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Judgments of the Court in Case C-407/21 | UFC – Que choisir and CLCV and in Case C-540/21 Commission v Slovakia (Right of termination without fees)

Package travel and the COVID-19 pandemic: national legislation which temporarily releases organisers from their obligation to provide a full refund in the event of termination of a package travel contract is incompatible with EU law

A Member State cannot rely on an apprehension of internal difficulties to justify a failure to comply with obligations arising under EU law where that failure to comply does not satisfy the conditions for force majeure

UFC-Que Choisir and CLCV, two consumer protection associations, brought an application before the Conseil d'Etat (Council of State, France) for the annulment of an order concerning the financial conditions for the termination of certain tourist travel and holiday contracts in the event of unavoidable and extraordinary circumstances or *force majeure* (Case C-407/21). That legislation had been adopted in the context of the COVID-19 pandemic in order to enable travel organisers, in the event of termination ('rescission') of a package travel contract owing to unavoidable and extraordinary circumstances, to issue a voucher with an 18-month validity period giving rise to a refund of any payments made by travellers only if that voucher is not used during that period. This constituted a derogation from the requirements of the Directive on package travel, which provides for a full refund of those payments not later than 14 days after termination.¹ According to the French Government, that measure was intended to preserve the viability of the tourism sector by preventing, due to the large number of reimbursement claims linked to the pandemic, the solvency of travel organisers being affected to the point of jeopardising their existence.

In its judgment, the Court holds that Member States **cannot invoke *force majeure* in order to release, even temporarily, package travel organisers from the reimbursement obligation** laid down by the Directive.

It explains that 'refund' is to be understood as reimbursement **in the form of money**. The EU legislature **did not envisage the possibility of replacing that payment obligation with a benefit in another form**, such as the offer of vouchers. The objective pursued by the directive in question is to achieve a **high** and as uniform as possible **level of consumer protection**. Accordingly, a refund in the form of money is **better able to contribute to the protection of the traveller's interests**, which of course does not rule out that the traveller may accept, on a voluntary basis, reimbursement in the form of a voucher.

As regards the grounds for terminating a package travel contract, the Court holds that a global health crisis such as the **COVID-19 pandemic**, as an **event which is clearly beyond all control and the consequences of which could not have been avoided even if all reasonable measures had been taken**, must be regarded as capable of

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).

constituting ‘unavoidable and extraordinary circumstances’, in respect of which the Directive prescribes a full refund.

In addition, the Court rejects the French Government’s argument that the COVID-19 pandemic, while constituting ‘unavoidable and extraordinary circumstances’, also constituted a case of *force majeure*, covering cases which go beyond what was envisaged when the Directive was adopted and permitting the adoption of national legislation derogating from the obligation to provide a full refund. In that regard, the Court states that the concept of ‘unavoidable and extraordinary circumstances’ constitutes, for the purposes of the Directive, an exhaustive implementation of *force majeure*. The Directive does not provide for the possibility to derogate from the obligation to provide a full refund in respect of *force majeure*.

Furthermore, it states that *force majeure* likewise cannot be invoked by Member States to justify the adoption of national legislation that is contrary to the provisions of a directive. The conditions for *force majeure* are not, in any event, satisfied, since (i) the legislation at issue leads to a **general temporary suspension** of the reimbursement obligation, **without taking into account the specific and individual financial situation of the travel organisers concerned**; (ii) the financial consequences complained of by the French Government **could have been avoided** by the adoption, for example, of certain State aid for the benefit of the travel organisers concerned; and (iii) that legislation (which releases travel organisers from their reimbursement obligation for a period of up to 21 months) is **not framed in such a way as to limit its effects to the period necessary to remedy the difficulties caused by the event capable of constituting *force majeure***.

The Court also points out that it is for a national court hearing an action for the annulment of national legislation which it considers to be contrary to EU law to annul that legislation. It adds that the power to **adjust, in exceptional circumstances** (for example, when faced with overriding considerations relating to the protection of the environment or the electricity supply in a Member State), the **effects of an annulment decision, is not applicable in the present case**: the annulment of the order at issue is not likely to have adverse consequences for the package travel sector to such an extent that maintaining its effects would be necessary in order to protect the financial interests of the operators in that sector.

The Court follows, in essence, the reasoning summarised above in **Case C-540/21 Commission v Slovakia** and finds that in adopting a legislative amendment which temporarily denies travellers their right to terminate a package travel contract without paying termination fees and to receive a full refund, **the Republic of Slovakia has failed to fulfil its obligation under the Directive** on package travel.

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.

NOTE: An action for failure to fulfil obligations, directed against a Member State which has failed to comply with its obligations under European Union law may be brought by the Commission or by another Member State. If the Court of Justice finds that there has been a failure to fulfil obligations, the Member State concerned must comply with the Court’s judgment without delay. Where the Commission considers that the Member State has not complied with the judgment, it may bring a further action seeking financial penalties. However, if measures transposing a directive have not been notified to the Commission, the Court of Justice can, on a proposal from the Commission, impose penalties at the stage of the initial judgment.

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The full text of the judgments ([C-407/21](#) and [C-540/21](#)) is published on the CURIA website on the day of delivery.

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