



The protection of travellers against the risk of insolvency on the part of the package travel organiser also applies where the insolvency is attributable to the organiser's fraudulent conduct

The obligation on the travel organiser to hold sufficient security to ensure, in the event of insolvency, repayment of the cost of the travel and the repatriation of travellers applies whatever the causes of the insolvency may be

One of the aims of the Package Travel Directive¹ is to ensure that, in the event of insolvency or bankruptcy on the part of the travel organiser, the repatriation of the consumer and the refunding of the money paid over are guaranteed. To that end, the directive places the travel organiser under an obligation to provide evidence of sufficient security to cover that refund and repatriation in such a situation. Accordingly, the German Civil Code (Bürgerliches Gesetzbuch) provides that the travel organiser must guarantee that the amount paid for a trip will be refunded if the travel services are not provided because of the travel organiser's insolvency.

The Landgericht Hamburg (Regional Court, Hamburg, Germany) asks the Court of Justice whether that protection of consumers also applies where the insolvency is attributable to fraudulent conduct on the part of the travel organiser. The Landgericht Hamburg must rule on the action brought by Mr Blödel-Pawlik against HanseMerkur Reiseversicherung AG, a German insurance company, concerning its refusal to refund the cost of package travel which did not take place because of the insolvency of the travel organiser, Rhein Reisen GmbH. The travel organiser – which, in the view of the Landgericht, had never really intended to organise the trip which Mr Blödel-Pawlik had booked for himself and his wife – became insolvent because it had embezzled the money paid by prospective travellers. It had taken out insurance against insolvency with HanseMerkur Reiseversicherung AG and had provided Mr Blödel-Pawlik with two notices of guarantee confirming that the cost of the trip would be refunded if the trip did not take place owing to the organiser's insolvency. According to the insurance company, however, the Package Travel Directive is not intended to protect travellers against fraudulent conduct on the part of a package travel organiser.

In today's judgment, the Court replies that the protection conferred on travellers under that directive in the event of insolvency on the part of the package travel organiser applies even where the insolvency is attributable to the organiser's own fraudulent conduct. The directive is specifically aimed at arming consumers against the consequences of insolvency, whatever its causes. Accordingly, the fact that the insolvency of the travel organiser is attributable to its own fraudulent conduct cannot constitute an obstacle to the refund of money paid over or to the repatriation of travellers.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

¹ Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours (OJ 1990 L 158, p. 59).

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