

Jacek KRAŚ
University of Rzeszów

Complaint on the Package Travel as the Expression of the Consumer Rights Protection

Abstract

A complaint concerning tourism services is one of the methods of claiming compensation with reference to a failure to perform or an inadequate performance of the tourist event contract. Not always, however, do the clients have appropriate knowledge and abilities to file such a complaint effectively. They also lack awareness of the fact that there are institutions providing the client with help and exacting the obligations of the travel agency, functioning as a tourism organiser. The aim of this article is to present the complaint as one of the tools whose aim is to protect the rights of the clients. The publication makes use of the topic literature, including most of all M. Nesterowicz's *Prawo turystyczne* [Tourism Law] or J. Gospodarek's *Prawo w turystyce i rekreacji* [Law In Tourism and Recreation] as well as the legal acts in force from the thematic scope presented in this work; among them, first of all, the law on tourism services. The analysis of the aforementioned legal acts, literature and other information contributed to the creation of this article. The paper consists of two parts, preceded by an introduction which presents the aim and the topic of the article. The first part provides an insight into the form of entering a tourist event contract, its content and essence. It also presents examples of abusive clauses appearing in such contracts. The second part comprises the issues related to the purpose and essence of complaint, the ways of filing it and its effectiveness in claiming damages under the civil law. It emphasises the fact that it is one of the ways of assessing the quality of a tourism product. It also contains information concerning the, so called, Frankfurt Table. The article ends with a summary, presenting the conclusions drawn during the discussion of the topic.

Keywords: complaint, tourist's claims, client's rights.

Introduction

The complaint procedure is the means for the customer to exercise his/her rights in case of defects in the product. It can be used not only for a factory defect, or damaged goods but also in the event of failure or improper performance of services, including tourism and travel-related services.

The purpose of this article is to present the complaint lodging procedure as a tool with which customers can protect their rights. Therefore, the subject of this paper is to analyse both the causes and consequences of complaint lodging in the context of the consumer's rights and the obligations of the organiser of the package.

To achieve the objectives of this study, it was necessary to analyse the existing legislation, which includes the Act on tourism services or the Civil Code as well as the thematic literature. The most important reference titles here are the publications of Jerzy Gospodarek and Mirosław Nesterowicz addressing the issues of the tourism law. Another useful resource was the data and information available on the websites of the institutions involved in the protection of customer rights.

The publication consists of two parts preceded by an introduction which sets out the purpose and subject of the article. The first part contains an analysis of the form, content and legal nature of the package travel contract. The second part presents deliberations on the content, forms and types of complaints with a focus on the complaint about tourism-related services. It is also stressed here that the complaint is not only a tool with which the customer can enforce his/her rights but also one of the elements of measuring the quality of services provided by a travel office.

1. Legal grounds of the package travel contract

The legal nature of the package travel contract has been defined in the Act on tourism services¹ in the third chapter. The Act sets out, *inter alia*, the form of the contract conclusion and the contract content. Such contract must be made in writing. As regards the content, the following information should be included there:

- identification of the organiser of the package;
- the place of stay and the tour itinerary, depending on the package characteristics;
- duration;
- the package program includes hotel services, transport, catering and sight-seeing programme and other services included in the price;
- the price of the package, receivables not included in the price and all circumstances justifying any increases in price;
- mode of payment;
- the type and scope of insurance and the name and address of the insurance company;
- the deadline for notifying in writing of the potential package cancellation due to insufficient number of applications, where the execution of services depends on the number of applications;

¹ Ustawa o usługach turystycznych (Dz.U. No 133, item 884 as amended).

- the deadline for notifying of the transfer of powers and the acquisition of responsibilities by another person;
- the method of filing the complaint;
- special requirements of the customer brought to the attention of the organiser of the package or a travel intermediary and which the parties have agreed to;
- legal basis of the contract and its consequences².

Observance of the rights of the customer is also safeguarded by other provisions of the Act on tourism services, including the Art. 19. According to this regulation the provisions of the contracts that are less favourable to the customer than the provisions of the Act on tourism services are legally invalid. In place of these provisions there apply the provisions of the Act on tourism services which are more advantageous for the customer. Whereas the Act does not prohibit the use of contractual provisions more favourable to the customer than the provisions of the Act³.

