

THE PROBLEM OF HOLDING TOUR OPERATORS ACCOUNTABLE FOR NOT PROPERLY INFORMING TOURISTS

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Abstract: The authors in this article analyze the main features of the existing rules and regulations covering the tour operators' responsibility for not properly informing tourists. Legal practice has shown that the current regulations in place may not be sufficient, causing many tourists to suffer. As a result, lawmakers have made some changes to the basic principles regarding tourism legislation in order to increase the tour operators' accountability and to protect tourists right of information. This article examines the amendments and concludes that the legislative changes will allow to hold tour operators responsible for the actions (inactions) of travel agents, which should create the preconditions for proper accountability of the latter.

Keywords: Tourist, tour operator, travel agent, financial provision, compensation fund, tour operator personal responsibility fund, reserve fund.

INTRODUCTION

Over the last decade the sphere of tourism and its regulation has increasingly attracted the attention of both the public and lawmakers, mainly due to the various imperfections in the laws governing its functioning. There is a lack of legal uniformity, including separating the accountability of tourist companies directly involved, which arises in the process of delivering tourist finished product, as a set of transportation and accommodation services, and which are calculated from one sum.

The delivery of tourist finished product is understood to be tour operator's or the travel agents actions carried out to fulfil the tourist product specified in the agreement with the tourist or another customer, as well as the actions of the tour operator and (or) third parties in rendering the service to the tourist in accordance with this agreement.

The process of delivering tourist finished product involves both tour operator and travel agent. Tour operator, who put together tourist product, regularly delivers it through its own travel agent, who enters into direct interaction with consumer – tourist by signing a contract on the delivery of tourist finished product. According to part 1 of article 10 of the Federal law of 24.11.1996 No 132 – FL “Principles of tourist activity in the Russian Federation” (Law) the delivery of tourist product is based on the agreement, concluded and signed between tour operator and tourist and (or) another customer, as well as between travel agent and tourist and (or) another customer.

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An analysis of legal practice has shown that often during the delivery of tourist product, questions regarding the separation of responsibilities between tour operators arise, causing violation of tourist's right to information on the process of signing and fulfilment of an agreement on delivery of the tourist product. Thus, the problem on the right to information and to being properly kept informed (Volkova, et. al., 2015) is still relevant in the sphere of tourist services.

METHODOLOGY

During this study, the authors used both general and individual methods of research: legal, formal-legal, comparative legal and others. The main method utilized was system-structural approach, which helped reveal several aspects of the existing problems of tour companies' accountability in properly informing tourists.

The formal-legal method made it possible to analyze legal rules governing tourist activity in Russia by describing features of accountability of tour operators for not properly informing tourists.

Systemic-structural method provided the authors with the opportunity to review new mechanisms of tourist rights protection.

RESULTS AND DISCUSSION

Scholarly articles and other works of the following authors have focused on this topic: Pogudina T.E. (2009), Batischev, E. A. (2013), Mikhailova M.N. (2009), Kaurova et. al., (2014), Maloletko et. al., (2015), Kuskov and Sirik (2015), Kuzakhmetova S.Y. et. al., (2016), Vinogradova et. al., (2016).

The works of different researchers note the necessity of strengthening and providing more details in legally defending the right of tourists to better information.

Thus, Pogudina T.E., states that the tour operators and travel agents have responsibilities that have a whole range of specific features, and combined with the fact that customers of tourist services need to have their rights defended calls for the rules which hold tour operators and travel agents accountable to be given a separate article or section in the Law on tourist activity (Pogudina, 2009).

M.N.Mikhailova in her work "Defending the rights of customers receiving tourist services" views the right of information as the right to safety, pointing out that in many cases the safety of a tourist depends on the information that he is provided when signing an agreement. In addition to other so-called risk factors in tourism, some of the danger is due to the lack of necessary information about service and its nominal characteristics.

An argument for making tourist companies more accountable for not providing proper information to their customers is expressed by Batischev (2013) and Pisarevsky (2012).

