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"All Inclusive" Package Travel

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ABSTRACT

Travel and tourism contracts are regulated under Articles from 82 to 100 of the Italian Consumer Code. Those articles are specifically dedicated to the regulation of tourist services, providing an accurate and precise definition of "tourist packages". This paper presents a study of travel and tourism under Italian law.

Keywords: Travel and tourism contracts, Italian law, Italian Consumer code

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1. Introduction

Following the promulgation of the Consumer Code , travel and tourism contracts have finally found a place in our legal system and a unified framework, both from systematic and the substantive law points of view . In particular, the Articles from 82 to 100 were specifically dedicated to the regulation of tourist services, providing an accurate and precise definition of "tourist packages".

Previously, the doctrine and the jurisprudence had defined the travel contract with respect to the services offered by the economic operator, setting it as a contract of carriage or as a service contract, or even as a warrant.

From the normative point of view, before the Consumer Code, the sources that regulated contractual relations in this area were multiple and had, in some cases, the character of general laws, while others of special legislation.

Especially, from time to time, the difficulty of identifying the relevant legislation had prompted the legislature to enact new discipline standards of this relationship type, through the Legislative Decree of 17 March 1995, No. 111 , nowadays repealed by the aforementioned Consumer Code, that had asked to implement the EEC directive of 13 June 1990, No. 314.

However, the introduction of special legislation without an explicit repeal of that previously in force, and the controversial coordination with the discipline of general character, had led to the emergence of significant problems of interpretation with regard to the coexistence of different legal sources.

This, specifically, refers to the rules laid down by the Brussels Convention with respect to the travel contract (CVV), written by Unidroit in 1970 and implemented in our country by the Law of

27 December 1977 No. 1084 , further expressly recalled by Article 94 of the Consumer Code.

However, problems of coordination between national legislation and international convention, that had already existed before the implementation of the EU directive, remained even after the Legislative Decree No. 111/1995 entered in force.

Indeed, the continuing validity of the convention , that was implemented by the Italian legislature, could lead, as a source of uniform legislation law governing the contract of travel and of organized stay, to conflicts with the discipline on the EU level.

At the same time, it is clear that the scope of the same convention, with particular reference to extra communitarian citizens, was broader than the boundaries of the EU and as a consequence, at least from this point of view, or there was no overlap or contrast, were indeed gaps in the Community framework .

Before the Consumer Code entered in force, we should highlight the another legislative action that was of significance in this matter, namely the Law of 29 March 2001 No. 135 , which in Article. 4, entitled "Promotion of the Tourists Rights" has created new instruments to protect a tourist and related rights.

2. The regulatory framework

To better understand the issues related to the considered matter, we should briefly analyse of the aforementioned legislation.

The Brussels Convention of 1970 has, as its inspiring ratio, the need to create legislation that would regulate a tourist contract in a uniform way , with a particular reference to the activity of travel agents and tour operators, and, with attention, to the protection of the tourist. However, from various points of view, those expectations were largely disregarded as a result of few countries which applied for the convention .

Council Directive of 13 June 1990 (No. 90/314/EEC) addresses travel, holidays and tours "all inclusive" packages. The EU legislator, perhaps because of the poor diffusion spread of this convention, wanted to introduce rules for all EU countries to facilitate and simplify the tourist transit, eliminating and limiting breakpoints in the individual national laws between the position of tour operators and the consuming user of the tourist service .

The Legislative Decree No. 111/1995, nowadays repealed and replaced by the Consumer Code, had, in its application scope, the package tours offered or sold within the country by organized vendors that have valid authorization.

The decree applied also to tour packages negotiated outside of business offices, notwithstanding dispositions of the Decree of 15 January 1992, No. 50 (Article 1), also now repealed and replaced by the Consumer Code. Paragraph 2 of Article 82 of the Consumer Code expressly provides that the rules on package tours also applies to negotiated outside of business offices and remotely at a distance, notwithstanding the provisions contained in Articles 64 to 67 of the Consumer Code.

The national legislator has, therefore, taken the opportunity given by the predispositions of the Consumer Code to govern, in a unified way, the matter of tourist packages sold and offered for sale within a country by an organizer or a seller of packages de quo, both within business offices, outside of them and remotely.

