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Judgment of the Court in Case C-469/24 | [Tuleka] <sup>1</sup>

### **Package travel: where a contract has been performed improperly, the traveller may be entitled to a full refund, even if certain services have been provided**

*This is the case where the improper performance of the travel services is so serious that the package no longer serves its purpose and the trip is objectively no longer of interest to the traveller*

Two Polish travellers departed for an 'all-inclusive' stay at a five-star hotel in Albania.

The day after their arrival, they were awoken by the noise of work to demolish the hotel's two swimming pools, which had been commissioned by the Albanian authorities. That work lasted for four days, from 7.30 to 19.30, during which time the swimming pools, the seafront promenade and the paved waterfront with access to the sea were entirely demolished. The holidaymakers also had to wait in long queues for their meals and had to arrive at the start of service because the number of available meals was limited. The serving of afternoon snacks was also cancelled. Lastly, during the final three days of their stay, new work was started to add a fifth floor to the hotel.

The travellers initiated legal proceedings to claim a full refund of the price of their trip and compensation. Seeking clarification of the rights conferred on them by the Package Travel Directive, <sup>2</sup> the Polish court sought a preliminary ruling from the Court of Justice.

The Court finds that **a traveller is entitled to a full refund of the price paid** not only where the travel services have not been performed or have been performed improperly, but also **where, even though certain services have been provided, their improper performance is so serious that the package no longer serves its purpose and the trip is objectively no longer of interest to the traveller**. The Court adds that it is for the national court to assess, in the light of all the circumstances, whether that is the case.

The Court also observes that the Directive is intended solely to restore the contractual balance between travellers and travel organisers. Conversely, **it does not enable travel organisers to be penalised, in particular by imposing punitive damages**.

The Court also points out that travellers are not entitled to receive compensation if the organiser proves that the failure to perform or improper performance of the travel services is attributable to a third party and is unforeseeable or unavoidable. According to the Directive, **that possibility of escaping liability towards the traveller is not dependent on any fault on the part of that third party**. Accordingly, the Directive precludes Polish legislation which requires the travel organiser to demonstrate such fault.

As regards the question whether the demolition work may be considered 'an unavoidable and extraordinary circumstance', relieving the organiser of the obligation to pay compensation, the Court notes that that work

is the consequence of a measure taken by a public authority. Such measures are generally adopted in a transparent manner and preceded by some publicity. It is therefore for the national court to ascertain whether the travel organiser or the manager of the tourist infrastructure had been notified of the procedure which led to the decision to demolish, or even participated in that procedure, or whether they had been informed of the content of that decision before it was implemented. **Where there is such participation or notification, the demolition of the infrastructure in question cannot be considered unforeseeable. Consequently, the organiser cannot be relieved of its obligation to pay compensation to the 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.

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

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<sup>1</sup> The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

<sup>2</sup> [Directive \(EU\) 2015/2302](#) of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements.