



PRESS RELEASE No 140/23

Luxembourg, 14 September 2023

Judgment of the Court in Case C-83/22 | Tuk Tuk Travel

Termination of package holidays in the event of extraordinary circumstances: a national court may, under certain conditions, notify of its own motion the traveller of his or her right to terminate the contract without fees

In October 2019, a traveller purchased from the travel organiser Tuk Tuk Travel a package holiday for two persons to Vietnam and Cambodia departing from Madrid (Spain) on 8 March 2020 and returning on 24 March 2020. The traveller paid almost half of the total price of the trip. The contract provided information regarding the possibility to terminate the contract before the departure date upon payment of a fee. By contrast, the contract was silent as to the possibility of termination at no cost on account of unavoidable and extraordinary circumstances occurring at the place of destination, as provided for by the package travel directive.¹

On 12 February 2020, taking into account the spread of coronavirus in Asia, the traveller notified Tuk Tuk Travel of his decision to terminate the contract and requested that Tuk Tuk Travel refund all amounts to which he was entitled. Having been informed by the travel organiser that after deducting cancellation fees, only a small part of the amount paid would be reimbursed, the traveller brought an action. The traveller claims to have terminated the contract almost one month before the scheduled departure date and asserts a case of *force majeure*: the spread of coronavirus in Asia. The traveller, who is not represented by a lawyer, claims only a refund in part of the amount paid because he considers that a quarter of that amount corresponds to the management fees incurred by Tuk Tuk Travel.

The Spanish court before which the action was brought requested the interpretation of the Court of Justice of the package travel directive. It asks whether it may, of its own motion, under the directive, grant the traveller the refund of all the payments made, where the latter terminated the contract because of extraordinary circumstances. The Spanish court observes that that possibility is contrary to fundamental principles of Spanish procedural law.

In today's judgment, the Court of Justice points out first of all that the directive obliges a travel organiser to notify the traveller, *inter alia*, of his or her right to terminate the contract.

Next, the Court of Justice states that, **given the significance of the right to terminate the contract conferred by the directive** (and the further right to the full refund of payments made), **its effective protection requires that the national court may, of its own motion, claim that that directive has been infringed**, in particular where

¹ 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).

the traveller does not assert his or her right since he or she is unaware of its existence. That examination of its own motion is however subject to certain conditions.²

In the present case, and subject to the assessment of the Spanish Court, those conditions appear to be satisfied, all the more so because the Court of Justice already held in a general manner that the concept of 'unavoidable and extraordinary circumstances' is capable of covering the outbreak of a global health crisis, and that the case before the Spanish court concerns the refund of payments made by the traveller following his decision to terminate the contract on account of the spread of coronavirus.³ Furthermore, it cannot be excluded that the traveller was unaware of his right to terminate the contract, because Tuk Tuk Travel did not notify him of that right. **The Spanish court is therefore required to examine of its own motion the right to terminate the contract.** Accordingly, in particular, it will have to, first, **notify the traveller of that right** and, secondly, **offer him the possibility of asserting that right in the judicial proceedings pending.**

By contrast, an ex officio assessment does not require the national court to terminate of its own motion the package travel contract concerned without fees while conferring on the same applicant the right to a full refund of payments made. It is up to the traveller to decide whether he or she intends to assert that right or not before the court.

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.

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The [full text and, as the case may be, the résumé](#) of the judgment is published on the CURIA website on the day of delivery.

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² Those conditions are the following: one of the parties to the package travel contract concerned must have brought judicial proceedings before the national court and those proceedings must have that contract as their purpose; the right to terminate the contract must be connected to the purpose of the dispute as defined by the parties; the national court must have available all the necessary elements of law and fact necessary in order to assess whether that right to terminate the contract could be relied on by the traveller concerned; that traveller need not have expressly indicated to the national court that he or she objected to the application of the directive concerning that right.

³ See judgment of the Court of Justice of 8 June 2023, *UFC – Que choisir and CLCV*, [C-407/21](#) (see also press release [No 94/23](#)).