

BULGARIAN LEGISLATION ON COMPLAINTS IN TOURISM – GUIDELINES FOR UPDATE

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Effective complaint handling in tourism has a positive impact in the form of building customer loyalty and generating financial benefits for tourism business. On the other hand, tourist complaints might be a major source of information for regulatory authorities about the state of tourism and the key areas that need to be improved. The regular collection and analysis of the information about the registered complaints is a useful practice for identifying problems and possible solutions in terms of implementation of tourism legislation. Complaint management in tourism business presumably has to be consistent with the legal framework in Bulgaria, and respectively in the European Union. The changing environment in which tourism business has to operate determines the need for update of tourism legislation, especially in the part relating to the protection of consumer rights. These changes are necessary due to the detection of some discrepancies in Bulgarian legislation which are to the detriment of travelers as well. The purpose of this article is to emphasize the need for change in the current legal framework in tourism. This will be achieved by highlighting the most common types of tourist complaints in Bulgaria; tracking the complaint handling procedures; revealing some restrictions affecting essentially consumer rights; reviewing the forthcoming harmonization with the newly- approved changes in the European tourism legislation and outlining some key principles which might serve as a base for a more effective complaint handling legal procedure.

Keywords: tourism legislation, restrictions, update, complaint handling, key principles

БЪЛГАРСКОТО ЗАКОНОДАТЕЛСТВО ОТНОСНО РЕКЛАМАЦИИТЕ В ТУРИЗМА – НАСОКИ ЗА АКТУАЛИЗИРАНЕ

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Абстракт: Ефективното разрешаване на рекламациите в туризма има позитивен ефект под формата на създаване на клиентска лоялност и генериране на финансови постъпления за туристическия бизнес. От друга страна, турис-

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тическите рекламации могат да бъдат важен източник на информация за регулаторните органи по отношение състоянието на туризма и ключовите области, които се нуждаят от подобрене. Редовното събиране и анализ на информацията относно постъпилите рекламации е полезна практика за идентифицирането на проблемите и възможните решения от гледна точка на прилагането на законодателството в туризма. Както може да се предполага, управлението на рекламациите в туристическия бизнес трябва да се извършва в съответствие със законодателната рамка в България и с тази в Европейския съюз.

Променящата се среда, в която туристическият бизнес се налага да оперира, обуславя необходимостта от обновяване на туристическото законодателство, особено в частта, отнасяща се до защита правата на потребителите. Тези промени са необходими и поради откриването на някои несъответствия в българското законодателство, които са в ущърб на пътуващите. Целта на тази статия е да се подчертае необходимостта от актуализиране в настоящата законодателна рамка в туризма. Това ще се постигне посредством изтъкване на най-често срещаните типове туристически рекламации в България; проследяване на процедурите по разрешаване на рекламациите; разкриване на някои ограничения, засягащи съществено правата на потребителите; разглеждане на предстоящото хармонизиране с новоприетите промени в Европейското туристическо законодателство и очертаване на някои ключови принципи, които могат да послужат като основа за по-ефективна законодателна процедура по отношение на рекламациите в туризма.

Ключови думи: туристическо законодателство, ограничения, актуализиране, разрешаване на рекламации, ключови принципи

INTRODUCTION

Effective complaint handling in tourism has a positive impact in the form of building customer loyalty and generating financial benefits for tourism business. Effective complaint management can add financial benefits for tourism business such as saving adverse costs for compensation or additional investment in advertisement for attracting new clients to replace the lost ones. Generally, complaints and trends in complaining highlight how to operate a better business by alerting management about problematic areas that need urgent correction.

The regulatory authorities manage the development of the tourism sector in an indicative way. They should set directions, provide support and create the right conditions for the private sector by means of appropriate legal framework. Tourist complaints might be a major source of information for regulatory authorities about the state of tourism and the key areas that need to be improved. The regular collection and analysis of the information about the registered complaints is a useful practice for identifying problems and possible solutions in terms of implementation of tourism legislation.

Complaint management in tourism business presumably has to be consistent with the legal framework in Bulgaria, and respectively in the European Union. The protection of the rights of travelers and the regulations about complaint handling in particular, are regulated by the Consumer Protection Law and the Law on Tourism which are harmonized with the regulations of the European Union.

The changing environment in which tourism business has to operate determines the need for update of tourism legislation, especially in the part related to the protection of consumer rights. These changes are necessary due to the detection of some discrepancies in Bulgarian legislation which are to the detriment of travelers as well.

