



Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

12 January 2023 *

(Reference for a preliminary ruling – Directive (EU) 2015/2302 – Article 14(1) – Package travel and linked travel arrangements – Performance of a package travel contract – Liability of the organiser concerned – Measures to fight the worldwide spread of an infectious disease – COVID-19 pandemic – Restrictions imposed at the travel destination and in the place of residence of the traveller concerned and in other countries – Lack of conformity of the services provided as part of the package concerned – Appropriate reduction in the price of that package)

In Case C-396/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Landgericht München I (Regional Court, Munich I, Germany), made by decision of 18 May 2021, received at the Court on 29 June 2021, in the proceedings

KT,

NS

v

FTI Touristik GmbH,

THE COURT (Second Chamber),

composed of A. Prechal (Rapporteur), President of the Chamber, M.L. Arastey Sahún, F. Biltgen, N. Wahl and J. Passer, Judges,

Advocate General: L. Medina,

Registrar: D. Dittert, Head of Unit,

having regard to the written procedure and further to the hearing on 1 June 2022,

after considering the observations submitted on behalf of:

- the Czech Government, by S. Šindelková, M. Smolek and J. Vláčil, acting as Agents,
- the French Government, by A. Daniel and A. Ferrand, acting as Agents,

* Language of the case: German.

– the Finnish Government, by H. Leppo, acting as Agent,
– the European Commission, by B.-R. Killmann, I. Rubene and C. Valero, acting as Agents,
after hearing the Opinion of the Advocate General at the sitting on 15 September 2022,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 14(1) of Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC (OJ 2015 L 326, p. 1).
- 2 This request has been made in proceedings between, of the one part, two travellers, KT and NS ('the applicants in the main proceedings'), and, of the other part, a travel organiser, FTI Touristik GmbH, concerning a reduction in the price of a package requested as a result of restrictions that were imposed at the travel destination of those two travellers, in order to fight the spread of the COVID-19 pandemic, and the early return of those travellers to their place of departure.

Legal context

European Union law

- 3 Recitals 31 and 34 of Directive 2015/2302 state:
'(31) Travellers should also be able to terminate the package travel contract at any time before the start of the package in return for payment of an appropriate and justifiable termination fee, taking into account expected cost savings and income from alternative deployment of the travel services. They should also have the right to terminate the package travel contract without paying any termination fee where unavoidable and extraordinary circumstances will significantly affect the performance of the package. This may cover for example warfare, other serious security problems such as terrorism, significant risks to human health such as the outbreak of a serious disease at the travel destination, or natural disasters such as floods, earthquakes or weather conditions which make it impossible to travel safely to the destination as agreed in the package travel contract.
...
(34) It is appropriate to set out specific rules on remedies as regards the lack of conformity in the performance of the package travel contract. The traveller should be entitled to have problems resolved and, where a significant proportion of travel services included in the package travel contract cannot be provided, the traveller should be offered suitable alternative arrangements. If the organiser does not remedy the lack of conformity within a reasonable period set by the traveller, the traveller should be able to do so himself and request reimbursement of the necessary expenses. In certain cases there should not be a

need to specify a time-limit, in particular if immediate remedy is required. This would apply, for instance, when, due to the delay of a bus provided by the organiser, the traveller has to take a taxi to catch his flight on time. Travellers should also be entitled to a price reduction, termination of the package travel contract and/or compensation for damages. Compensation should also cover non-material damage, such as compensation for loss of enjoyment of the trip or holiday because of substantial problems in the performance of the relevant travel services. The traveller should be required to inform the organiser without undue delay, taking into account the circumstances of the case, of any lack of conformity he perceives during the performance of a travel service included in the package travel contract. Failure to do so may be taken into account when determining the appropriate price reduction or compensation for damages where such notice would have avoided or reduced the damage.’