3. The tourist package

The Consumer Code provides a definition of a tourist package and governs the formal and substantive requirements in an analytical mode, as well as the rights of a tourist and the responsibility of an organizer and a seller.

The contract concerns with the purchase and sale of a package of "all inclusive travel" is able to meet many demands of modern mass tourism by offering conditions with more services (including for example transport, accommodation) in exchange for a flat rate. The resulting benefit for the purchasing subject is evident: costs are significantly reduced compared to the cost of each service purchased separately.

Article 84 of the Consumer Code defines travel packages as those that "have, as subjects, travels, holidays and all inclusive packages resulting from pre-arranged combination of at least two elements from the following list, sold or offered for sale at a flat rate, exceeding twenty-four hours or at least one night: a) transport b) accommodation c) tourist services not ancillary to transport or accommodation that, with regard to the Article 86, lett. i) and o), comprise a significant part of the package" .

The addressed subjects of the legislation envisaged by the Consumer Code, similarly to what happened under the provisions contained in Legislative Decree No. 111/1995, are the organizers and the sellers of travel packages on the one hand, and consumers on the other.

"A travel organizer" is understood, according to Article 83 of the Code, as a subject that realizes the combination of package elements and is obliged under its own name and with respect to an appropriate amount to provide tourist packages to third parties .

The "seller" is identified, still by Article 83, as one who sells or commits to provide tourist packages realized by an organizer after paying an appropriate amount. The seller may also be non-profit association that has the characteristics necessary to be also an organizer of tourist packages .

Finally, under the provisions of Article 83, lett. c) "consumer" should be understood as the purchaser or transferee of a tourist package, or even any person to appoint who has all the characteristics required for a use of the service, on whose behalf the principal contractor agrees to acquire a package, without any remuneration.

4. The travel contract

One of the main topics of the discipline is how to build and manage the contract relationship between the seller and the consumer, that results in unquestionable protection of the weaker party, which, in this case, is represented by the consumer.

Indeed, the Decree No. 111/1995 and, nowadays, the Consumer Code affect the issues of purely commercial nature that use negotiation forms extremely simplified in which the only written documents provided to the client are of registration or reservation which had the sole purpose of evidence.

The Article 85 provides that the contract for the sale of tourist packages should be delivered in written form, in clear and accurate terms, and that a consumer should be given a copy, that is signed or stamped by the organizer or by the seller .

With regard to elements of the contract, it must indicate, inter alia, contact details and details of entities authorized by the organizer or seller, any optional modifications or additions to the basic program and the time limit for bringing complain in case of lack or non-compliant service (Article 86).

The decree, however, didn't go beyond the determination of the minimum form and content the contract must comply with, leaving to the parties the possibility to stipulate the agreement. At this point it is important to note how the Consumer Code, reaffirming the previous arrangements, provides particularly significant provisions on the method of making payment.

In fact, the payment made by the consumer upon (stipulation) conclusion of the contract, up 25 percent of the total, must be considered, by provision legislation, in terms of a deposit, a deposit, however, may not have the effects in as those Article 1385 of Civil Code if the withdrawal is dependent on non-attributable action or is justified by serious failure of the counter-party.

This allowed to exceed a practice that was widespread in the sector, whereby the organizer of the package required the customer to pay a down payment even before the contract was actually executed. In this way, never looked, from a technical standpoint, like predisposition of a contract proposal, but rather as an acceptance of a contract proposal received by the customer. Consequently, the contract is perfected only by delivery of travel document by the seller or by the organizer. However, the cited legislation estimates also another important effect, namely to facilitate determination of the value of compensation due to any consumer in the event of cancellation by the seller in the absence of a justifiable reason, or in case of non-fulfilment.

Article 88 of the Consumer Code is even stronger, providing, inter alia, the need to claim within the brochures of destination, transport, and transport category type, and the solutions provided for board and lodging, as well indication that the deadline for executing the right of withdrawal amount or percentage of the price to be paid as a deposit, in addition to the schedule for the balance payment.