The purpose of this article is to emphasize the need for change in the current legal framework in tourism. This will be achieved by highlighting the most common types of complaints in the travel and tourism industry in Bulgaria, tracking the complaint handling regulations; revealing some restrictions affecting essentially consumer rights; reviewing the forthcoming harmonization with the newly- approved changes in the European tourism legislation and outlining some key principles which might serve as a base for more effective complaint handling legal regulations.

THE MOST COMMON TYPES OF COMPLAINTS IN THE TRAVEL AND TOURISM INDUSTRY IN BULGARIA

Whether it be for lack of communication, poor customer service, inappropriate behavior, different standards of services, unfairness, or any other issue, a complaint is an expression of dissatisfaction with the services that have been received. Service failures in the tourism industry are unavoidable due to the intangibility of tourism product and the personal interaction between the tourist and the travel organization. Such service failures create the feeling of dissatisfaction which can result in raising a complaint.

It is widespread that Bulgaria is perceived as a low- cost tourist destination, mainly preferred for beach holidays, a country with beautiful nature and with rich cultural and historical heritage but at the same time a destination with poor customer service, low quality of the tourist services and poorly- maintained infrastructure. Apart from the low prices of the travel packages, the main advantages of Bulgaria as a tourist destination are its physicogeographical features such as favorable climate and varied landscape. The standard of the accommodation is highly appreciated by travelers as well.

Tourism industry is often recognised as a priority sector in Bulgarian economy. Nevertheless, the main disadvantages of Bulgaria as a tourist destination are due to the state policy in the field of tourism. Among these are insufficient state support for the tourism sector; poor transport infrastructure; poor maintenance of the tourist attractions; overbuilding; low quality of the tourist services, especially the quality of the all-inclusive packages; poor customer service; lack of qualified and well- trained staff.

Some of the disadvantages of the tourist product such as transport infrastructure, communications and overbuilding fall out of the scope of the tourism and consumer protection legislation. While others such as the quality of the tourism product and the level of the customer service can be adequately regulated by the tourism and consumer protection legislation.

The overall quality of the service provided to travelers in Bulgaria needs to be improved. This includes both the service provided to travelers prior to departure and whilst on holiday in Bulgaria. In brief, dissatisfaction occurs when the customer expectations exceed the customer experience and it can result in a complaint against the service provided.

Exceeded expectations can often be as a result of a lack of pre- contractual information, or incorrect information. Accurate and comprehensive pre- contractual information is vital so that travelers can make informed purchasing decisions. Complaints can be avoided if the customer receives detailed and correct information about the purchased tourist services prior to departure and thus not expecting to get more than he has paid for. A typical complaint about standards not meeting customer expectations is when a traveler expects the same standard of the tourist services in Bulgaria as in more developed destinations such as Spain, Turkey etc.

Adequate pre- contractual information about consumer rights and the company's complaint procedures can also facilitate the process of complaint- handling. With an increasing number of travel services booked through the Internet, it can be difficult for consumers to know who is responsible for putting things right. The information about the liability in case of complaints should be clearly communicated to consumers.

The Flash Eurobarometer 397 survey on "Consumer attitudes towards cross-border trade and consumer protection (European Commission, 2015) shows that overall knowledge about consumer rights in Bulgaria is low- when asked 3 questions about knowledge of consumer rights only 7 % gave 3 correct answers; 27 % - 2 correct answers, and 42% - 1 correct answer. 24 % of respondents did not answer correctly to any of the 3 questions. Low awareness of consumer rights can also demonstrated in the reluctance of the consumer to pursue travel complaints. If consumers do not know what to expect from a service provider, or do not know what is or is not acceptable,

they will not be confident about proceeding with a complaint. There is a clear need to raise awareness about consumer rights in the area of travel and tourism in Bulgaria. Only when consumers know and understand their rights they will be able to enforce them and seek effective redress.

Sometimes, customers are provided with correct and comprehensive information prior to departure but they are still dissatisfied with the services provided whilst on holiday. Usually customers feel dissatisfied and raise a complaint when the tourist services are not performed properly or they had not been performed at all. In Bulgaria the most common complaints are about the quality of the tourist product and the level of the customer service provided. Bulgaria is a popular choice for beach holidays and there has been a significant increase in booking of all- inclusive packages along the Black Sea coast. Unfortunately the level of satisfaction with the all- inclusive service is relatively low. This is due to the fact that the quality of the services, included in these packages is controversial and depends on each separate hotel. The major complaints are in regard to the quality and the variety of food and drinks provided, and the lack of or poor entertainment. In order future complaints to be avoided, the quality of the all- inclusive packages on offer can be regulated by adding a criterion in the national compulsory hotel classification system.