4 Article 1 of that directive, entitled ‘Subject matter’, states:

‘The purpose of this Directive is to contribute to the proper functioning of the internal market and to the achievement of a high and as uniform as possible level of consumer protection by approximating certain aspects of the laws, regulations and administrative provisions of the Member States in respect of contracts between travellers and traders relating to package travel and linked travel arrangements.’

5 Article 3 of that directive, entitled ‘Definitions’, provides:

‘For the purposes of this Directive, the following definitions apply:

...

(12) “unavoidable and extraordinary circumstances” means a situation beyond the control of the party who invokes such a situation and the consequences of which could not have been avoided even if all reasonable measures had been taken;

(13) “lack of conformity” means a failure to perform or improper performance of the travel services included in a package;

...’

6 Article 13 of that directive, entitled ‘Responsibility for the performance of the package’, states:

‘1. Member States shall ensure that the organiser is responsible for the performance of the travel services included in the package travel contract, irrespective of whether those services are to be performed by the organiser or by other travel service providers.

...

2. The traveller shall inform the organiser without undue delay, taking into account the circumstances of the case, of any lack of conformity which he perceives during the performance of a travel service included in the package travel contract.

3. If any of the travel services are not performed in accordance with the package travel contract, the organiser shall remedy the lack of conformity, unless that:

- (a) is impossible; or
- (b) entails disproportionate costs, taking into account the extent of the lack of conformity and the value of the travel services affected.

If the organiser, in accordance with point (a) or point (b) of the first subparagraph of this paragraph, does not remedy the lack of conformity, Article 14 shall apply.

...'

7 Article 14 of Directive 2015/2302, entitled 'Price reduction and compensation for damages', states:

'1. Member States shall ensure that the traveller is entitled to an appropriate price reduction for any period during which there was lack of conformity, unless the organiser proves that the lack of conformity is attributable to the traveller.

2. The traveller shall be entitled to receive appropriate compensation from the organiser for any damage which the traveller sustains as a result of any lack of conformity. Compensation shall be made without undue delay.

3. The traveller shall not be entitled to compensation for damages if the organiser proves that the lack of conformity is:

- (a) attributable to the traveller;
- (b) attributable to a third party unconnected with the provision of the travel services included in the package travel contract and is unforeseeable or unavoidable; or
- (c) due to unavoidable and extraordinary circumstances.

...'

German law

8 Paragraph 651i of the Bürgerliches Gesetzbuch (Civil Code; 'the BGB') provides:

'(1) The tour operator must provide the traveller with the package tour free of travel defects.

(2) The package tour shall be free from defects if it has the agreed quality. In so far as the quality has not been agreed, the package tour shall be free of travel defects,

- 1. if it is suitable for the use presumed according to the contract, otherwise
- 2. if it is suitable for normal use and has a quality which is customary for package tours of the same type and which the traveller may expect according to the nature of the package tour.

A travel defect shall also exist if the tour operator does not provide travel services or provides them with unreasonable delay.

(3) If the package tour is defective, the traveller may, if the conditions laid down in the following provisions are met and unless otherwise specified,

...

6. exercise the rights arising from a reduction in the travel price (Paragraph 651m) ...

...'

9 Paragraph 651m of the BGB is worded as follows:

'The travel price shall be reduced for the duration of the travel defect. In the case of a price reduction, the travel price is to be reduced in the proportion which the value of the package tour free of defects would, at the time when the contract was entered into, have had to the actual value. Where necessary, the price reduction is to be established by estimation.'