Also, special attention is given by decree about the information to be provided to the consumer both in the negotiations and, therefore, before concluding the contract, which prior to travel.

All informations that the consumer is provided in the brochure are considered binding for both the vendor for the organizer so that any change must be promptly communicated to the client before writing the contract. If, by contrast, would be modified subsequent to signing the contract, then for making claims to the consumer will need a specific agreement between the parties on this point.

Under the present case, (the doctrine has two different figures apart contractual) the doctrine has distinguished between two different shapes contract: the contract of organizing the trip and the contract travel agency, whose definitions have their origin in Article 1 of the Brussels Convention.

There is before the first case where a person defined as an organizer, agrees to provide the traveller a number of benefits, which include transportation, living and other services including, without limitation, meals, tours and entertainment shows, combine and organize themselves in exchange for payment of an appropriate amount .

In practice, this contract applies in cases where a travel agent plays an active organization that results in selling their products to travel agencies (tour operators), or that results in direct sales to customers (tour organizer).

Instead, you are before a contract for a travel agency, a subject, such an agent, undertakes to provide the customer with a travel package arranged by others, or to obtain more separate services, always provided by others, such for example, transport, food, lodging.

In practice, this case is applied with reference to the contract travel agencies s.c. reta retailers, which merely act as a liaison between the end customer and the suppliers of accommodation services, which travel organizers .

The difference between the two types of contract is to be found in his undertaking: in fact, by the terms of an organization contract, the operator promises in his name the travel, called "all inclusive", in scope of which the customer uses the single services covered by an organization subject without getting directly in contact with their suppliers, that remain only mere suppliers for the organizer.

However, in the intermediary contract the agent commits itself to provide the customer with the travel called "all inclusive", or individual services that will be provided by other subjects using their names in front of the tourist .

In conclusion, the organizer provides a set of services combined in a unique product that represents a different package and more complex than the simple sum of its parts, especially considering the fact that the organizer provides its business also to combine different elements to create a "all- inclusive" travel that best meets needs of a tourist client .

The definition of "all inclusive" packages, provided by the law, is not something totally different from that of the travel organization contract, but it can be said that it is related to it and constitutes a better specification and further clarification .

There is no doubt that the rules dictated by the Consumer Code, which implemented the provisions of Decree No. 111, 1995 on "all inclusive" tourist package, has enhanced, in particular, the protection of a consumer understood as a tourist purchasing a tourist package from a travel organizer or from a travel agency.

In fact, before that decree entered into force, the consumers often signed travel and tourist contracts that restricted and excluded, in an excessive and unbalanced way, the responsibility of operators of the sector for a very wide range of indeterminate cases, considered "out of the contract".

From the standpoint of protection, nowadays, the consumer tourist can find within the Customer Code (and thus in a single normative text) a wide range of instruments to protect his/her role as weaker party of the contract.

The contract that must be signed by the parties under pain of nullity, receives not only direct protection from the articles analysed and grouped under Title IV "provisions relating to individual contracts" of chapter II " Tourism Services "(Article 82 and ff.), but also further protection for the related legislation on unfair terms in contracts between professionals and consumers (Article 33 and ff.), further enhanced with respect to that contained in the repeals of Article 1469 bis and ff. of Civil Code, and by the rules on advertising (Article 19 and ff.).

It follows, then, that one can legitimately claim that a typical form of contract for the sale of tourist services exists with a complete and accurate regulation in our system.

5. The rights of tourists and their protection

Once stipulated, the contract can be an object of modification in the light of the provisions contained in Articles 89, 90 and 91 of the Consumer Code, in particular, the purchaser may decide to cede the tourist package or has an option to recede from the contract, if significant elements of the conditions contained in the contract have been altered significantly.

In all these cases, the legislator intended to provide a consumer with adequate protection, both in terms of a contract and compensation.

Thus, with the reference to the first case, Article 89 of the mentioned code allows a consumer to cede the stipulated contract before its execution; in this case, the consumer must give a written notice the transferee's particulars to the organizer or to the seller of the tourist package, not later than by four working days before the departure, if it is impossible to make use of the tourist package. The cession of the contract results in a joint liability of the transferor and transferee to pay the price and expenses that may derive from the cession.

