

Joined Cases C-178/94, C-179/94, C-188/94, C-189/94 and C-190/94
Erich Dillenkofer and Others

v

Federal Republic of Germany

(References for a preliminary ruling
from the Landgericht Bonn)

(Directive 90 / 314 / EEC on package travel, package
holidays and package tours — Non-transposition —

Liability of the Member State and its obligation to make reparation)

Opinion of Advocate General Tesouro delivered on 28 November 1995 I - 4848

Judgment of the Court, 8 October 1996 I - 4867

Summary of the Judgment

1. *Community law — Rights conferred on individuals — Breach, by a Member State, of the obligation to transpose a directive — Obligation to make good damage caused to individuals — Conditions — Sufficiently serious breach — Concept — Failure to transpose the directive within the prescribed period*

(*EC Treaty, Art. 189, third para.*)

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SUMMARY — JOINED CASES C-178/94, C-179/94, C-188/94, C-189/94 AND C-190/94

2. *Approximation of laws — Package travel, package holidays and package tours — Directive 90/314 — Article 7 — Protection against the risk of the organizer's insolvency — Grant to the package traveller of rights whose content is sufficiently identifiable*

(*Council Directive 90/314, Art. 7*)

3. *Approximation of laws — Package travel, package holidays and package tours — Directive 90/314 — Protection against the risk of the organizer's insolvency — Measures necessary to ensure correct transposition of the Directive*

(*Council Directive 90/314, Arts 7 and 9*)

1. Failure to take any measure to transpose a directive in order to achieve the result it prescribes within the period laid down for that purpose constitutes *per se* a serious breach of Community law and consequently gives rise to a right of reparation for individuals suffering injury if the result prescribed by the directive entails the grant to individuals of rights whose content is identifiable and a causal link exists between the breach of the State's obligation and the loss and damage suffered.

2. The result prescribed by Article 7 of Directive 90/314 on package travel, package holidays and package tours, which provides that the organizer and/or retailer party to the contract is to provide sufficient evidence of security for the refund of money paid over by the consumer and for his repatriation, entails the grant to package travellers of rights guaranteeing a refund of money paid over and their repatriation in the event of the organizer's insolvency; the content of those rights is sufficiently identifiable.

3. In order to comply with Article 9 of Directive 90/314 on package travel, package holidays and package tours, which provides that the Member States are to bring into force the measures necessary to comply with the directive before 31 December 1992, the Member States should have adopted, within the period prescribed, all the measures necessary to ensure that, as from 1 January 1993, individuals would have effective protection against the risk of the insolvency of the organizer.

In that connection, if a Member State allows a package travel organizer to require payment of a deposit of up to 10% towards the travel price, but subject to a certain maximum amount, the protective purpose pursued by Article 7 of Directive 90/314 is not satisfied unless a

refund of that deposit is also guaranteed in the event of the insolvency of the package travel organizer.

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Article 7 of Directive 90/314 is, furthermore, to be interpreted as meaning, first, that the 'security' of which organizers must offer sufficient evidence is lacking even if, on payment of the travel price, travellers are in possession of documents of value which, although guaranteeing a direct right against the actual provider of services, do not necessarily require that party, who is himself likewise exposed to the risks consequent on insolvency, to honour them and, secondly, that a Member State may not omit to transpose a directive on the basis of a judgment of a domestic supreme court, according to which package travel purchasers are no longer required to pay more than 10% of the travel price before they obtain such documents of value.

Neither the objective of Directive 90/314 nor its specific provisions require the Member States to adopt particular provisions in relation to Article 7 to protect package travellers from their own negligence.

Where a directive has not been transposed within the prescribed period, a national court may, in order to determine the damage which must be made good, always inquire whether the injured person showed reasonable care so as to avoid the loss or damage or to mitigate it.

However, a package traveller who has paid the whole travel price cannot be regarded as acting negligently simply because he did not take advantage of the possibility, which a judgment of the kind referred to above afforded him, of paying no more than 10% of the total travel price before obtaining documents of value.

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