The dispute in the main proceedings and the question referred for a preliminary ruling

- 10 On 30 December 2019, the applicants in the main proceedings purchased from FTI Touristik a package holiday consisting of, first, a return flight between Germany and Gran Canaria (Spain) and, secondly, a stay on that island for the period from 13 to 27 March 2020. The applicants in the main proceedings were able to depart for their travel destination as planned.
- 11 However, on 15 March 2020, the Spanish authorities took measures throughout Spain to fight the spread of the COVID-19 pandemic, resulting, in particular, in the closure of the beaches in Gran Canaria and the introduction of a curfew on that island. In the hotel where the applicants in the main proceedings were staying, guests were thus only permitted to leave their room to eat, access to the swimming pools and sunbeds was prohibited and the entertainment programme was discontinued. On 18 March 2020, the applicants in the main proceedings were informed that they should be ready to leave the island at any moment and, two days later, they had to return to Germany.
- 12 Upon their return, the applicants in the main proceedings requested that FTI Touristik grant them a 70% reduction in the price of their package, that is to say EUR 1 018.50. FTI Touristik refused to grant them that price reduction, taking the view that it could not be held liable for what constituted a 'general life risk'. Following that refusal, the applicants in the main proceedings brought an action before the Amtsgericht München (Local Court, Munich, Germany) requesting that that price reduction be granted.
- 13 By judgment of 26 November 2020, that court dismissed that action, taking the view that the measures taken by the Spanish authorities to fight the spread of the COVID-19 pandemic were measures to protect the health of the applicants in the main proceedings and that such protection could not lead to a 'defect' in their package, within the meaning of Paragraph 651i of the BGB. That court notes, in that regard, that the operators of the hotel where the applicants in the main proceedings stayed had been obliged to take protective measures in respect of their guests.

- 14 The applicants in the main proceedings brought an appeal against that decision before the Landgericht München I (Regional Court, Munich I, Germany), the referring court. That court considers that the view may be taken that the package travel organiser may be held liable where there is a lack of conformity of the travel services resulting from the application of health protection measures, taking into account the strict liability of that organiser provided for in Article 651i of the BGB. However, during the applicants' trip, measures similar to those taken by the Spanish authorities to fight the spread of the COVID-19 pandemic were also adopted in Germany, with the result that the measures imposed at their travel destination could be regarded as 'normal circumstances' imposed throughout Europe on account of that pandemic and not as extraordinary circumstances specific to that destination.
- 15 Furthermore, the referring court expresses doubts as to whether the restrictions imposed could be regarded as part of the 'general life risk' that excludes the liability of the package travel organiser concerned. It refers, in that regard, to a judgment of the Bundesgerichtshof (Federal Court of Justice, Germany), in which it was held *inter alia* that, in essence, the guarantee under travel contracts may be limited with regard to circumstances falling solely within the personal sphere of the traveller or in which risks that the traveller also has to bear in his or her daily life materialise. The traveller should therefore bear the risks associated with an activity falling under 'general life risk' in situations where no breach of duty or any other event giving rise to liability is attributable to the travel organiser concerned. That would be the case if, irrespective of the travel arrangements provided in the package, the traveller has an accident at his or her holiday location, falls ill, is the victim of a crime or is otherwise unable to enjoy further services for personal reasons.
- 16 The referring court also notes that, although, as is apparent from recital 31 of Directive 2015/2302, the authors of that directive included among the 'unavoidable and extraordinary circumstances', within the meaning of Article 12(2) of that directive, the 'outbreak of a serious disease at the travel destination', it may be assumed that those authors did not consider a pandemic situation.
- 17 In those circumstances, the Landgericht München I (Regional Court, Munich I) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:
- 'Do restrictions imposed due to an infectious disease that is prevalent at the travel destination constitute a lack of conformity within the meaning of Article 14(1) of [Directive 2015/2302] even if, because of the worldwide spread of the infectious disease, such restrictions were imposed both in the traveller's place of residence and in other countries?'

Consideration of the question referred

- 18 By its question, the referring court asks, in essence, whether Article 14(1) of Directive 2015/2302 must be interpreted as meaning that a traveller is entitled to a reduction in the price of his or her package holiday where a lack of conformity of the travel services included in the package is due to restrictions that have been imposed at the traveller's destination to fight the spread of an infectious disease and such restrictions have also been imposed in the traveller's place of residence and in other countries due to the worldwide spread of that disease.