In the second case, there are two situations: the price revision and modification of conditions of the contract that can result in withdrawal of the consumer or cancellation of the service (Articles 90 and 91).

With reference to the first case, the consumer is protected against upward revisions of the price agreed for the purchase of the tourist package, which, however, can not be increased during the 20 days prior to the departure. Indeed, if the increase exceeds 10 percent of the price with respect to the original amount, Article 90 of the Code provides the possibility of withdrawal for the purchaser who gains the right to obtain reimbursement of sums already paid to the seller or to the organizer.

In the second case, however, the consumer may recede from the contract without paying any penalty, if before the departure the organizer or the seller needs to change significantly one or more elements of the contract. In that case, they must give a written notice to the buyer, indicating the type of change and the consequent change in the price, and if this change is not accepted within two working days of notification, the seller or the organizer will be required to refund the price paid.

The protection of a tourist takes place also in the case where alternation of the key parts of the services provided in the contract can be verified only after the departure, and thus, from the point of civil law, during the execution of the contract. The decree provides that the seller or the organizer should propose adequate alternatives for continuing the journey, without any extra burden or additional costs or, alternatively, the must pay the difference between the services originally planned and those carried out, reserving the right for further compensation.

Furthermore, if there are no alternatives acceptable for the consumer, or she/he does not accept them because of the justified cause, the seller or the organizer must provide a means of transport for the consumer to return, reimbursing the difference between the planned services and those completely carried out until paying back the advance money.

With reference to the cases provided for in Articles 90 and 91 of the decree, the Article 92 governs the rights of the consumer in case of withdrawal or cancellation of a service.

As noted above, the legislator wanted to give to the buyer of a tourist package coverage of special protection, guaranteeing, in certain cases, a broad right to withdraw from the signed contract, providing, at the same time, to the seller or to the organizer the possibility of dissolving the contract, but only in specific cases and analytically shown by the rules.

If the consumer withdraws from the contract in the circumstances permitted by the decree, as in the case of trip cancelled for the reasons not attributable to the consumer, in this case the following three solutions are indicated. First, she/he has the right to take a substitute package of equivalent or higher quality than purchased, without any extra cost or, alternatively, has the right to use a lower quality package with a refund of the price

difference or has the right to obtain repayment of money already paid, within seven working days since notification about termination or cancellation of the trip. In any case, however, the tourist is entitled to be indemnified for any further damage deriving from the breach of the contract.

As mentioned above, the Article 92 of the decree provides also protection to the seller or the organizer, so that the just examined instructions do not apply to the cases, where the cancellation of the tourist package depends on the failure to reach the minimum number of required participants, provided that the consumer has been informed by a written notice at least twenty days before the expected date of departure or cancellation due to grave causes except of cases of overbooking .

In the latter case, in fact, the seller or the organizer will be required to respond to the cancellation of reservation of a tourist package, since the choice to conclude a number of contracts above the actual availability resulted from her/his entrepreneurial choice and its consequences can hardly be charged in any way to the consumer.

The right to compensation that the tourist can use applies also to the cases provided for in Article 93 of the decree where the indemnification obligation is explicitly attributed to the party of the vendor or the organization, besides the cases where the failure or defective performance of their obligations taken on by selling the tourist package is not attributable to them. In order to simplify the consumer compensation protection the second paragraph of that article provides that the organizer or the seller is always, however, required to indemnify, even when they have made use of other service providers, having at the same the time possibility to claim on the same .

In practice, to ensure the efficient use of the tourist package the content of the Charter of the Tourist Rights provided by legislative decree No. 135 of 2001 appears particularly important and relevant. It contains information on tourist rights regarding the use of received tourist services, as well as appeal procedures, including conciliation and arbitration in cases of breach of the contract by providers of the tourist offer . In this context we should mention as significant chambers of commerce, industry, handicrafts and agriculture, alone or in association that, under the Law of 29 December 1993 No. 580, have created committees for arbitration and conciliation to settle disputes between businesses, and between businesses, consumers and participants related to the provision of tourism services. Consumers have also the opportunity to be represented, in the case of conciliation, through consumer associations.