As noted by Starodumova, violating the tourist's right to information and as a result dissatisfaction with the service, or perhaps even the possibility of not being able to use the service at all, leads to court disputes and as a consequence to the responsibility of the providers of service for not providing full information (Starodumova et. al., 2015).

Kuskov and Sirik believe that the legal relationship between tour operator and travel agent regarding the question of delivering the tourist product, which by its legal nature is agents agreement (Kuskov and Sirik 2015), can be regulated in terms of accountability before third parties by chapter 52 of the Civil Code of the Russian Federation (Sitdikova et. al, 2016).

According to paragraph 2 point 1 article 1005 of the Civil Code of the Russian Federation in an agreement made by the travel agent with a third party in its name and for the principal company, the agent become responsible, even if the principal was named in the agreement or signed an agreement directly with the third party. However, this is a general rule, which according to point 4 of the named article stipulates that the law allows certain specifics in different types of agent agreements. Such specifics of travel agents' legal status are established by articles 9, 10 and 10.1 of the Law. In accordance with paragraph 5 article 9 of the Law the tour operator is held responsible for not providing or nor providing up to a required standard the services agreed in the contract, outlining the delivery of the finished product to the tourist or third party, concluded by the travel agent in its name or in the tour operators name. These positions of the Law were highlighted and explained in clause 50 of the Resolution of the Plenary session of the Supreme Court of the Russian Federation from 28 June 2012 No 17.

The existing legislation obliges tourist companies to provide their customers promptly with necessary and reliable information regarding their product, thus giving them the opportunity to make the correct choice. Despite the detailed regulation at the legislation level on the customers right to receive information, a large number of court disputes arise due to tourists not being properly informed about the finished product or the specifics of certain travel destinations. First of all, this concerns the main aspects of the provided information – its necessity, fullness, reliability, which in the end is used to make the right choice regarding this or that tourist product.

One of the mechanisms of defending customers right to information regarding the service is secured in article 12 of the Law “On protecting the rights of consumers”, which anticipates accountability of the provider for not disclosing information about the service. According to this article, if the consumer is not given the opportunity when signing an agreement to receive full information on the service, then he has the right to demand from the provider reimbursement of losses, caused by groundless evasion of signing an agreement, and if the agreement has already been signed, in a reasonable timeframe its termination, the reimbursement of all funds and compensation of all other losses (Kirillova et. al., 2016, Shilovskaya

et. al., 2016). According to part 2 of this article the provider, who has not delivered full and reliable information on the service, is accountable as foreseen by law, for not arranging full service as a result for not having the information. At the same time part 4 of this article states, that when considering the demands of the consumer to reimburse his losses, caused as a result of false or lack of information on the service, it is necessary to proceed from the presumption that the consumer had no special knowledge of the properties and characteristics of the service. The Law on protection of consumers' rights establishes general frame of protection on the right to information in the sphere of tourism, hotel, medical and other types of services (Sitdikova et. al., 2015).

Special rules, which guarantee tourist a right to information, also exist in the regulations of basic principles of tourist activities. According to article 6 of the Law, amongst the reserved rights of the tourist, there is the right of information on the rules of entering visiting country (place) and staying there, on the customs of the local population, religious practices, holy sites, natural monuments, history, culture and other objects of tourist interest (under special protection) as well as the state of the environment. In order to guarantee the tourist a safe and secure journey, article 14 of the Law stipulates on the necessity of providing reliable information on the need of obtaining visa and other documents allowing travel; on possible dangers while travelling; on customs, border, medical, sanitary-epidemiological and other rules (to the extent which would make travelling possible); the contacts of diplomatic representatives and consul institutions of the Russian Federation, in the country (place) of visit; on national and religious aspects of the country (place) of visit; on the way to contact the association of tour operators in the sphere of foreign tourism to get emergency help and other information necessary for making travel possible. The specified list of information is not fixed and can be changed by both sides depending on the type of travel.

