

Travel Agencies in our times. Is it safer to directly book with the holiday venue or through the means of a travel agency?



We have chosen to write this material at this time because after two years of restrictions, including travel restrictions, from 8 March 2022 the state of alert has not been extended and these restrictions no longer apply. For example, the green certificate and the passenger locator form (PLF) are no longer required when entering Romania, they are also no longer required in accommodation establishments and restaurants. Within this context and given the fact that Summer is around the corner (the holiday leave period), the appetite of Romanian citizens for holidays is growing and therefore we believe that it is of great interest for them to be aware of a number of issues related to their rights and how they can be limited.

From the outset, we would like to point out that we do not intend to provide an exhaustive analysis of the status of travel agencies and all the obligations incumbent on them from a legal standpoint, but we simply wish to draw attention to the status of travel agencies using certain apps and platforms, which make offers of accommodation available to the public at various establishments such as guest houses or hotels and also transport, as well as the way in which some of these entities, qualified as travel agencies, attempt to exempt themselves from the obligations incumbent on them in this capacity. Moreover, amongst other things, we will also address the type of damages which are to be reimbursed in the circumstances of cancellation of the booking of tourist packages by the tourist service provider.

Travel agencies and their evolution in the world of Internet and smart phone apps

The way in which contemporary society has evolved has brought about a series of transformations, which are reflected in all sectors of activity, including in the provision of tourist services, both in terms of the requirements from tourist service consumers (who are increasingly demanding and open to exclusive locations and new experiences) and in terms of the way in which these services are purchased (more online than through physical presence in a travel agency) and the form of organization of the travel agency.

Thus, with technological changes, and the widespread use of the internet, the concept of the travel agency has undergone a number of developments.

Today, travel agencies are not limited to those economic agents who offer and market travel packages in their physical offices, but their activity has increasingly moved online. Although not many people are aware of it, online platforms which are used to book certain services, such as hotel or transport services, even if not all have working points and staff to interact with physically, have travel agency status.

Most of the time, people interested in purchasing tourist services use smart phone apps developed by these online platforms to save time and benefit from certain offers that are advantageous or tailored to their needs (given their

specific search criteria). Users of these platforms also choose to book packages in this way for safety reasons, with the covering of the risks by the travel agency (service intermediary) in various unexpected situations, such as cancellation of the booking by the accommodation. Thus, the purchase of a package of services or associated services through a travel agency, even if it operates online, is an advantageous option for the customer, because the travel agency assumes certain obligations if the beneficiary of the tourist services is harmed in any way by the service provider.

In this context, it is useful to point out that most travel agencies are legally qualified as organizing agencies, which means that they combine and market certain travel packages or related services. However, there is also another type of travel agency, namely the intermediary travel agency which aggregates the offer of other agencies.

Consumer rights in case of wrongful cancellation of travel bookings. The European and National legal framework

In this respect, it is important to point out that when a travel booking is made through a travel agency, the customer benefits from additional legal protection if the service provider breaches its contractual obligations and wrongfully cancels the booking.

Travel agencies are liable for such situations in accordance with both National and European legislation, as these acts expressly require tour operators to assume liability for damage caused by service providers through abusive cancellation of bookings.

In this regard, the European Directive of 25 November 2015 on package travel and associated travel services, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC, which was similarly transposed into National law by Ordinance No 2 of 2 August 2018 on package travel and associated travel services and amending certain legislative acts, is relevant in this matter.

These regulations expressly refer to the remedies available to the person injured by the UNJUSTIFIED cancellation of the booking by the service provider, in which sense we mention the possibility of termination of the travel package contract and/or compensation for damages suffered.

These damages can be claimed directly from the travel agency through which the booking was made, given its obligation to guarantee the proper performance of the travel services included in the package contract: "The organizing travel agency is responsible for the proper performance of the travel services included in the travel package contract, irrespective of whether these services are to be provided by it or by another travel service provider."

Another aspect to which attention should be drawn is that in addition to the right of tourists to benefit from compensation for actual material damage suffered (the cost of cancelled tourist services, any additional costs of making a new booking), they are also entitled to the award of certain compensation for non-material damage, such as: compensation for the loss of the possibility of enjoying the trip or holiday in the expected conditions, the stress of reorganizing the holiday, the time taken to make a new booking.

Thus, injured parties who have purchased travel services through an agency are entitled to appropriate compensation from the agency for any damage they suffer as a result of non-compliance (material or immaterial).

The way in which some travel agencies intend not to observe the provisions laid down in the relevant legislation

A very important aspect that we have observed in our practice with regard to travel agencies and which should be borne in mind when using the services of such an entity is that in contracts for the marketing of tourist packages and associated travel services, it is often stipulated that the organizing agency does not assume any liability for the way in which the service provider performs its obligations.

In this situation, although the travel agency will charge a fee for the services provided, the client will only have the possibility to claim against the service provider for the payment of the related compensation, without the travel agency being held liable in any way. However, the liability of the travel agency in the event of non-performance or improper performance of the contract is often also one of the reasons why the customer chooses to conclude the contract for tourist services through a travel agency, which he considers to be solvent, rather than directly with a guesthouse or hotel, with which he has not interacted before.

Furthermore, we draw attention to the fact that we found certain consumer vulnerabilities in the terms and conditions of one of the world's most widely used online travel booking platforms, which, although not operating from physical premises and given the associated travel services it provides and the way it presents itself publicly on its website, has the status of a travel agency.

It has published on its website the Terms and Conditions for booking via the platform which among other things include several provisions limiting the liability of the travel agency in case the service provider does not comply with its contractual obligation. Thus, the Terms and Conditions state that tourists who book through the online platform will not benefit from the legal protection and rights offered by Directive 25/2015 and Ordinance 2/2018.

In fact, this means that if a booking is made via the online platform and the service provider, in this case the hotelier, abusively cancels the booking or fails to honor its contractual obligations, the travel agency will not be liable to the customer and will not compensate the customer adequately for the damage caused.

We consider that the way in which the travel agency in question has chosen to limit its liability does not comply with the relevant provisions in the field nor with the provisions of common law on limitation of liability clauses, which state that this type of clause must be expressly accepted in writing by the party to whose detriment it was proposed.

However, the beneficiary of the travel services does not expressly or in writing accept the conditions limiting the liability of the travel agency by simply making an online booking, given that these are only set out on the operator's website in the Terms and Conditions section, which is not even easily accessible.

In this scenario, the bona fide customer, who believes that once the booking has been made through such a travel agency, operating in the online environment and offering solid guarantees of solvency, enjoys full legal protection, will find that, in fact, the travel agency is taking advantage of the existence of Terms and Conditions published somewhere on the website in order to avoid liability in the event of an unjustifiable cancellation of the booking or for any other damage caused by the service provider.

Conclusions

It is useful to note that in the event of cancellation of the service package by the service provider, the customer is entitled not only to recover the cost paid, but also to be compensated for all material and non-material damage suffered.

In this context, we recommend the careful examination of the contractual Terms and Conditions, which are proposed when purchasing a package of tourist services, even though they are not always easily accessible, so that the right to compensation for non-performance or improper performance of tourist services is not limited in any

way.

We would like to stress the fact that the purpose of this material is not to cover all the legal aspects identified by the authors, but simply to give an outline of the issues and of course advice should always be sought on any specific issue.