- 19 In that regard, according to settled case-law, the interpretation of a provision of EU law requires that account be taken not only of its wording, but also of its context, the objectives pursued by the rules of which it is part and, where appropriate, its origins (judgment of 18 October 2022, *IG Metall and ver.di*, C-677/20, EU:C:2022:800, paragraph 31 and the case-law cited).
- 20 In the first place, as regards Article 14(1) of Directive 2015/2302, that provision states that Member States are to ensure that a traveller is entitled to an appropriate price reduction for any period during which there was lack of conformity, unless the organiser proves that such lack of conformity is attributable to that traveller.
- 21 It is thus apparent from that provision that the traveller's entitlement to a reduction in the price of his or her package is conditional only on there being a lack of conformity of the travel services provided. In accordance with Article 3(13) of Directive 2015/2302, the concept of 'lack of conformity' is defined as the failure to perform or the improper performance of the travel services included in a package.
- 22 It follows that the failure to perform or the improper performance of travel services is sufficient to confer on the traveller in question the right to obtain a reduction in the price of the package from the organiser who sold it to that traveller. The cause of that lack of conformity, in particular whether it is attributable to that organiser, is irrelevant in that regard. As the Advocate General also observed in point 17 of her Opinion, the finding of a lack of conformity is objective in that it requires only a comparison between the services included in the package of the traveller concerned and those in fact provided to that person.
- 23 That provision provides only one exception to that package traveller's right, that is to say where the lack of conformity is attributable to the traveller. In view of the clear meaning of that exception and of the strict interpretation that must be given to any exception, that exception cannot cover situations other than those in which the lack of conformity is attributable to that traveller.
- 24 Accordingly, it is apparent from a literal interpretation of Article 14(1) of Directive 2015/2302 that the failure to perform or the improper performance of the travel services included in a package entitles the traveller concerned to a price reduction in all circumstances, except where that failure to perform or that improper performance is attributable to that traveller. The fact that the lack of conformity of those travel services is attributable to the organiser or to persons other than that traveller or that it is due to circumstances beyond the control of that organiser such as 'unavoidable and extraordinary circumstances', within the meaning of Article 3(12) of Directive 2015/2302, therefore does not affect the existence of that traveller's right to a price reduction.
- 25 In the second place, as regards the context of Article 14(1) of Directive 2015/2302, it must be noted that that provision is part of the harmonised system of contractual liability for package travel organisers established in Articles 13 and 14 of that directive, which fall within Chapter IV of that directive, entitled 'Performance of the package'. That system of liability is characterised by strict liability on the part of the organiser concerned and by a restrictive definition of the situations in which that organiser may be exempt from it.
- 26 Article 13 of that directive, entitled 'Responsibility for the performance of the package', provides in paragraph 1 that Member States are to ensure that that organiser is responsible for the performance of the travel services included in the package travel contract, irrespective of whether those services are to be performed by the organiser or by other travel service providers.

Paragraph 3 of that article provides that if one of those services is not performed in accordance with the package travel contract, that organiser must, in principle, remedy that lack of conformity and, in situations where it cannot be remedied by the organiser, Article 14 of that directive is to apply.