Another letdown is the level of the customer service provided whilst on holiday in Bulgaria. When it comes to hotels and destinations, guests expect staff members to be courteous, friendly and helpful. They also want staff members to be knowledgeable about the area and the attractions, and to be able to communicate their knowledge to the guests. The both major complaints about the customer service provided in the hotels in Bulgaria are about staff rudeness and language barrier. Therefore, additional efforts need to be made for staff training in foreign languages and personal interactions.

Irrespective of all the disadvantages in the tourist services which were mentioned above, Bulgaria has the potential to raise its competitiveness on the world travel market. One of the options this can be done is through effective complaint management. In turn, no effective complaint management can be achieved without an adequate legal framework in tourism.

COMPLAINT HANDLING REGULATIONS

Consumer Protection Law and *Law on Tourism* are the both regulations which define the rights of Bulgarian consumers as a whole and these of tourist services in particular in relation to complaint registration in case of non- performance or incor- performance of the services provided.

The current *Consumer Protection Law* has been into force since 2006 and its last amendment has been made in 2015. Generally, this law addresses problems that are related to the control of unfair trade practices and the liability for the product or service on offer in regard to the provision of guarantees and potential complaints. *Consumer Protection Law* aims at the provision of protection of some of the major consumer rights, namely:

- the right of information about products and services;
- the right of redress in disputes resolution.

The current *Law on Tourism* has been into force since 2013 and its last amend- ment has been made in 2015. One of its main aims is provision of protection of consumers of tourist services with special attention to the travel packages. This is required due to their popularity worldwide. As a consequence of the international commitments taken by Bulgaria, *Law on Tourism* is consistent with the relevant Eu- ropean legislation, namely Directive 2006/123/EC of the European Parliament and of the Council on services in the internal market and Council Directive 90/314/EEC on package travel, package holidays and package tours.

The Consumer Protection Law sets out general liability of the seller for provi- sion of information to the consumer about the main features of the service on offer, contact details of the seller, the final price, payment conditions and performance of the service, as well as forms of complaint registration. This information should be provided to the consumer before the conclusion of contract in writing or in other suitable form.

The Consumer Protection Law allows the right of the consumer to make a com- plaint for any discrepancy between the service contracted and that one which has been received. When complaining the consumer can ask the service to be fulfilled in accordance with the contract, for a discount in the price or for a refund. Complaint can be made to the seller or to an authorized person by the seller in writing or ver- bally. When complaining the consumer states the subject of complaint, the preferable way of satisfying the complaint, respectively the sum of the refund and contact de- tails. It is obligatory to attach documents such as receipts, protocols, complaint forms and other proofs that establish the reason and the sum of the claim. *The Consumer Protection Law* regulates the complaints to be made within 14-days period of the moment when the consumer realizes the discrepancy in the service received. The seller is obliged to have a complaints log. Each complaint should be recorded in this

log and each consumer should be given a written proof with information about the complaint raised.

The Law on Tourism regulates the consumer rights in regard to travel packages. *The Law on Tourism* requires the tour operator directly or via an intermediary to provide the traveler with all the terms and conditions in written before the contract is concluded. Apart from contact details, the main features of the tourist services, final price and cancellation details, the contract should contain requirements about the forms, ways and deadlines of complaints in case of non- performance or improper performance of the contract. The requirement about written information is met if it has been published on the organizer's/ intermediary's web page or if it has been forwarded to consumer's e-mail. The requirement about provision of such information does not have to be met in case of last minute bookings.

The Law on Tourism requires the tour operator directly or via an intermediary to provide the consumer with contact details of company's representative or an authorized person/ organization in the final destination who can assist the consumer in case of difficulty. This information has to be in written and it should be provided after the contract has been concluded but not later than 7 working days. In case there is no such person the consumer should be provided with contact telephone or e-mail. In case of last minute booking this information should be provided when the contract has been concluded.

The Law on Tourism requires the consumer to inform the service provider and the organizer or the intermediary as soon as possible about improper performance of the contract in terms of journey or stay. According to the *Law on Tourism* this should be done in writing or in other forms such as fax, e-mail etc. that can be easily reproduced.