The issues of contractual provisions, including those related to prohibited clauses, are addressed in the Civil Code. The Art. 3853 presents the examples of provisions that can not be included in the contracts because they affect the rights of the customer. These include, but are not limited to, the provisions that:

- exclude or limit the liability for the consumer's personal injury;
- exclude or significantly limit the liability to the consumer for non-performance or improper performance of an obligation;
- authorize the consumer's counterparty to a unilateral change in the contract without a valid reason specified in the contract;
- give the consumer's counterparty the power to make binding interpretation of the contract⁴.

Contracts concluded between a tourist and an organiser of the package often include abusive clauses limiting the rights of the customer. These relate, for example to shortening the deadline for submitting a complaint, i.e. to 7 days, granting the organiser of the package the right to a 50-day period for the complaint consideration; not examining complaints filed after the completion of the package⁵.

One of the institutions dealing with the protection of consumer rights is the Competition and Consumer Protection Office (UOKiK) which was established in 1996. The President of the Office is the central state administration authority who reports directly to the Prime Minister. Its powers relating to the protection of the interests of customers include:

- conducting proceedings on practices infringing collective consumer interests which may lead to ordering the abandonment of illegal activities or to a penalty payment;

² Art. 14 of the Act on tourism services.

³ S. Korycki, *Ochrona klienta usług turystycznych w świetle regulacji ustawowych i praktyki*, [in:] B. Dobiegała-Korona (ed.), *Zachowania turystów na rynku turystycznym*, Warszawa 2010, p. 263.

⁴ Ustawa z dnia 23 kwietnia 1964 r. Kodeks cywilny (Dz.U. No 16, item. 93 as amended).

⁵ M. Nesterowicz, *Prawo turystyczne*, Warszawa 2012, s. 107–108.

- taking actions to eliminate contractual provisions which are illegal or against good customs;
- conducting proceedings on general product safety, aimed at protecting the life and health of consumers;
- managing the system of monitoring and controlling quality of liquid fuels⁶.

The UOKiK is competent to keep the register of prohibited clauses. Among the contractual provisions that are inconsistent with the applicable law we can find those related to the tourism industry. Their inclusion gives ground for lodging complaints about tourism related services. These include, inter alia:

- “The organiser does not accept any responsibility for the customers’ baggage in the event of any changes, customers’ forgetfulness or theft”.
- “The Office reserves the right to introduce minor changes in the program and change the package price due to changes in transportation costs, hotel services, currency prices etc”.
- “If you buy a package at a discount, last minute or special price, it is not subject to a complaint [...]”.
- “The complaint will be considered within 45 days from the date of submission”.
- “If the customer withdrawing from the contract indicates a person fulfilling the conditions for participation in a package who accepts the obligations of this contract, the customer is obliged to pay the handling charge”.
- “G.B.P. ZANCO&MARS reserves a 50 day deadline for the complaint handling”.
- “The Travel Services Office Ella-Tur stipulates that it will examine the complaints as long as the subject of the complaint was submitted in writing to the tour leader during the package”.
- “If the claim has no effect it is necessary to draw up a protocol which must be signed by the tour leader, resident. This is essential for the complaint to be considered”.
- “The complaint should be submitted in writing no later than 14 days after the termination of the package holiday”.
- “The complaint will be examined by the Department within 30 days of its submission, in special cases this term may be extended”.
- “The organiser of the package accepts complaints within 7 days of the end of the package. The complaint on the quantity or quality of services shall be examined only when submitted in writing, confirmed by the organiser’s employee or the organiser’s contractor during the package. If these conditions are not fulfilled, the complaint will not be taken into account”.
- “The complaint to be valid must be submitted by the Participant in the form of a written statement on the existing problematic situation to the tour leader or any other FUNCLUB representative so that it can be dealt with already

⁶ <https://www.biznes.gov.pl/-/urzed-ochrony-konkurencji-i-konsumentow>

on-the-spot and any inconvenience can be removed. If the Participant fails to do so, the complaint filed after the return will not be considered”.

- “The complaint will be considered within 45 days from the date of submission”.
- “The organiser of the package reserves the right to consider the complaint subject to it having been submitted in writing to the tour leader during the contract execution, and in his/her absence, to the personnel of the hotel reception, facility manager or the Office representative. The date of receipt of the complaint shall be the date on which the complaint was filed to the Traper Company Office”⁷.