In addition to the above mentioned instructions in the existing legislation on the order of informing the tourist, the Rules of rendering services in delivering tourist finished product (Rules) outline, in fair detail, the facts which are regarded as information on tourist product, which the provider has to promptly present to the consumer to guarantee the possibility of the correct choice of product.

As we can see the current legislation establishes in great detail the list of information, which has to be presented to the tourist before and during signing of an agreement.

An examination of legal practice allows stating that the courts satisfy the demands of tourists regarding disputes concerning the failure to provide information or providing unreliable information about tourist product by reimbursing losses, lowering buying price of the product and compensating for the product. At the same time inappropriate information is recognized as incorrect information on the route

of travel, the place of departure and the procedure of purchasing of the ticket and other necessary documents. In court practice there are cases where the tourists' demands have been satisfied when tour operators have not provided the information on expiry date of passport to exit the country on a foreign trip. In all the listed cases the courts rule in favor of tourists, if the documents of the case point to the guilt of the tour operators in violating the legal norms of tourists (consumers) right to information on the product (Volkova, et. al., 2015).

In court practice there is often the problem of determining the right defendant, who should bear responsibility for violating the consumers' rights by not providing the correct information on quality of tourist product. Not rare are cases where tour operators are held responsible for providing inappropriate information to tourists, which was in fact done by travel agents. Thus, for example, according to appeals resolution of Saint-Petersburg City Court from 19.05.2015 No 33-8478/2015 in case No 2-4452/2014 the claims for compensation of moral damage and a fine against the tour operator were upheld based on article 9 of the Law "Principles of tourist activity in the Russian Federation", because the tourists' rights were breached as false information regarding the rating of the reserved hotel was provided. When considering the question of responsibility between different tourist companies the judges deemed unfounded the resolution of the court on holding travel agent responsible and forcing it to compensate moral damages, based on the fact that regardless in whose name the agreement on providing the tourist services was signed, paragraph 3 of article 9 of the Law stipulates that the tour operator based on the law of the Russian federation is responsible for the delivery of the tourist product of a poor standard. Similar resolutions are found in the Moscow City Court from 16.06.2014 N 4r/6-5571 in the appeals resolution of the Moscow City Court from 30.01.2013 in case N 11-3294/13 and other court resolutions.

Nonetheless, there exists another practice in sphere of this problem. There are cases where travel agent is held responsible, as an individual body delivering tourist product and not providing relevant information to tourist. Thus, according to the appeals resolution of the Sverdlov Regional Court from 07.05.2014 in case N 33-5828/2014 the demand of the compensation of moral damages from the travel agent, caused by not providing reliable information on tourist product, was satisfied because violation of the tourist's right to receive, in reasonable timeframe, reliable information about significant changes in terms of contract on delivery of tourist product (the tourist was informed about the changes to the tour's programme only at the airport on the day of departure). Arguments of the complainant for the ungrounded refusal to satisfy his demands for compensation of moral damages as the defendant did not provide appropriate information, the judicial board recognized as valid, because the travel agent, acting in his own name, is fully responsible to the customer for the violation of their rights at the time of the contract's signing and earlier (before the contract is signed), above all regarding the timely disclosure

of necessary and reliable information, which guarantees tourist the opportunity of making the right choice on the product, which is stipulated in the provisions of the Law, as well as in the agents contract agreed between the tour operator and the travel agent. Similar resolutions are found in the rulings of the Primorskii Provincial Court from 21.10.2015 in case N 33-9540/2015; appeals ruling of the Cheliabinsk Regional Court from 26.08.2014 in case N 11-8711/14; appeals ruling of the Moscow City Court from 30.05.2014 in case N 33-16708; in the ruling of Sverdlov Regional Court from 18.01.2013 in case N 33-29/2013 and other court decisions.