Some of these chambers were already activated before the entry into force of Law No. 135 of 2001, but the major spread and proliferation of such chamber initiatives has taken a place during the last two years.

Finally, with reference to rights arising from the purchase of a flight ticket we should point out the enactment, following the entry into force within the European Union: the Convention unifying certain rules relating to international air transport (Montreal Convention of 1999), and the Passenger Charter of Rights edited by the National Civil Aviation Authority (ENAC - Ente Nazionale per l'Aviazione Civile), which operates from 8 May 2001.

There are specific provisions for the "all inclusive" travel package in this charter, under which the passenger would be provided with every type of assistance by the organizer from whom she/he bought the ticket, and the organizer will also be liable for any failure to meet contractual terms.

Furthermore, the charter provides the information that the organizer must provide to the passenger for the stipulation and execution of the contract, also with regarding the circumstances listed in the brochure.

By the Passenger Charter of Rights, ENAC wants to provide advance knowledge base about the types of inefficiency for which the passenger may claim compensation from the airline. Moreover, ENAC will take the active role of a guarantor, so that passengers can find immediately the effective and efficient assistance.

6. The responsibility profiles for an organizer and a seller of tourist package

In the context of liability, the code regulates exhaustively cases related to damages caused to the person (Article 94), and related to damages other than to the person (Article 95) . In both cases, there is an explicit reference to the provisions provided not only by the Brussels Convention of 23 April 1970, but also by other international conventions on transport; in particular, the following ones are recalled: the one of Warsaw of 12 October 1929 on international air transport , and that of Bern of 25 February 1961 on rail transport .

The seller or the organizer will be exempt from liability under Articles 94 and 95 only in cases where the non-fulfilment or incorrect execution of the contract is attributable directly to consumers, or has been caused by unforeseeable or inevitable action of the third parties . Also, there is exemption from liability when that event occurs by an accident or force majeure.

In any case, however, the seller or the organizer have an obligation to bring about every possible remedy for the consumer to continue his/her travel, retaining still the right to be compensated for their own expenses and sudden losses, where the action is attributable to the tourist herself/himself.

The seller or the organizer who has effectively compensated for the loss suffered by the consumer have the right of subrogation to the position of the latter to third parties responsible for all rights and actions that would be expected from the same tourist. If necessary, in order to facilitate the right of subrogation, the consumer must provide the seller and the organizer with all documents, information and data useful to execute this right (Article 97).

With particular reference to the limits of damage compensation, the decree provides that, with respect to personal damages, any agreement is void if it is going to exclude or limit the compensation to thresholds lower than those provided by: international conventions acceded by Italy or the European Union, particularly the thresholds defined by the conventions mentioned above.

However, with regard to damage other than to the person, Article 94 provides the possibility for the parties to limit in the widely accepted way the right to compensation for damages arising from non-fulfilment or incorrect execution of the services making up the tourist package. In any case, however, the provisions of Articles 1341 and ff. of Civil Code and 33 and ff. of Consumer Code must be fully implemented, applying to the clauses of the contract that limit the liability of the seller and organizer including to all intents and purposes in effect, restrictive and "unfair" clauses.

If no exemption has been provided in the contract, the quantification of limits for compensations to damages other than to the person should be made by not less than that envisaged by the provisions of the International Brussels Convention of 1970, as the subject of explicit reference.

Finally, the deadlines, by which the consumer is entitled to request for compensation, must be examined. In the first instance, it becomes clearly evident that the deadlines can differ, and thus it potential can confuse the consumer, moreover, these deadlines are partly different from those commonly provided by the Civil Code.

With regard to personal damages, the right to compensation expires by three years after the return of the traveller to the place of departure; the right expires sooner, by eighteen or twelve months respectively, with regard to the failure of transport service included in the tourist package for which, however, one should apply the provisions contained in Article 2951 of Civil Code regarding limitation on shipment and transport depending on the fact whether that the transport takes places in Europe or outside Europe. However, with regard

to damages other than to the person, the right to compensation expires always a year after the traveller's return to the place of departure.

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