- 27 Article 14 of Directive 2015/2302, entitled ‘Price reduction and compensation for damages’, confers, in addition to the right of the traveller concerned to a price reduction, provided in paragraph 1 of that article, the separate right of that traveller to compensation, defined in paragraphs 2 and 3 of that article. That right to compensation by the organiser concerned relates to any damage that the traveller sustains as a result of any lack of conformity of the travel services provided, except where that lack of conformity is attributable to the traveller himself or herself, is attributable to a third party unconnected with the provision of the travel services in question and is unforeseeable or unavoidable, or is due to ‘unavoidable and extraordinary circumstances’. As the Advocate General also observed in point 23 of her Opinion, it follows from the structure of Article 14 of Directive 2015/2302 that the exceptions to the right to compensation for damage are specific to that right and cannot be applied in relation to the right to receive a price reduction.
- 28 The contextual interpretation of Article 14(1) of Directive 2015/2302 thus supports the literal interpretation of that provision since it follows that that provision is part of a system of liability which focuses contractual liability on the organiser.
- 29 In the third place, as regards the objective pursued by Directive 2015/2302, it is apparent from Article 1 of that directive that its purpose is to contribute, inter alia, to the achievement of a high level of consumer protection. The literal interpretation of Article 14(1) of that directive is thus also borne out by the teleological interpretation of that provision. A high level of consumer protection is ensured by entitling travellers to a price reduction for any lack of conformity of the travel services provided, irrespective of the cause and attributability of that lack of conformity, and by laying down as the sole exception to that right the situation in which that lack of conformity is attributable to the traveller concerned.
- 30 Last, in the fourth place, the legislative history of Directive 2015/2302 also supports the literal interpretation of Article 14(1) of that directive. As the Advocate General observed in point 25 of her Opinion, the initial proposal for that directive provided for the same exceptions to the right to a reduction in the price of the package and to the right of the traveller concerned to compensation for damage. However, in the course of the legislative process, the exceptions to the right to receive a price reduction were distinguished from those of the right to compensation.
- 31 It thus follows from the wording and context of Article 14(1) of Directive 2015/2302 and from the purpose and legislative history of that directive that the traveller concerned is entitled to a reduction in the price of the package whenever there is a lack of conformity of the travel services provided, with the exception of one situation, namely that in which that lack of conformity is attributable to that traveller. That traveller is thus granted that right to a price reduction irrespective of whether that lack of conformity is due to ‘unavoidable and extraordinary circumstances’ that are beyond the control of the organiser concerned.
- 32 In the present case, and subject to the verification which will be for the referring court to carry out, any lack of conformity of the travel services at issue in the main proceedings is due to health measures taken at the travel destination of the applicants in the main proceedings to fight the spread of the COVID-19 pandemic.

- 33 Neither those health measures nor the fact that similar measures were adopted in the place of residence of the applicants in the main proceedings and in other countries can prevent the applicants in the main proceedings from being entitled to a price reduction under Article 14(1) of Directive 2015/2302. In particular, the question whether, as the referring court states, first, measures adopted to fight the spread of the COVID-19 pandemic may be considered not to be extraordinary circumstances but rather normal circumstances, since they had been adopted in many other countries, and, secondly, those measures and their consequences are part of the ‘general life risk’ that a traveller must bear is not relevant for the purposes of assessing the right of that traveller to a reduction in the price of his or her package, pursuant to Article 14(1) of Directive 2015/2302.
- 34 As is apparent from paragraph 22 above, the finding of a lack of conformity of the services provided requires only comparison between the services included in the package of the traveller concerned and those actually provided to that traveller, such that the extraordinary or normal nature of the circumstances surrounding that lack of conformity has no bearing on the grant of that right. Furthermore, although the restrictions which the public authorities impose on that traveller as a result of the worldwide spread of the COVID-19 pandemic constitute a risk for that traveller, the failure to perform or the improper performance of the package travel services caused by those restrictions is not attributable to that traveller. As stated in paragraph 23 above, only such attributability can exempt the organiser concerned from its obligation to grant that traveller a reduction in the price of his or her package in the event of a lack of conformity of the services provided.
- 35 The Czech Government’s argument that compliance with the legislation applicable at the travel destination is an implicit term of any package travel contract, such that compliance with the restrictions adopted by the authorities at the travel destination cannot be considered to be a lack of conformity of the services provided, does not call into question the conclusion in paragraph 31 above. While it is true that the parties to a package travel contract are required to comply with such legislation irrespective of whether it is mentioned in the contract and that such compliance by the organiser may lead to a lack of conformity of the travel services provided, the fact remains that that lack of conformity is not, in any event, attributable to the traveller concerned, with the result that that traveller is entitled to a reduction in the price of his or her package. Nor is it relevant that that lack of conformity is not attributable to the organiser concerned, since that right to a price reduction is based on the strict liability of the organiser, as noted in paragraph 25 above.
- 36 In assessing whether a right to a price reduction exists under Article 14(1) of Directive 2015/2302, the referring court will still have to take the factors below into account.
- 37 In the first place, as is apparent from a combined reading of that provision and Article 3(13) of Directive 2015/2302, the organiser’s obligation to grant such a price reduction is assessed only with regard to the travel services included in the package travel contract which have not been performed or which have been performed improperly. That organiser is not required to provide compensation for services which it has not undertaken to provide. That package travel contract thus limits the organiser’s obligation.
- 38 In view of the purpose of Directive 2015/2302, which is to ensure a high level of consumer protection, the organiser’s obligations arising from such a contract cannot, however, be interpreted restrictively. Thus, those obligations include not only those explicitly stipulated in the package travel contract, but also those linked to it as a result of the purpose of that contract