During the tourist season the UOKiK receives many consumer complaints, which relate, inter alia, to:

- means of transport which is not in conformity with the contract;
- poor sanitation in the hotel;
- fewer meals than specified in the offer;
- changes in prices during the package;
- incompetence (the lack of culture on the part of the resident).

The Office of Competition and Consumer Protection also audited the contents of contracts concluded between the travel agency and the customer. It appears therein that:

- most of the audited contracts contained prohibited provisions;
- the information contained on the websites of travel agencies are unreliable and mislead their customers;
- the contracts often included ambiguous provisions, unintelligible to the customer;
- most of the audited contractual provisions contained provisions which unlawfully limited the liability of the organiser of the package⁸.

2. Complaint procedure – the purpose and application

The complaint can be described as the consumer’s act of notifying the seller about the defect of the product or deficiencies in the provision of services in order to ensure the exercise of the rights that the customer is entitled to. The complaint may be submitted in writing or orally. If the seller does not settle the complaint immediately, he is obliged to acknowledge its receipt and inform the customer about the way it is handled⁹.

As mentioned, complaints are submitted when the goods or service do not correspond to the specifications of the order placed by the recipient. Among the complaints there can be distinguished:

⁷ <http://uokik.gov.pl/rejestr/>.

⁸ S. Korycki, *Ochrona klienta usług turystycznych...*, pp. 269–270.

⁹ T. Kierzyk, *Prawo konsumenckie*, Legnica 2002, p. 74.

- quality-related complaint – if a customer finds a defect in the product;
 - quantity-related – if the client finds any deficiencies in quantitative terms.
- There can also be distinguished such complaints as:
- detailed/specific – the customer makes demands, claims;
 - general – the customer expresses his dissatisfaction with the purchased product, indicates the shortcomings which the seller should avoid in the future.
- Each complaint should contain;
- full name and address of the buyer;
 - the date of the purchase of goods or the performance of services;
 - the name of the goods or services that are the subject of complaint;
 - relevant demands and claims of the buyer;
 - the ending phrase on the letter of complaint;
 - signature of the person lodging a complaint¹⁰.
- In case of the complaint about the goods the customer has the right to:
- the price reduction or refund of the entire amount for the defective goods;
 - request the defective goods to be replaced;
 - demand the removal of defects
 - terminate the purchase-sale transaction and claim compensation under the terms of the contract¹¹.

Whereas in case of a package travel execution, the customer can file a complaint if there is a failure to perform or improper performance of the services provided during the package. The rights of redress to which the customer is then entitled, consist primarily of the claim to reduce the price of services (a service). If the service has not been provided, the customer can also demand the execution of an alternative service of the same or better quality than the one that did not take place and that without bearing extra costs. Should the alternative service be of a lower quality, the customer must give a prior consent to it. The tourist can also request reimbursement of expenses which he/she made in connection with the failure or improper performance of services. This concerns, for example, the situation when the organiser of the package provided for the board in contract but on the spot it turned out that catering services are not implemented. As a result the customer had to organise the catering at his/her own expense. Thus, he/she may require the reimbursement of related expenses if the complaint is equipped with the relevant documents regarding the expenditure. The customer may also terminate the contract and make relevant claims for damages.

The provisions concerning the complaint about tourism related services can be found primarily in the Art. 16 b of the Act on tourism services. It gives the customer the right to notify the organiser and the contractor of services of any deficiencies during the package. In addition, the customer has the right to lodge

¹⁰ B. Alejziak, *Organizacja i technika pracy biurowej w turystyce*, Kraków 2002, p. 233.

