JUDGMENT OF THE COURT (Third Chamber)

30 April 2002 *

In Case C-400/00,

REFERENCE to the Court under Article 234 EC by the Tribunal Judicial da Comarca do Porto (Portugal) for a preliminary ruling in the proceedings pending before that court between

Club-Tour, Viagens e Turismo SA

and

Alberto Carlos Lobo Gonçalves Garrido,

Third party:

Club Med Viagens Ld.ª,

on the interpretation of Article 2(1) of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours,

* Language of the case: Portuguese.

THE COURT (Third Chamber),

composed of: F. Macken, President of the Chamber, C. Gulmann (Rapporteur) and J.N. Cunha Rodrigues, Judges,

Advocate General: A. Tizzano,
Registrar: R. Grass,

after considering the written observations submitted on behalf of:

— the Portuguese Government, by L. Fernandes and M. Telles Romão, acting as Agents,

— the Belgian Government, by A. Snoecx, acting as Agent,

— the Spanish Government, by R. Silva de Lapuerta, acting as Agent,

— the French Government, by G. de Bergues and R. Loosli-Surrans, acting as Agents,

— the Austrian Government, by H. Dossi, acting as Agent,

— the Commission of the European Communities, by M. França, acting as Agent,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 17 January 2002,

gives the following

Judgment

1 By a decision of 31 October 2000, received at the Court on 3 November 2000, the Tribunal Judicial da Comarco do Porto referred to the Court for a preliminary ruling under Article 234 EC on two questions on the interpretation of Article 2(1) of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours (OJ 1990 L 158 p. 59; the 'Directive').

2 Those questions arose in the course of a dispute between the travel agency Club-Tour, Viagens et Tourismo SA ('Club-Tour') and Mr Lobo Gonçalves Garrido concerning payment of the price of a holiday.

Legal background

3 The purpose of the Directive is to harmonise the laws, regulations and administrative provisions of the Members States concerning package travel, package holidays and package tours sold or offered for sale within the Community.

4 Article 2(1) of the Directive provides:

'For the purposes of this Directive:

1. "package" means the pre-arranged combination of not fewer than two of the following when sold or offered for sale at an inclusive price and when the service covers a period of more than 24 hours or includes overnight accommodation:

   (a) transport;

   (b) accommodation;

   (c) other tourist services not ancillary to transport or accommodation and accounting for a significant proportion of the package.

The separate billing of various components of the same package shall not absolve the organiser or retailer from the obligations under this Directive.'

Point (j) of the Annex to the Directive states:

'Elements to be included in the contract if relevant to the particular package:

...

(j) special requirements which the consumer has communicated to the organiser or retailer when making the booking, and which both have accepted.'

The dispute in the main proceedings and the questions referred

Mr Lobo Gonçalves Garrido purchased from Club-Tour, for PTE 1 692 928, a holiday consisting of air tickets and accommodation for two weeks, full board, in the holiday village of Gregolimano (Greece).

For that purpose, Club-Tour bought a holiday from the travel agency Club Med Viagens Ld.[4] ('Club Med'). It was thus Club Med which undertook to make the

necessary reservations at the holiday village of Gregolimano for accommodation, meals and transfers, organised and published the holiday programme, and fixed the overall price.

8 On their arrival at the holiday village, Mr Lobo Gonçalves Garrido and his family noticed that it was infested by thousands of wasps, which prevented them — throughout their stay — from fully enjoying their holiday. Moreover, the immediate request by Mr Lobo Gonçalves Garrido for the transfer of himself and his family to another village could not be dealt with by Club-Tour, as the Club Med which it contacted stated that it was not in a position to arrange appropriate alternative accommodation.

9 For that reason, on his return home, Mr Lobo Gonçalves Garrido refused to pay the price of the holiday agreed with Club-Tour. The latter thereupon sought an order from the Tribunal Judicial da Comarca do Porto that Mr Lobo Gonçalves Garrido pay the price of the holiday. Before that court, Club-Tour denied that the Directive applied to the present proceedings, arguing that the holiday sold was outside its scope.

