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Faculty of Law

Journal of Law

№1, 2021



**უნივერსიტეტის
გამომცემლობა**

Liability of the Travel Organiser for the Traveller's Ruined Holiday

In parallel with the development of the tourism industry, it is important to take proper care of the rights of those who apply for travel services to a travel organiser, especially in a situation when Georgia has obligation to implement EU regulations in the framework of a number of international agreements. Liability of the travel organiser for failure to perform or improper performance of the travel services is defined by Georgian legislation, however, the lack of scientific literature in the field of tourism law and case law in common courts in Georgia makes it very important to study/share an international experience. The paper focuses on the liability of the travel organiser for holiday leave spent to no avail by the traveller, where the traveller can request compensation for non-material damage for loss of the expected enjoyment of the planned leave. The study focuses on the compliance of Georgian legislation with EU directives, discusses the international experience and court precedents on the example of different countries. One of the most pressing and at the same time problematic issues in the study is the determination of compensation in money for the ruined holiday.

Keywords: *Travel organiser, traveller, failed travel, improperly organised leave, compensation for non-material damage, monetary compensation, loss of enjoyment, ruined holiday.*

1. Introduction

The tourism industry is rapidly developing throughout the world, including Georgia. The development of tourism is an important factor for the development of the economy in Georgia, which was clearly demonstrated in the circumstances of the pandemic. Consequently, in parallel with the development of the tourism industry, focusing on legislation regulating this area is an important factor for the tourism development. It should be noted that Georgia has the obligation to align its tourism regulatory acts with international acts in terms of the European integration within the framework of international agreements. In this process, it is important for the law to regulate the rights and responsibilities of the parties of this legal relationship in such a way as to ensure the normal functioning of the internal market and, most importantly, the rights of the traveller, the weak party, who applies to a travel company to receive the services under the travel contract and has an expectation that the contractor will fulfill its obligations properly.

Georgian legislation regulates the responsibility of the travel organiser in case of failure to perform or improper performance of the obligation and allows the traveller to request a price reduction, termination of the travel contract, compensation for material damages and, also, appropriate monetary compensation for ruined holiday. Georgian legislation distinguishes material and non-

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material damages and determines the preconditions for their compensation. The right to claim non-material damage exists in cases of violation of personal non-property rights or other cases provided by law. There is an opinion in legal doctrine that the imposition of monetary compensation for the ruined holiday is one of the grounds for claiming non-property damage.

This paper focuses on the provision in Part 2 of Article 662 of the Civil Code of Georgia (Hereinafter – GCC), which allows the traveller to claim appropriate monetary compensation for the ruined holiday in case the travel was failed or if it was organised improperly. It should be noted that the disputes arising from the travel contract are quite rare in Georgia, which can be explained by many factors, however, there is no case law regarding the monetary compensation caused by the ruined holiday. The aim of this paper is to determine the content of the request for the above norm, to assess the EU regulations and their compliance with Georgian legislation, as well as the essential factors for determining the amount of monetary compensation and to propose relevant recommendations, which on the one hand ensure the protection of the rights of travellers, the weak party, and on the other hand, the normal functioning of the internal market of Georgia in the field of tourism.

2. General Overview of the Grounds for Compensation in Case of Failed or Improper Performance of the Obligation

According to Part 2 of Article 361 of GCC, the obligation shall be performed duly, in good faith, and at the determined time and place. Failure by the debtor to perform or improper performance of the obligation may result in damage to the creditor. Georgian legislation separates material and non-material damages and, at the same time, determines the preconditions for their compensation. In the present paper, based on the subject of research, we will focus on compensation for non-material damage.

The concept of non-material damage is first found in French law, and a little later in German law, where the concept of damage was expanded to include non-material damage in addition to material damage in the presence of relevant preconditions, which was considerably influenced by the concept of personal rights.¹ Any damage that does not lead to a decrease in a person's property can be considered as the non-material damage.² Non-material damage is characterized by the difficulty of determining its exact monetary value, since its assessment depends on subjective factors.³ Furthermore, the existence of non-material damage implies the existence of intangible circumstances such as loss of pleasure, pain, shock, suffering.⁴

¹ *Sadiku A.*, Immaterial Damage and Some Types of its Compensation, *Prizren Social Science Journal*, Vol. 4, Issue 1, 2020, 50.