¹¹ <https://prokonsumencki.pl/blog/reklamacja-towaru-przez-konsumenta-przed-i-po-25-grudnia-2014-roku-czyli-co-zmieni-nowa-ustawa-o-prawach-konsumenta/?nabw=1>

a complaint within 30 days from the date of completion of the package. The complaint must state the failures which have been committed by the organiser of the package or a subcontractor and indicate the customer's requests. The customer has the right to lodge a complaint directly to the organiser of the package or bring it to the attention of the tour leader who represents the organiser during the package. The organiser of the package is obliged to respond to such charges made by the customer. If the complaint was lodged during the package travel, the organiser is obliged to respond to complaints within 30 days from the date of completion of the package. If, however, the complaint was filed after the package, the organiser is obliged to respond to it within 30 days from the date of its submission. The organiser of the package is obliged to specify in writing the reasons for refusing the examination of a complaint. Attention should be also drawn to the consequences provided for by the Act regarding the organiser of the package who did not respond to the complaint. In this situation the complaint is considered grounded, which works in favour of the customer because in this way his claim is considered justified¹². According to the article 16c added to the Act, which will enter into force on 1 January 2016 the customer will have the opportunity to lodge a complaint to the province marshal about the undertaking which violates his/her rights under the Act on tourism services, including the rights concerning the complaint procedure¹³.

The information about the complaint procedure must be included in the package travel contract. There should be information on the method and deadline of complaint lodging included. It must be presented comprehensibly to the customer and cannot mislead him/her. Claims made by the customer concern mainly hotel services. They relate mostly to: the location and category of hotel facility, the room standard, catering services, sanitary conditions. The tourist may submit a claim to the attention of the tour leader or send a registered letter to the organiser of the package. After the package the complaint may be submitted (with confirmation) directly at the headquarters of the organiser of the package. If the customer submits a complaint to the attention of the tour leader, the latter is required not only to answer the complaint but also to confirm its reception, e.g. by appropriate endorsement and signature on a copy of the letter of complaint. If possible, the tour leader should settle the problem that is the subject of the complaint. If this is not possible the complaint should be passed to the organiser of the package. If necessary, the tour leader directly informs the service provider, insurer or the police about the events which are the subject of complaint. This kind of operation requires the tour leader to draw up a protocol which can be useful in further proceedings¹⁴.

¹² Ustawa o usługach turystycznych (Dz.U. No 133, item.884 as amended).

¹³ Art. 16 c ustawy o usługach turystycznych.

¹⁴ M. Nesterowicz, *Prawo turystyczne*, Warszawa 2012, pp. 106–107.

If a customer files a complaint to the tour leader, the latter should thoroughly analyse it. If he/she finds that the prejudices actually occurred, he/she should strive to remove them. If the provision of the service being an essential part of the package program is not possible, the tour leader in consultation with the organiser of the package should strive to provide the customer with a replacement service. Such a replacement should be of the same or higher quality than that which did not materialize. Should a lower-quality service be provided, the customer has the right to demand a price reduction. If the service provided for in the contract did not take effect due to force majeure or acts or omissions of third parties, there is not grounds to perform replacement services¹⁵.

The tour leader is obliged to include the information on any exceptional situations in the report on the package execution. These include, inter alia:

- delays in communication;
- unplanned hotel change;
- failure of the means of transport, the route change;
- change of plan and the type of food.

Such occurrences can also cause complaints from the part of the tourists. The reply to the complaint should be clear, short and friendly. Most commonly, the customer expects financial compensation but also an apology or explanation of the situation. It must be remembered that in the case of a non-recognition of the complaint, the organiser of the package is obliged to justify in detail the reasons for rejection of the customer's claims¹⁶. The reply to the complaint may involve rejection or acceptance of the complaint. Rejection of the complaint may be made on substantive grounds (the seller/service provider considers the customer's allegations unfounded) or for formal reasons (the client does not fulfil the necessary formalities, for example he/she filed a complaint after the deadline). In the case of acceptance of the complaint, the organiser of the package recognizes the validity of the customer's argument and his/her claim¹⁷.

It must be remembered that the customer is not left alone when it comes to learning the rules of and assistance in the preparation of the complaint. He/she may address to the relevant institutions dealing with the protection of consumers interests. These include the district and municipal consumer ombudsmen, field representatives of the Federation of Consumer Protection and Trade Inspection offices. With them, the tourist can dispel his/her doubts and make a successful claim.

When a customer pursues a claim on tourism-related services the so called the Frankfurt Table may prove to be helpful. It is a document created on the order of the Civil Chamber of the National Court in Germany. It was recognized in Poland by the UOKiK in 2003 as a basis for the settlement of disputes between travel agencies and their clients. The table specifies the percentage price reduc-

¹⁵ Z. Kruczek, *Kompendium pilota wycieczek*, Kraków 2006, pp. 118–119.