According to *Law on Tourism* the service provider and the organizer, travel agent or their representative are obliged to take the relevant measures to satisfy the consumer as soon as possible. The tour operator is liable for non- performance or improper performance of contract regardless of the fact whose duty it is. The tour operator has the right to make a claim against suppliers for any non- performance or improper performance of the contract.

The Law on Tourism allows maximum limit of tour operator's liability in terms of damages caused due to non- performance or improper performance of the contract. The maximum limit of the tour operator's liability should not exceed three times the final price of the travel package with the exception of personal injuries.

The Commission for Consumer Protection is the authority which supervises the implementation of both laws in the part of complaint handling.

RESTRICTIONS OF CONSUMER RIGHTS

By tracking the complaint handling regulations which are set out in the both laws, it is easy to highlight some restrictions which might affect the consumer rights. These are as a consequence of so- called "unfair terms in consumer contracts". As per *Consumer Protection Law* unfair term in a contract concluded by consumer is each term in his/her detriment that does not meet the requirement for good faith and that leads to substantial disbalance between the rights and the duties of the seller or supplier and the consumer.

The main restriction in regard to complaint handling that is unequal to consumers is about the form of addressing complaints about travel packages. *The Law on Tourism* requires written form of complaints or other form that can be reproduced. *The Law on Tourism* requires the service supplier and the tour operator or intermediary to be informed about the complaint immediately. Most tourist companies require a written protocol stating the problem and the consumer claim as part of their terms and conditions. The legal 14- days period for registering a complaint that is regulated by *the Consumer Protection Law* starts at the moment the discrepancy in the contract is detected. In certain cases it is not possible to follow the obligatory form of addressing the complaints. The lack of tour operator's representative or another authorized person in the final destination for example might be a serious obstacle to the tourists who wish to make a complaint. In such cases the verbal form of complaint is obviously more convenient and accessible. In addition, the requirement for written form of complaints might lead to a situation when the consumer to miss the deadline for registration of complaints, for example if the holiday booked is a longer one. On the other hand, *the Consumer Protection Law* does not regulate an obligatory written form of addressing the complaint. As stated above, the complaint might be in written or in verbal form. The exclusion of the option for verbal complaint might be a prerequisite for the consumer to miss the deadline for addressing the complaint thus restricting consumer rights.

Another restriction which might affect consumer rights is related to the exclusion of the requirement for provision of contract terms and conditions in writing in case of last minute bookings. The exceptionally short time period between the booking and the start date of the holiday complicates the provision of information in its traditional written form (e.g. brochures, catalogues). At the same time, such last minute bookings are made predominantly online. The restricted access to pre- contractual information might mislead the travelers in regard to their rights and duties.

There is practice some Bulgarian tour operators to include clauses in their contract that might lead to substantial disbalance between the rights and the duties of the tour operator and the consumer. Such a clause requires the complaints to be addressed only in the tour operator's office or makes the deadline for registering a complaint shorter to 7 days after the end of the holiday. In 2015 the Commission for Consumer Protection found two unfair terms in tour operators' contracts that restrict consumer rights as well as the options to register a complaint. They are related to shorter deadlines and restricted forms of addressing the complaints as well as inclusion of indemnity clauses in case of travel cancellation or delay due to unforeseen circumstances. As a result, the Commission made prescriptions about these unfair terms to be removed or amended.

HARMONIZATION OF BULGARIAN TOURISM LEGISLATION WITH THE EUROPEAN UNION LAW

Despite the fact that the European Union (EU) treaties exclude any harmonization of tourism laws and allow the EU only to support, coordinate or supplement the actions of the Member States in tourism, the protection of the rights of consumers of tourist services in the European Union is guaranteed by more than 15 regulations and

directives. The regulations clearly state the consumer rights and the organizers' and intermediaries' liability for travel packages (incl. package travel, package holidays and package tours).

European Directives and Regulations which affect consumer rights and security in the tourism field include:

- package travel;
- travel with different means of transport;
- transfer of goods and food.

Until recently the main document which used to set out the protection of rights of consumers of travel packages was Council Directive 90/314/EEC on package travel, package holidays and package tours. The requirements of the Directive were introduced by the Law on Tourism in Bulgaria. The Ministry of Tourism and the Commission for Consumer Protection are the both regulatory authorities which supervise the implementation of this Directive.

