

Case C-83/22

Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice

Date lodged:

8 February 2022

Referring court:

Juzgado de Primera Instancia No 5 de Cartagena (Spain)

Date of the decision to refer:

11 January 2022

Applicant:

RTG

Defendant:

Tuk Tuk Travel, S. L.

Subject matter of the main proceedings

Package travel – Traveller’s decision to cancel the trip due to fear of the spread of COVID-19 in Asia – Unavoidable and extraordinary circumstances – Full reimbursement of all payments made in respect of the trip

Subject matter and legal basis of the request for a preliminary ruling

Article 267 TFEU – Request for a preliminary ruling on validity and interpretation – Article 5 of Directive (EU) 2015/2302 – Minimum information to be supplied to the traveller – Validity in the light of Articles 114(3) TFEU and 169(1) and 2(a) TFEU – National principles of the delimitation of the subject matter of an action by the parties and of the correlation between the claims put forward in the action and the rulings contained in the operative part – Compatibility with EU law

Questions referred for a preliminary ruling

1.- Must Articles 169(1) and (2)(a) TFEU and 114(3) TFEU be interpreted as precluding Article 5 of Directive 2015/2302 on package travel and linked travel arrangements, since that article does not include, among the compulsory precontractual information to be provided to travellers, the right, conferred on travellers by Article 12 of the directive, to terminate the contract before the start of the package and obtain a full refund of payments made in the event of unavoidable and extraordinary circumstances which significantly affect the performance of the package?

2.- Do Articles 114 and 169 TFEU, and Article 15 of Directive 2015/2302, preclude the application of the principles of the delimitation of the subject matter of an action by the parties and of the correlation between the claims put forward in the action and the rulings contained in the operative part, which are laid down in Articles 216 and 218(1) LEC [Ley de Enjuiciamiento Civil (Law on Civil Procedure)], where those procedural principles are liable to impede the full protection of the applicant consumer?

Provisions of European Union law relied on

- Articles 114(1), (3) and (4) TFEU and 169(1) and (2) TFEU.
- 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, recital 31 and Articles 3(12), 5, 6, 8 and 12.
- Commission Recommendation (EU) 2020/648 of 13 May 2020 on vouchers offered to passengers and travellers as an alternative to reimbursement for cancelled package travel and transport services in the context of the COVID-19 pandemic

Provisions of national law relied on

- Consolidated Text of the General Law for the Protection of Consumers and Users (Texto refundido de la Ley General para la Defensa de los Consumidores y Usuarios), Articles 153, 156 and 160.

Those articles transpose almost verbatim the provisions of Articles 5, 6, 8 and 12 of Directive 2015/2302 into Spanish law.

- Law on Civil Procedure (Ley de Enjuiciamiento Civil; ‘LEC’)

Article 216: ‘Civil courts before which cases are brought shall dispose of them on the basis of the facts, evidence and claims put forward by the parties, save where otherwise provided by law in specific cases.’

Article 218: ‘1. Legal decisions must be clear and precise and must be commensurate with the requests and other claims of the parties, made in a timely manner in the course of the proceedings. Those decisions must contain the requisite declarations, find in favour of or against the defendant and settle all points in dispute which form the subject matter of the litigation.

The court, without departing from the cause of action by accepting elements of fact or points of law other than those which the parties intended to raise, must give its decisions in accordance with the rules applicable to the case, even though they may not have been correctly cited or pleaded by the parties to the procedure.’

Article 412: ‘1. Once the subject matter of the proceedings has been established in the application, in the defence, and, as the case may be, in the counterclaim, the parties may not vary it at a later date.’

Succinct presentation of the facts and procedure in the main proceedings

- 1 On 10 October 2019, the applicant decided to purchase from the defendant, Tuk Travel, S. L., a package trip for two persons to Vietnam and Cambodia, departing from Madrid on 8 March 2020 and returning on 24 March 2020.
- 2 The applicant paid EUR 2 402 at the time of signature of the contract, while the full cost of the trip was EUR 5 208. The general conditions of the contract provided information about the option ‘to cancel the trip before it starts upon payment of a termination fee’. No contractual or precontractual information was included regarding the option to cancel in the event of unavoidable and extraordinary circumstances occurring at the place of destination or its immediate vicinity and significantly affecting the performance of the package.
- 3 On 12 February 2020, the applicant notified the defendant of his decision not to take the trip, in view of his concern over the spread of coronavirus in Asia, and he requested the refund of the amounts due to him as a result of that decision.
- 4 The defendant replied to the applicant on 14 February 2020, informing him about the cancellation costs and stating in conclusion that it would reimburse the applicant EUR 81. Following exchanges between the applicant and the defendant, the latter notified the former that it would finally reimburse him EUR 302.
- 5 The applicant decided to bring an action before the referring court. He claims the refund of EUR 1 500, allowing the agency to retain EUR 600 as administration costs.