¹⁶ E. Szymańska, *Biura podróży na rynku usług turystycznych*, Białystok 2009, pp. 91–92.

¹⁷ B. Alejziak, *Organizacja i technika pracy biurowej w turystyce*, Kraków 2002, pp. 234–235.

tion for the non-performance of particular tourism-related services specified in the contract. However, in Poland, this document is not obligatory, which means that it may or may not be taken into account when considering complaints by the travel agency or when civil proceedings are conducted by the court. The table divides tourism-related services into four parts, namely: accommodation, catering, transport and others. A few examples of the proposed price reduction resulting from the Act should be given at this point, e.g.:

- the difference in the type of room (single instead of a double) - the price is to be reduced by 20 percent;
- total lack of boarding – the price is to be reduced by 50 percent;
- shortcomings of the transport equipment – price reduced up to 15 percent;
- polluted beach – price reduced from 10 to 20 percent¹⁸.

The issue of the complaint lodging is also closely related to the quality of the tourism product. Quality means a set of features, qualities, functional and emotional attributes that determine the extent to which the product meets the needs of the consumer. The most important elements of the service quality assessment include:

- duration of the service delivery;
- process execution time;
- service latency;
- number of complaints;
- customer loyalty;
- the company's turnover and profits.

To provide for their good reputation and position in the market, tourism-related undertakings should regularly measure the level of customer satisfaction. It can be carried out using the following methods:

- receiving complaints and suggestions from customers;
- conducting surveys;
- examination of consumers' willingness to re-use the services of the company;
- analysing the causes of customer loss;
- analysing the strengths and weaknesses of the offers.

Attention should also be paid to the criteria used by customers evaluating services. These include:

- availability of services – includes opening hours of the business, the service latency, communication);
- information on the company's services - involves clarity and accessibility of information about the company and its services;
- competence and skills of the service provider;
- kindness;
- sensitivity to customers' needs;
- credibility and trust in the company;

¹⁸ http://www.gazetaprawna.pl/encyklopedia/prawo/hasla/437575,tabela_frankfurcka.html.

- ensuring customer safety;
- the condition, equipment and aesthetic of the facility hosting the customer;
- knowledge of customer's needs and expectations¹⁹.

Conclusion

The complaint is one of the means to protect the tourism company customer. Not only does it allow tourists to pursue their claims, but it is also one of the indicators of the quality of services provided by the undertaking. Therefore, the aim of this article was to present the complaint about a package travel as a tool with which customers can protect their rights.

Examination of this issue gives rise to the following conclusions and observations:

- The most important legal act addressing the issue of complaint lodging is the Act on tourism services and especially its Article No 16b.
- The complaint procedure is one way for the claimant tourist to seek redress for the failure or improper performance of tourism and travel-related services.
- It is highly important for the customer recovering his/her claims that he/she is knowledgeable about the applicable laws and rules for submitting complaints. The customer's ignorance of the law is often abused by the organiser of the package who unlawfully does not recognize the customer's claims or deliberately misleads him/her.
- The customer should know that he/she can seek help in preparing the claim with such institutions as District Consumer Ombudsman and the Federation of Consumer Protection or the State Trade Inspection.
- An important document that can be useful when submitting a complaint is the Frankfurt Table. Consideration should be given to the mandatory use of this document in Poland. So far travel agencies are reluctant to use it for the settlement with the customer.
- The compliance of the tourism services contracts with the law is also safeguarded by the UOKiK, which can enter abusive clauses into the register of prohibited clauses and impose severe financial penalty on a fraudulent undertaking.
- The new provisions of the Act on tourism services will give the opportunity to submit complaints on the unfair undertaking to the province marshal and allow this authority to draw the consequences.
- The complaint lodging is also important for assessing the quality of the undertaking's business activities. A large number of complaints testifies to the

¹⁹ A. Lewandowska, *Turystyka uzdrowiskowa*, Uniwersytet Szczeciński, Szczecin 2007, pp. 102–111.

fact that the undertaking does not work in the interest of the customer and is ill-judged by the later. This is a signal that more attention should be paid to the quality of services.

To sum up, one can say that the complaint is undoubtedly one of the most important tools for protecting the customer's rights. However, insufficient knowledge of the customer and dishonesty of undertakings can be the cause of its ineffective application.

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