² *Magnus U.*, Damages for Non-Pecuniary Loss in German Contract and Tort Law, *The Chinese Journal of Comparative Law*, Vol. 3, № 2, 2015, 290, Seen in: *Jahnke J., Burmann M. and others (eds.)*, *Straßenverkehrsrecht* (23rd ed., Beck 2014) s 253 BGB n 3.

³ *Magnus U.*, Damages for Non-Pecuniary Loss in German Contract and Tort Law, *The Chinese Journal of Comparative Law*, Vol. 3, № 2, 2015, 291.

⁴ *CooKe J.*, *Law of Tort*, 12th ed., United Kingdom, 2015, 552.

In accordance with Article 413 of GCC, monetary compensation for non-material damages may be claimed only in the cases precisely defined by law in the form of a reasonable and fair compensation. According to this norm, there must be two cumulative conditions – the fact of causing moral damage and the relevant legal provision.⁵ The purpose of the above article is to regulate the cases precisely defined by law, when a victim within various relationships under private law may suffer moral, spiritual suffering, which creates legal basis to claim compensation for non-material damage. Therefore, such regulation provides for the reduction, limitation of the unreasonable extension of the result provided for in this norm, in order to ensure the stability and order of the civil turnover.⁶

It should be noted that the purpose of compensation for moral damages has a function of moral satisfaction along with the rectification of the result, which is manifested in the replacement of spiritual pain with positive emotions.⁷ However, it is debatable whether it is possible to rectify the result, because the restitution of the moral damage is considered to be impossible, as the suffering experienced by a human being leaves an indelible mark on their personality.⁸ According to the Georgian legislation, the regulation on non-material damage should also have a preventive role, in particular, the person should be protected from material and non-material damage to the extent possible.⁹

GCC and other legislative acts¹⁰ regulate the grounds for claiming non-material damage, including in cases such as violation of personal non-property rights, bodily injury or damage to health, ruined holiday.

It is notable that the case of *Jarvis v Swans Tours LTD* was one of the first where the court had to discuss the issue of compensation for non-material damages for the breach of contract. Mr. Jarvis wanted to go to Switzerland for Christmas to spend a two-week vacation. He read information in a brochure prepared by a travel company. The brochure described in detail the environment and conditions in which the traveller would stay. The traveller was left in despair with his trip, as the essential conditions given in the brochure were not accurate, so he appealed to the court for damages. The Court noted that if the contracting party breaks the contract, it was important to compensate for the disappointment, loss of enjoyment and distress caused by the breach. Although it is difficult to assess in terms of money, but this does not preclude the possibility of satisfying the claim as Mr. Jarvis eagerly waited for his vacation and he suffered the damage for the loss of it.¹¹

⁵ *Chanturia L. (ed.)*, Commentary to the Civil Code, Vol. III, Tbilisi, 2019, 745 (in Georgian).

⁶ Decision of January 20, 2012, № AS-1156-1176-2011, Supreme Court of Georgia.

⁷ *Chanturia L. (ed.)*, Commentary to the Civil Code, Vol. III, Tbilisi, 2019, 749 (in Georgian).

⁸ *Bichia M.*, Analysis of an Article by Grigol Rtskhiladze “Compensation of Moral Damage”, Journal “Law and World”, № 8, 2017, 80 seen in: *Rtskhiladze G.*, Compensation of Moral Damage, Journal “Soviet Law”, № 4, 1928, 80-81.

⁹ *Bichia M.*, Analysis of an Article by Grigol Rtskhiladze “Compensation of Moral Damage”, Journal “Law and World” № 8, Tbilisi, 2017, 84, seen in: *Ninidze T.*, The Problem of Moral Damage in Law, Journal “Soviet Law” № 2, Tbilisi, 1978, 55.