The essential arguments of the parties in the main proceedings

- 6 The applicant argues that cancellation occurred almost one month before the start of the trip and that his decision was based on a reason of force majeure: the worrying health situation in the area of the trip as a result of COVID-19.
- 7 The defendant submits that, on the date of termination of the contract, the applicant's decision was unjustified. In February 2020, travel to those countries was continuing as normal. No unavoidable and extraordinary circumstances were occurring at the place of destination on the date on which the trip was cancelled, since it has not been established that the authorities of the country of origin or those of the country of destination had adopted specific measures which would have prevented the trip. Regard must be had to the information existing at the time when the applicant decided to cancel his trip. The applicant agreed to the general conditions of the contract relating to administration charges (15% of the total cost of the trip), while the cancellation charges are those applied by each of its providers. In addition, by failing to take out insurance, the applicant assumed the risk of any hypothetical cancellation.

Succinct presentation of the reasoning in the request for a preliminary ruling

- 8 Pursuant to recital 31 of Directive 2015/2302, 'travellers should ... 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.'
- 9 Article 12(2) of Directive 2015/2302 provides that, 'notwithstanding paragraph 1, the traveller shall have the right to terminate the package travel contract before the start of the package without paying any termination fee in the event of unavoidable and extraordinary circumstances occurring at the place of destination or its immediate vicinity and significantly affecting the performance of the package, or which significantly affect the carriage of passengers to the destination. In the event of termination of the package travel contract under this paragraph, the traveller shall be entitled to a full refund of any payments made for the package, but shall not be entitled to additional compensation.'
- 10 However, neither Directive 2015/2302 nor the Spanish legislation include as a minimum component of the compulsory information to be provided to travellers the option to terminate the package travel contract in the event of unavoidable and extraordinary circumstances, with the right to recover all payments made and without any termination fee. Therefore, the applicant was unaware, both when he communicated to the defendant his decision not to travel and when he lodged his application with the referring court (before which he is appearing without legal

representation), that he may be entitled to terminate the contract and obtain reimbursement of all payments made on the grounds of unavoidable and extraordinary circumstances occurring at the place of destination which were liable to significantly affect the performance of the package.

- 11 First, the question arises whether the minimum information that was provided to the applicant under Directive 2015/2302 is insufficient in the light of Article 169 TFEU, in conjunction with Article 114 TFEU. In other words, whether the information in the traveller's possession, which is compatible with the directive, makes it difficult for him to defend his legally recognised rights and interests as a traveller and may be insufficient for him to obtain as a consumer a high level of protection in a case like this, in which he has no legal representation.
- 12 Second, the question arises whether, if the existence of a serious situation resulting from unavoidable and extraordinary circumstances significantly affecting the performance of the package is found to have been established, it is possible, under EU law, to award in the judgment the reimbursement of all payments made, which is more than the applicant has claimed and is contrary to a basic principle of Spanish procedural law, the principle of the correlation between the claims put forward in the action and the rulings contained in the operative part of a judgment (Article 218(1) LEC). Under Spanish procedural law, a judgment may not award more than has been claimed in the application (in the present case, the effect of that would be that full repayment was not made), which could preclude a high level of protection for the consumer who would, therefore, not benefit fully from the high level of protection which the TFEU grants to consumers.
- 13 In relation to the latter question, the Tribunal Supremo (Supreme Court, Spain) submitted a request for a preliminary ruling (Case C-869/19) on the scope of the national procedural principles of the delimitation of the subject matter of an action by the parties and the correlation between the claims put forward in the action and the rulings contained in the operative part. On 15 July 2021, the Advocate General delivered his Opinion in that case, stating that 'Article 6(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted, in the light of the principle of effectiveness, as precluding the application of the national procedural principles of the delimitation of the subject matter of an action by the parties, the correlation between the claims put forward in the action and the rulings contained in the operative part and the prohibition of *reformatio in peius*, which prevent the national court seised of an appeal lodged by a bank against a judgment that placed a temporal limitation on repayment of the amounts overpaid by a consumer under a floor clause subsequently declared void from ordering repayment in full of the said overpayments.'