The absence of single legal practice is due to legal regulations, which place unconditional responsibility on the tour operator. Thus, by placing the responsibility on tour operator for the actions (inactions) of the travel agents the courts are guided by part 5 of article 9 of the Law, according to which the tour operator is responsible before the tourist or other customers for not fulfilling or not fulfilling properly the obligations of the contract in delivering the tourist product, signed by the travel agent in his own name or in the name of the tour operator.

However, the mentioned rule has recently been corrected in connection with the changes to the law on tourist activities, coming into force from January 2017 in accordance with the passing of the Federal law on 02.03.2016 No 49-F3 “on the introduction of changes to separate legislative acts of the Russian Federation with the aim of improving the legislation regulating tourist activity” (F3 No 49). According to the new edition of part 5 of article 9 of the F3-No 49 version, the tour operator is held responsible before the tourist or another customer for the actions (inactions) of third parties, who provide services, which are part of the tourist product, if federal laws and other legislative acts of the Russian Federation have not established that the responsibility before the tourist and other customers is held by the third party. As can be seen the lawmaker has excluded the rule where the tour operator has unconditional responsibility for the actions of the travel agent regarding the non-fulfillment or only partial fulfillment of the obligations of the contract on delivering the tourist product, signed by the travel agent whether in his own name or that of the tour operator. Moreover, article 10.1 “Specifics of realizing the tourist product by the travel agent” has undergone significant changes, which will come into force from 1 January 2017. Thus, amongst the contract conditions on realizing tourist product, a new condition has been inserted, which states that the agreement must contain information that travel agent is the provider of the service and holds responsibility as stipulated by the law of the Russian Federation regarding the realization of the contract on the finished tourist product. This article in the new edition also envisages that the travel agent is responsible as stipulated by the laws of the Russian Federation to the tourist and other customers for not fulfilling or fulfilling only partially their obligation, as written in the contract on delivery of the tourist product.

CONCLUSION

It is justifiably noted in legal science that traditionally the participants of civil interactions are held equally responsible on similar conditions (which is based on the judicial principle of the equality of both sides). The existing legal practice of guiltless responsibility of tour operator for the actions (inactions) of travel agent, who violated tourist's right to proper information when signing and while executing the agreement on delivering tourist product, contradicts the right of respecting the rights of private property and demands of legal determination as a phenomena of the principle of superiority of the law, and is defended everywhere by international standards in article 1 of Protocol No 1 of the Convention on the protection of human rights and main freedoms (Signed in Rome 04.11.1950) according to which each person or legal entity has the right of respect of its private property. No one can have his property confiscated other than in the interests of the public or for other reasons outlined by law and general principles of international law (Kuzakhmetova, 2015). We believe that the indicated changes in the law on tourism will allow to eradicate the guiltless responsibility of tour agent for the actions (inactions) of travel agent, which will create the preconditions for proper fulfilment by the latter of their responsibilities and excludes the risk of accountability before the tourist regarding providing information on the tourist product, and providing other obligations by the travel agent.

References

- Batischev, E. A. (2013). The legal regulation of tourist activity in the Russian Federation. Doctoral dissertation. Institute of State and Law of the Russian Academy of Sciences. Moscow.
- Volkova, M.A., Sitdikova, L.B., Starodumova, S.J., and Shilovskaya, A.L. (2015). Legal problems in implementing information services in Russian civil law. *Review of European Studies*, 7(6): 243-271.
- Kaurova, O.V., Kryukova, E.M., Maloletko, A.N., Deryabina, A.V., and Yumanova, O. S. (2014). Modern trends in development of tourism statistics in the world and in Russia. *Life Science Journal*, 11(4): 451-454.
- Kirillova, E.A., Shergunova, E.A., Ustinovich, E.S., Nadezhin, N.N., and Sitdikova, L.B. (2016). The Principles of Consumer Right Protection in Electronic Trade: A Comparative Law Analysis. *International Journal of Economics and Finance Issues*, 6: 117-122.
- Kuzakhmetova, S.Y., Sitdikova, L.B., Shilovskaya, A.L. (2016). International tour operators' responsibility guarantees in developing legislation in the Russian Federation. *Tourism Management Perspectives*, 20: 66-69.
- Kuzakhmetova, S.Y. (2015). On the question of separating the responsibility between the tour operator and travel agent for violating the tourists right to holiday caused by the failure to transfer money to the tour operator. *Law and Economics*, 8(330): 40-45.
- Kuskov, A.S. and Sirik, N.V. (2015). The problem of assessing the contract signed between the tour operator and the travel agent. *Law and Economics*, 2: 35-39.