¹⁰ Laws of Georgia on “Freedom of Speech and Expression”, “Patient Rights”, “Advertising”, etc.

¹¹ *Jarvis v Swans Tours LTD*, England and Wales Court of Appeal, 1972.

3. The Essence of Holiday Leaves and its Relation to Article 662 of the Civil Code

Georgian legislation recognizes the right of an employee to enjoy paid and unpaid holiday leave for a period defined by law. Vacation, or free time for rest, is earned by the employee in exchange for the work done by him/her.¹²

Georgian law distinguishes between paid leave and unpaid leave. A period of temporary incapacity for work, leave due to pregnancy, childbirth and childcare, newborn adoption leave and additional parental leave for childcare are not considered as holiday leaves.¹³

Holiday leave is a legally guaranteed right to rest in exchange for the time worked by an employee, the use of which is essential for health and personal development. One of the rulings of the European Court of Justice explained that the purpose of entitlement to paid leave is to enable the worker to rest and to enjoy a period of relaxation and leisure.¹⁴ The importance of leave is also emphasized by the fact that the EU law prohibits the replacement of the period of paid annual leave by an allowance in lieu.¹⁵

The right to leave is a social right, which, in accordance with the Italian law, is considered in close connection with the rights to health and the security of the person. The purpose of the annual leave is to restore the psychophysical energy spent on the work they do during the year for the employees, as well as to support the family and social relations to ensure the personal development.¹⁶ The purpose of the holiday leave is to have some leisure time and enjoy it. It is also the best opportunity to accumulate new emotions. In some cases, people associate their holiday leave with a public holiday, and the expected vacation may especially intensify the importance of the leave.

It is generally believed that a person obtains a sense of satisfaction from a variety of sources throughout life, one of which is the leisure time that a person spends at home or while traveling. Satisfaction received from traveling refers to the experience that a person acquires in an environment free from control, which implies a space free from work, spontaneous emotions received through traveling, and, one of the essential components, the travel service that the traveller receives.¹⁷

The importance of the leave is indicated in Part 2 of Article 662 of GCC, which stipulates that if the travel was failed or improperly organised, then the traveller can also claim the appropriate monetary compensation for the ruined holiday. Based on the above, the question logically arises – if the provision in Article 662 of GCC refers to the damage caused by wasting the leave of any kind, or only the paid leave. It should be noted that the legislature does not specify the purpose of paid or unpaid leave. In addition, it is debatable whether the traveller has the right to claim monetary compensation for the failure to perform or improper performance of the obligation by the travel

¹² *Shvelidze Z.*, Georgian Labor Law and International Labor Standards, Tbilisi, 2017, 213 (in Georgian).

¹³ Articles 31-36, Organic Law of Georgia “Labour Code of Georgia”, LHG, 75, 27/12/2010.

¹⁴ Case C-78/11 Judgement of the Court (5th Chamber), 21 June 2012.

¹⁵ Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning Certain Aspects of the Organisation of Working Time, Article 7 (2).

¹⁶ *Borroni A. (ed.)*, Commentary on the Labour Code of Georgia, Tbilisi, 2016, 197-199 (in Georgian).

¹⁷ *Neal D. J., Sirgy J. M., Uysal M.*, Measuring the Effect of Tourism Services on Travelers’ Quality of Life Further Validation, Social Indicators Research, 12, Vol. 69, 2004, 244.

organiser on the above grounds if the traveller is not involved in labour relations and purchases a travel service from a travel organiser. It would be important for the common courts of Georgia to define “leave” in the light of a particular dispute. In my opinion “leave” should be broadly defined or in the impossibility of explanation changes should be made to the provisions of this norm in order to ensure equal protection of the rights of all customers.

4. The Entity Responsible for Ruined Holiday

According to Part 1 of Article 657 of GCC, the parties to the travel contract are the travel organiser (trader) and the tourist (traveller). The travel organiser is responsible for providing the services in accordance with the terms agreed upon by the parties. At the traveling stage, the interest of the traveller shall be taken into account, who has certain expectations from the planned trip. The traveller has a high interest in the fact that the planned trip will be an opportunity for new emotions, adventures and relaxation.

