid the travel organiser for the costs of his accommodation before travelling on his holiday is compelled, following the travel organiser’s insolvency, to pay the hotelier for his accommodation again in order to be able to leave the hotel and return home.
- 12 The Verein für Konsumenteninformation, the Greek Government and the Commission submit that, having regard to the objective of Article 7 of the Directive, which is to protect consumers against the economic risks of the travel organiser’s insolvency, a situation such as that described in the national court’s question falls within the ambit of Article 7, since there is nothing in the wording of that article to exclude such an interpretation.

- 13 The Verein für Konsumenteninformation and the Greek Government consider that, having regard to Article 7 of the Directive, the cover required may be considered to be 'the refund of money paid over', since the fact that the holidaymaker made a direct payment to the hotelier meant that the travel organiser had not paid for the accommodation, as well as the refund of any expenditure necessary for 'the repatriation of the consumer'.
- 14 The Commission maintains that the expenditure in issue in the main proceedings must be regarded as necessary for 'the repatriation of the consumer'.
- 15 The Austrian Government states that, taking account of the consumer's duty to mitigate his loss, a refund can be allowed only for necessary and unavoidable expenses.
- 16 The Österreichische Kreditversicherungs AG and the French Government consider that the answer to the question referred should be in the negative. In particular, they submit that the expression 'provide ... for the repatriation of the consumer' indicates that the only expenses which must be refunded are those having a direct causal link to the consumer's repatriation, such as the cost of a journey by taxi or by aircraft.
- 17 They further submit that, since the Directive governs solely the contract concluded between the purchaser of a package holiday and the travel organiser, it cannot be interpreted in such a way as to give the benefit of the security under Article 7 to a provider of services, who would thus obtain indirectly, through the consumer whom he has 'taken hostage', and when he is not a party to the main package holiday contract, payment for his services. The prospect of obtaining indirect compensation through the consumer would, in their view, entail the risk of encouraging providers of services to copy such practices.

- 18 It must be borne in mind first of all that the purpose of Article 7 is to protect consumers against the risks arising from the insolvency of the package holiday or tour organiser. As the French Government has pointed out, those risks, which are inherent in the contract concluded between the purchaser and the package holiday organiser, stem from the payment in advance of the price of the package and from the spread of liability between the travel organiser and the various providers of the services which, in combination, make up the package. Consequently, the result prescribed by Article 7 of the Directive entails the grant to package travellers of rights guaranteeing the refund of money that they have paid over and their repatriation in the event of the organiser's insolvency (see Joined Cases C-178/94, C-179/94, C-188/94 to C-190/94 *Dillenkofer and Others v Federal Republic of Germany* [1996] ECR I-4845, paragraph 42).
- 19 The security for the 'refund of money paid over' covers cases in which the organiser's insolvency becomes known after the contract has been concluded and before it has begun to be performed or cases in which the services are interrupted while the contract is being performed and the consumer must be reimbursed a proportion of the money paid over corresponding to the services which have not been provided. The purpose of the security for the 'repatriation of the consumer' is to ensure that the consumer does not become stranded, during the performance of the contract, at the place where he is staying, through the carrier refusing, on account of the organiser's insolvency, to supply the service of transporting the consumer back to his place of departure.
- 20 Having regard to the objectives of the Directive, in particular those of Article 7, that provision must be interpreted as also covering a situation in which a hotelier forces a holidaymaker to pay for the accommodation provided, claiming that the now insolvent travel organiser will never pay that sum over to him. For the purchaser of the package holiday, the risk in question derives from the travel organiser's insolvency; it must therefore be covered by the guarantees afforded to the consumer by the travel organiser.
- 21 With regard to the argument put forward by the Österreichische Kreditversicherungs AG and the French Government to the effect that such an interpretation of Article 7 might encourage hoteliers to imitate practices such as those

described in the case in the main proceedings, it should be borne in mind, as the Verein für Konsumenteninformation has pointed out, that in such situations insurers can, if they consider it necessary, take action against the hoteliers and that in any event they are better placed than holidaymakers to proceed against hoteliers.

22 Furthermore, given that in a situation such as that which occurred in this case the traveller actually paid for his accommodation twice, first to the package holiday organiser and then again to the hotelier, the insurer's obligation is to 'refund ... money paid over'. Since the holidaymaker has in fact been lodged at his own expense, the sums which he had paid to the travel organiser will have to be refunded to him since, as a result of the latter's insolvency, the services agreed upon were not supplied to him by the travel organiser.

23 The answer to be given to the question referred must therefore be that Article 7 of the Directive is to be interpreted as covering, as security for the refund of money paid over, a situation in which the purchaser of a package holiday who has paid the travel organiser for the costs of his accommodation before travelling on his holiday is compelled, following the travel organiser's insolvency, to pay the hotelier for his accommodation again in order to be able to leave the hotel and return home.

Costs

24 The costs incurred by the Austrian, French and Greek Governments and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the question referred to it by the Bezirksgericht für Handelssachen Wien by order of 21 October 1996, hereby rules:

Article 7 of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours is to be interpreted as covering, as security for the refund of money paid over, a situation in which the purchaser of a package holiday who has paid the travel organiser for the costs of his accommodation before travelling on his holiday is compelled, following the travel organiser's insolvency, to pay the hotelier for his accommodation again in order to be able to leave the hotel and return home.

Gulmann

Wathelet

Moitinho de Almeida

Puissochet

Sevón

Delivered in open court in Luxembourg on 14 May 1998.

R. Grass

C. Gulmann

Registrar

President of the Fifth Chamber