- Maloletko, A.N., Kaurova, O.V., Kryukova, E.M., Pochinok, N.B. and Gladko, E.A. (2015). Analysis of key indicators of tourism industry in Russia. *Modern Applied Science*, 9 (3): 23-25.
- Mikhailova, M.N. (2009). The responsibility of tourist companies for not providing quality standard services. *Pskov Regional Journal*, 8: 89-99.
- Starodumova, S.U., Maloletko, A.N., Kaurova, O.V. and Khaludorova, S.V. (2015). Accountability in the sphere of rendering services: The problems of regulation and legal practice. Monograph. Moscow: RUSAINS, p. 298.
- Pisarevsky, P.E. (2012). The concept of the doctrine of tourism security in the Russian Federation. *Tourism: Law and Economy*, 1: 17-32.
- Pogudina, T.A. (2009). The civil-legal protection of the parties to a contract on the provision of touristic services. Doctoral dissertation. The Russian State Humanitarian University. Moscow.
- Sitdikova, L.B., Shilovskaya, A.L., Starodumova, S.J. and Volkova, M.A. (2015). Medical Law as an Independent Branch of Law: History and Development Outlook. *Journal of Advanced Research in Law and Economics*, 2(12): 439–446.
- Sitdikova, L.B., Shilovskaya, A.L., Volkova, M.A., Lenkovskaya, R.R. and Stepanova, N.A. (2016). Legal regulation of the professional liability insurance of consultant in Russia and abroad. *Journal of Advanced Research in Law and Economics*, 2(16): 363 – 369.
- Shilovskaya A.L., Sitdikova, L.B., Starodumova S.Yu., Volkova M.A. and Khaludorova S.V. (2016). The consumers' rights' protection in the sphere of consultancy services: the problems of theory and judicial practice in Russian Federation. *Journal of Internet Banking and Commerce*, 21(S4). Date Views: 01.11.2016 <http://www.icommercecentral.com/open-access/the-consumers-rights-protection-in-consultancy-services-the-problems-of-theory-and-judicial-practice-in-russian-federation.pdf>
- Vinogradova, M.V., Kulyamina, O.S., Larionova, A.A., Maloletko, A.N. and Kaurova, O.V. (2016). The use of management of objectives method of attraction and evaluation of effectiveness of investments to the tourism and hospitality. *International Review of Management and Marketing*, 6(2S): 241-246.
- Volkova, M.A., Sitdikova, L.B., Starodumova, S.J. and Shilovskaya, A.L. (2015). Legal problems of the information services implementation in Russian civil law. *Review of European Studies*, 7(6): 243-271.
- Law of the Russian federation of 07.02.1992 #2300-1 On protecting the rights of consumers. 15.01.1996. Code of Laws of the Russian Federation, 3: 140.
- Federal law of 24.11.1996 No 132 – FL Principles of tourist activity in the Russian Federation. Code of Laws of the Russian Federation, 02.12.1996, N 49, article. 5491.
- Federal law of 02.03.2016 No 49-F3 On the introduction of changes to separate legislative acts of the Russian Federation with the aim of improving the legislation regulating tourist activity. Code of Laws of the Russian Federation, 07.03.2016, N 10, p. 1323.
- Resolution of the Plenary session of the Supreme Court of the Russian Federation from 28 June 2012 No 17. September, 2012. Court examinations of civil law cases regarding the rights of consumers. *Bulletin of the Supreme Court of the Russian Federation*, No. 9.