A traveller is a service recipient, whose right to receive service derives from the free movement of services.¹⁸ The Civil Code does not contain the notion of a traveller, however, as a service recipient the traveller is a customer, therefore is a subject to the standard of protection contained in the Georgian legislation to protect the “weak” party.¹⁹ In turn, any subject that buys any product or service to meet personal needs is a customer.²⁰

We find the definition of a tourist (traveller) in the Law of Georgia on Tourism and Resorts, according to which – a tourist is a natural person who voluntarily travels outside the place of his/her permanent residence for leisure, recreation, business or other purposes, for no less than 24 hours and no more than one year, and whose travel is not reimbursed from the financial sources of the place of temporary stay.²¹

A traveller applies to a travel organiser for the service, as he or she may not have enough experience to plan the travel and/or may consider that in case of improper performance of the obligation during the service period, it will be more practical and convenient for the traveller to have the right to complain to the travel organiser rather than individually to all the subjects providing different services.

Accordingly, the traveller buys the service hoping that the trip will be in accordance with the expectations. At this stage, it is the obligation of the travel organiser to ensure the proper performance

¹⁸ *Leeuwen van B.*, European Standardisation of Services and its Impact on Private Law: Paradoxes of Convergence (Modern Studies in European Law), Bloomsbury, 2017, 118.

¹⁹ *Tsertsvadze G.*, Commentary to Article 657 of the Civil Code, <<http://www.gccc.ge/>> [15.01.2021] (in Georgian).

²⁰ *Lakerbaia T., Zaalishvili V., Zoidze T.*, Consumer Law, Tbilisi, 2018, 30 (in Georgian).

²¹ Article 2, part 2, Law of Georgia on Tourism and Resorts, Departments of the Parliament of Georgia, 13-14 (45-46/13), 12/04/1997. Also, the notion of a tourist (traveller) is regulated under Article 2, subparagraph “a” of the Law of Georgia on “the Regulation of the Registration of Tourists Entering and Leaving Georgia”.

of the obligations under the contract and to keep the traveller satisfied, within the scope of its responsibilities.

In accordance with Article 662 of the GCC, the party responsible for performing the conditions defined by the agreement between the parties to the travel is the travel organiser, which is a registered entity defined by Georgian law and which has the authorization to carry out entrepreneurial activities. It should be noted that Georgian legislation does not provide for any special legal preconditions for the registration of a travel company and the commencement of activities. The Order of the Head of the State Department of Tourism and Resorts of Georgia envisages voluntary licensing of touristic and resort activities in Georgia.²² Absence of a license is not a ground for banning or restricting touristic and resort activities for legal or physical persons.²³ Consequently, there are no strictly defined criteria that such a subject would have to meet, which would have led to a somewhat high degree of expectation that the needs of the traveller would be met.

Therefore, it is important to define a number of criteria by the Georgian legislation, which would have to be met in order to give travel companies the right to operate. This would ensure the protection of the interests of travellers, whose lives and health to some extent depend on the trip planned by the travel organiser and may be endangered. Setting additional criteria for the activities of travel companies may have a negative impact on the country's economy, as their registration will be subject to certain restrictions, but I think human life and health should be given priority in this case and reasonable steps should be taken to protect it.

5. Grounds for Claiming Monetary Compensation for Ruined Holiday

The main duty of the travel organiser is to fulfill the obligation in accordance with the terms agreed by the parties, which means to organise the trip in such a way that it does not have any shortcomings that can downgrade or reduce its importance for general or contractual purposes.²⁴

Georgian legislation entitles a traveller to request reduction of the price and termination of the contract in the presence of preconditions provided by law, as well as compensation for material damage for failure to perform the obligation, and appropriate monetary compensation for the ruined holiday.²⁵

The travel organiser is liable for damages caused by it and the result of which is the failed travel or improper performance of the travel services, which entitles the traveller to claim appropriate compensation for the ruined holiday. The terms "failed travel" and "improper performance of travel services" are ambiguous, as the failed travel may be the result of improper performance of travel services. Whereas, under Article 662, these two grounds constitute two independent grounds for the claim for damages, let us consider that failed travel is the one that did not take place, which can be

²² See Order № 2 of the Head of the State Department of Tourism and Resorts of Georgia, 28/01/1999.

