

Austria

Compensation for non-material damage caused by loss of enjoyment of the holidays

Jürgen Brandstätter

Foglar-Deinhardstein & Brandstätter, Vienna

The Austrian government recently decided to submit a bill on the amendment of Austrian civil law ("*Zivilrechts-Änderungsgesetz 2004*") to parliament for adoption. With the insertion of para. 31e (3) in the Consumer Protection Act ("*KSchG*") the Ministry of Justice responded to the need for reform created by the European Court judgement, C-168/00, *Simone Leitner v TUI Deutschland GmbH & Co KG*. The case was referred to the European Court by an Austrian provincial court for a preliminary ruling on the interpretation of Article 5 of Council Directive 90/314/EEC on package travel, holidays and tours. According to the judgement, Art 5 in principle confers on consumers a right to compensation for non-material damage resulting from the non-performance or improper performance of the services constituting a package holiday. The judgement was followed by conflicting judicial decisions of Austrian courts, and today, there is still no express provision in Austrian law for non-material damage of that kind.

This new bill addresses the current situation by granting consumers a right to a compensation for non-material damage caused by loss of enjoyment of the holidays, if the organizer did not provide a significant proportion of the services contracted for. The organizer is liable for fault, including slight negligence. With regard to the amount of the compensation the provision only gives general criteria as the gravity and the duration of the defect, the degree of fault, the contracted goal of the travel or the stipulated price. Previous judgements rendered by Austrian courts on that issue indicated sums of € 50-60 per day to be adequate. However, the courts will have to stay in line with the principles developed with respect to damages for pain and suffering. The bill to be enacted is envisaged to enter into force on January 1, 2004.