In 2015 the European Commission decided to cancel Council Directive 90/314/EEC and to replace it with the new Directive (EU) 2015/2302. This decision is determined by market changes such as introduction of personalized travel packages, increase in the number of online bookings etc. Apart from improved protection of package travel, the changes in the Directive will contribute for:

- obtaining information about the organizer's liability- the consumers should be informed about the organizer's liability for the quality of all the services included in the travel package;
- possibility for better redress- in case the tourist service is not provided at a satisfactory level or it is worse than described in the contract the consumers have the right to claim for compensation;
- stating contact person in case of problems- the consumers have the option to address their complaints and claims directly to the tour operator or the travel agent who sold the holiday.

It is expected the new Package Travel Directive to be enforced since 1st July 2018 and each Member- State of the European Union is obliged to harmonize its tourism legislation with the forthcoming changes as per the legal deadline.

KEY PRINCIPLES FOR EFFECTIVE LEGISLATION ON TOURISM COMPLAINTS

In order the tourism legislation to be more effective, especially in regard to protection of consumer rights, it has to comply with the following key principles:

- Transparency

Transparency presupposes the existence of clear rules about functions of the legislation. The legal framework should be clear, accessible and the consumers should be informed about their rights. Transparency also guarantees that the regulations are being implemented in a proper way. It ensures possibility of efficient communication between consumers and the authorities via simple and accessible means. The consumer who has registered a complaint should have an access to sufficient information about the measures being taken in relation to the complaint at all times. Ideally, authorities should inform the consumers about the actions taken within predefined

timeframe. Therefore, it is a good idea such a timeframe to be as short as possible. The systematic registration of complaints at a national level and the public access to it is another prerequisite for transparency of the legislation. Such a register can be included in the Unified System for Tourist Information as part of the obligation deriving from *Art. 70 (1) Law on Tourism*, namely provision of statistical information for analytical and forecasting purposes on behalf of the tourist services suppliers.

- Accessibility and simplicity

To be efficient, the legislation should be accessible to all the consumers who wish to make a complaint, regardless of circumstances. Accessibility requires public awareness about the existence and functioning of the legal protection of the consumers of tourist services, as well as the options for an easy access to it. Public awareness presupposes the consumers to be aware of the possibility to inform the relevant authorities about any improper performance of the tourist services that are being purchased. Information about the existence of such mechanisms can be communicated through various means e.g. awareness rising campaigns, brochures, mass media publications or Internet. In order to ensure that these mechanisms are easily accessible, the consumers should be aware how they can lodge a complaint and this information should be simply explained. In addition, providing availability of various methods to lodge a complaint (e.g. letter, e-mail, direct complaints) is of great importance to the consumers. This is one of main aims of Directive (EU) 2015/2302. The use of alternative mechanisms for dispute resolution (e.g. mediation, Ombudsman etc.), as well as the introduction of online dispute resolution additionally facilitate the process of complaint handling. It is essential the information about the forms of addressing of complaints which is stated in the Law on Tourism and the Consumer Protection Law to be unified. Provision of an option for both verbal and written form of addressing of complaints, as well as an extension in the deadline for registration of complaints will make complaints handling more effective.

- Confidentiality

In the context of tourist legislation, confidentiality refers to the extent the mechanism guarantees that information about the identity of the complainant is being protected. The extent of confidentiality can range from accepting anonymous complaints to protection of consumer identity etc. According to the *Consumer Protection Law* each claim should include contact details of the claimant. At the same time, one of the reasons consumers not to complain is their unwillingness to reveal their identity and to have conflicts with the suppliers of tourist services. In this regard a higher extent of confidentiality of the claims can be enforced.

- Independence

Independence of tourism legislation can be achieved through the presence of independent supervisory body (e.g. Ombudsman), high transparency requirements or the possibility for take further actions such as going to court. The establishment of agencies representing the Ombudsman in tourist areas for example, or the publication of periodic reports containing statistical information (e.g. percentage of complaints treated within a given timeframe, statistics on the outcome of complaints etc.) will also contribute for an increase in independence of the complaint handling mechanisms.

CONCLUSION

Being a priority economic sector in Bulgaria, tourism should grow in an adequate legal framework which protects the rights of travelers. Remedies must be provided at the European Union level but also at national level. The update of Bulgarian legislation on tourism complaints is determined by the forthcoming harmonization with the European Package Travel Directive, as well as the need for elimination of some restrictions which are to the detriment of the consumers. The application of some key principles such as transparency, accessibility and simplicity, confidentiality and independence of the legislation will contribute for a more effective complaint handling process in tourism.

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