(see, to that effect, judgment of 18 March 2021, *Kuoni Travel*, C-578/19, EU:C:2021:213, paragraph 45). In the present case, it will be for the referring court to assess, on the basis of the services which the organiser concerned had to provide, in accordance with the package travel contract signed with the applicants in the main proceedings, whether, in particular, the closure of the swimming pools in the hotel concerned, the lack of an entertainment programme in that hotel and the fact that it was not possible to access the beaches of Gran Canaria or visit that island following the adoption of measures taken by the Spanish authorities to fight the spread of the COVID-19 pandemic could constitute failures to perform or improper performances of that contract by that organiser.

- 39 In the second place, in accordance with Article 14(1) of Directive 2015/2302, the reduction in the price of the package concerned must be appropriate for the entire period in which there was lack of conformity. The assessment of whether it is appropriate must, like the finding of a lack of conformity, be carried out objectively, taking into account the organiser's obligations under the package travel contract. Thus, that assessment must be based on an estimate of the value of the travel services included in the package concerned which have not been performed or have been performed improperly, taking into account the duration of that failure to perform or that improper performance and the value of that package. The reduction in the price of that package must correspond to the value of the travel services for which a lack of conformity has been found.
- 40 In the third place, as is apparent from recital 34 and Article 13(2) of Directive 2015/2302, the traveller concerned is required to inform the organiser without undue delay, taking into account the circumstances of the case, of any lack of conformity he or she perceives during the performance of a travel service included in the package travel contract. Failure to do so may be taken into account when determining the reduction in the price of that package where such notice could have reduced the duration of the lack of conformity perceived.
- 41 In the present case, in so far as those instances of lack of conformity are due to measures taken by the Spanish authorities to fight the spread of the COVID-19 pandemic, the duration of those instances of lack of conformity could not have been limited had the applicants in the main proceedings given notice thereof. Thus, failure to give notice cannot be taken into account when determining that price reduction.
- 42 In the light of all of the foregoing considerations, the answer to the question referred is that Article 14(1) of Directive 2015/2302 must be interpreted as meaning that a traveller is entitled to a reduction in the price of his or her package holiday where a lack of conformity of the travel services included in the package is due to restrictions that have been imposed at the travel destination to fight the spread of an infectious disease and such restrictions have also been imposed in the traveller's place of residence and in other countries due to the worldwide spread of that disease. In order for that price reduction to be appropriate, it must be assessed in the light of the services included in the package concerned and must correspond to the value of the services for which a lack of conformity has been found.

Costs

- 43 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. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

Article 14(1) of Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC,

must be interpreted as meaning that a traveller is entitled to a reduction in the price of his or her package holiday where a lack of conformity of the travel services included in the package is due to restrictions that have been imposed at the travel destination to fight the spread of an infectious disease and such restrictions have also been imposed in the traveller's place of residence and in other countries due to the worldwide spread of that disease. In order for that price reduction to be appropriate, it must be assessed in the light of the services included in the package concerned and must correspond to the value of the services for which a lack of conformity has been found.

[Signatures]