

“When a dream holiday turns into a nightmare” – travel contracts

The holiday peak season is here, people are heading for their holiday destinations, and organised trips and package holidays these days are still highly popular alternatives to independent travel. It is essential for those travelling with a tour operator to know what to do if the holiday they booked and paid for does not meet the standards promised by the company at booking...

The tour operator, as a rule of thumb, is liable for all damages resulting from any default or defective performance of the travel contract. However, if the non-compliance or defective performance is neither of the tour operator nor of his intermediaries, the tour operator will not be liable for the damages. So is the case when the defect is attributable to the conduct of the traveller or to a third party who is not related to the performance of the services agreed upon in the travel contract in any way, and the defect was not reasonably foreseeable to the tour operator, or the tour operator was not in the position to prevent it (for example if we book a sailing tour, but the sailboat is stolen and the company is not in the position to substitute it with another sailboat to conduct the tour with) and in case of vis major events.

If the default is attributable to third persons and in case of vis major events the tour operator may not be liable for compensation, but it is still bound to provide assistance to the customer. Depending on the circumstances this obligation may include the supply of first aid, lodging, food expenses, clothing and transportation.

The tour operator’s liability for breach or defective performance of the travel contract may be maximised at double the amount of the participation fee paid by the customer, provided that this condition has been specifically stipulated in the travel contract.

The tour operator is liable for the providing the services agreed in the travel contract, even if the contract was concluded by way of an intermediary travel agency. If the travel agency fails to perform any of the services according to terms and conditions of the contract, it will be **obliged to reduce the price of the holiday in proportion with the noncompliance**. This means for example that if instead of a five star hotel you only received a two star, the price of the accommodation will have to be reduced accordingly, and the abatement must be detracted from the total price of the holiday.

Holiday makers often find that the distance from the hotel to the beach is much further away than stated in the brochure, the room booked with a sea view has a view over the parking lot, and the rooms in the hotel are completely different from what was promised at the time of the booking. Travellers are entitled to make a complaint for the inconvenience caused, or claim compensation by taking the case to court. When working out the amount of the claimed compensation, the calculation must be based on the price paid for the services. The percentage of the compensation to which the claimant is entitled will be a question of subsequent deliberation. In any case, it is always advisable to document the level of the services received by photo or video recording, since that may serve at a later stage as proof of the difference between the advertised services and those actually received.



If it turns out after departure that the tour operator fails to perform a considerable part of the services agreed, it will be liable for substituting those with other suitable services of similar value. If a hot air balloon ride was included in the package but the programme is cancelled because of a defective balloon, then the tour operator must provide the customer with a substitute programme of equal or similar quality, for example with a helicopter sightseeing ride. However, if the cost of the equivalent quality excursion is superior to the one cancelled, the customer does not have to pay for the enforced upgrade. However, if the tour operator fails to provide a supplementary service which would be acceptable to the customer, or the customer has a justifiable reason for not accepting that, then the tour operator will be responsible for carrying the client back to the starting point, or to a different point in the country of destination which is acceptable to the client, besides, it will also be liable for reimbursing the holiday participation fee to the customer after deducting the expenses related to those elements of the holiday package which the customer had used by then. The tour operator will also be answerable for the expenses related to transporting the customer back home.

In the event of breach or defective performance the traveller must **immediately register the claim with** the tour guide, or in absence of that, notify the local service provider of the claim (e.g. the owner of the apartment rented). If the notification is delayed, the responsibility for any further damages arising from the delay will be borne by the customer himself. Therefore it is absolutely essential that we do not limit ourselves to sharing our dissatisfaction with friends and acquaintances, but instead register the claim directly with the local representative if the company has one, and we must remember at the same time to immediately notify the travel agent and the tour operator as well. We should make sure to use a form for submitting our claim which we can use at a later stage to prove that we had made it. (Such means are for example if we submit the claim via e-mail, fax, or registered phone conversation). The service provider tour operator and his contractual partners are bound to sort out the problem without delay. However, if the customer registers his claim only at the end of the holiday, chances are that they will be unable to remedy the defect retrospectively, and thus the risk of delayed notification will lie on the customer.

If the tour guide, or in absence of such the local service provider (e.g. the owner of the accommodation) fails to remedy the complaint, then the customer must notify the tour operator or the intermediary with whom it concluded the contract of this fact. Here again, it is highly advisable to document the level of the services received by taking photos or video recordings, since that may serve at a later stage as proof of the difference between the advertised services and the services received.

So in the unfortunate event that the services received during our holiday do not meet the standard of what was promised at the travel agency, we should remember to file a complaint immediately, document the defective services, and not to be afraid to enforce our customer rights, as this will help us to alleviate the annoyance caused by the inconvenience.