10 Taking the view that the Directive aims to protect consumers of holiday services by making tour operators and travel agents liable for loss caused to consumers as a result of the improper execution of a contract, and that national law must be interpreted and applied in accordance with the Directive, the Tribunal Judicial da Comarca do Porto referred the following questions to the Court for a preliminary ruling:

'(1) Does a package organised by the agency, at the request and on the initiative of the consumer or a strictly defined group of consumers in accordance with their wishes, including transport and accommodation through a tourism

undertaking, at an inclusive price, for a period of more than 24 hours or including overnight accommodation, fall within the scope of the concept of "package travel" as defined in Article 2(1)?

(2) May the expression "pre-arranged" which appears in the directive be interpreted as referring to the moment when the contract is entered into between the agency and the customer?'

The first question

11 By the first question, the court of reference essentially asks whether the word 'package' used in Article 2(1) of the Directive must be interpreted as including holidays organised by a travel agency at the request of and according to the specifications of a consumer or a defined group of consumers.

12 In line with the submissions of the governments and of the Commission to this Court, the answer to that question must be in the affirmative.

13 The Directive, which is designed amongst other things to protect consumers who buy 'package' holidays, gives a definition of that term in Article 2(1) whereby it is enough, for a service to qualify as a 'package', if, first, the combination of tourist services sold by a travel agency at an inclusive price includes two of the three services referred to in that paragraph (namely transport, accommodation and other tourist services not ancillary to transport or accommodation and accounting for a significant proportion of the package), and, second, that service covers a period of more than 24 hours or includes overnight accommodation.

14 There is nothing in that definition to suggest that holidays organised at the request and in accordance with the specifications of a consumer or a defined group of consumers cannot be considered as 'package' holidays within the meaning of the Directive.

15 That definition is reinforced by point (j) of the Annex to the Directive, which provides that, among the elements to be included in a contract covered by the Directive are 'special requirements which the consumer has communicated to the organiser or retailer when making the booking, and which both have accepted'.

16 In those circumstances, the answer to the first question is that the term 'package' used in Article 2(1) of the Directive must be interpreted as including holidays organised by a travel agency at the request of and according to the specifications of a consumer or a defined group of consumers.

The second question

17 By its second question, the referring court essentially asks whether the term 'pre-arranged combination' used in Article 2(1) of the Directive must be interpreted as including combinations of tourist services which are put together at the time when the contract is concluded between the travel agency and the consumer.

18 Given the answer suggested by them to the first question, the governments which have submitted observations to the Court and the Commission propose an affirmative answer to the second question.

19 As it has been held in paragraph 16 of this judgment that the term 'package' in Article 2(1) of the Directive must be interpreted so as to include holidays organised in accordance with the consumer's specifications, the term 'pre-arranged combination' which constitutes one of the elements of the definition of 'package', necessarily covers cases where the combination of tourist services is the result of the wishes expressed by the consumer up to the moment when the parties reach an agreement and conclude the contract.

20 The answer to the second question must therefore be that the term 'pre-arranged combination' used in Article 2(1) of the Directive must be interpreted so as to include combinations of tourist services put together at the time when the contract is concluded between the travel agency and the consumer.

Costs

21 The costs incurred by the Portuguese, Belgian, Spanish, French and Austrian Governments and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Third Chamber),

in answer to the questions referred to it by the Tribunal Judicial da Comarca do Porto by decision of 31 October 2000, hereby rules:

1. **The term 'package' used in Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours, must be interpreted so as to include holidays organised by travel agents, at the request of and in accordance with the specifications of a consumer or limited group of consumers.**

2. **The term 'pre-organised combination' used in Article 2(1) of Directive 90/314 must be interpreted so as to include combinations of tourist services put together at the time when the contract is concluded between the travel agency and the consumer.**

Macken Gulmann Cunha Rodrigues

Delivered in open court in Luxembourg on 30 April 2002.

R. Grass — Registrar

F. Macken — President of the Third Chamber