²³ I approached the LEPL National Tourism Administration with the request to provide information about the travel companies in the country that have voluntary licensing. According to the received answer (letter № 3120, 08.10.2020), licensing of travel companies is not carried out in Georgia.

²⁴ Decision of March 14, 2017, №AS-1102-1059-2016, Supreme Court of Georgia.

²⁵ See Articles 660-662, of the Civil Code of Georgia, Parliamentary Gazette, 31, 24/07/1997.

caused by many reasons (absence of visa, expired travel documents, etc.),²⁶ and improper performance of travel services – when the traveller took the trip, however the service lacked such a component that significantly deteriorated and reduced the value of the trip, causing the traveller to suffer non-material damage.²⁷

It should be noted that according to the Civil Code of Germany (Hereinafter – BGB), if the travel package is made impossible or package conditions significantly impaired, then the traveller may also claim appropriate compensation in money for the ruined holiday. Travel package “made impossible” and “significantly impaired” is a much more terminologically correct wording than is found in Georgian legislation.²⁸ Regulations on compensation for damages, including provisions on non-material damages, were especially adopted in German legislation at the end of the 20th century. In 1979, the law made it possible to claim non-material damage under a travel service contract.²⁹ One of the exceptions to the cases of compensation for non-material damage is the damage caused by the loss of the pleasure of the holiday, as the traveller has an interest and expectation that he or she will be able to regain energy and have fun as a result of the holiday. Accordingly, German legislation, in particular paragraph 651f of the Civil Code of Germany (BGB), allows a traveller to claim compensation for damages, in particular for non-material damage, for the disappointment or significant impairment of his or her expectation under a contractual relationship. This should be considered as a means of protecting the contractual interest that the traveller has towards the proper performance of the obligation. It should be noted that the German courts do not recognize the possibility of compensation for loss of leisure or the enjoyment of leave outside the contractual relationship.³⁰

Under German legislation, the obligation to pay compensation for the “ruined holiday” is the only case in contract law that ensures the protection of non-material interests, as there is a loss of pleasure.³¹ Damage received through a ruined (wasted) holiday time shall, as an exception, be reimbursed as non-material damage and not as material damage.³² Herewith, the grounds for this claim can be both if the travel package was made “impossible” or “significantly impaired”.³³

In France there is a fairly big practice of imposing compensation for non-material damage due to improper performance of the travel services. In one case instead of the agreed three-star hotel the travellers had to spend a holiday in a low-class hotel, which was inconvenient and served poor quality food. The travellers got their money back and received 500 EUR in non-material damage for

²⁶ See the decision of February 18, 2015, № 2/16914-15, Collegium of Civil Cases of Tbilisi City Court.

²⁷ See the decision of March 14, 2017, № AS -1102-1059-2016, Chamber of Civil Cases of the Supreme Court of Georgia; Decision of December 4, 2013, № AS-510-484-2013, Chamber of Civil Cases of the Supreme Court of Georgia.

²⁸ Article 651f (2), Civil Code of Germany (BGB), 01/01/1900.

²⁹ *Magnus U.*, Damage for Non-Pecuniary Loss in German Contract and Tort Law, *The Chinese Journal of Comparative Law*, Vol. 3, № 2, 2015, 297.

³⁰ *Ibid.*, 302.

³¹ *Markesinis B. S., Unberath H, Johnston A.*, *The German Law of Contract*, 2nd ed., USA and Canada, 2006, 157-158.

³² *Kropholler J.*, *Commentary to the Civil Code*, *Darjania T., Tchetchelashvili Z. (transl.), Chachanidze E., Darjania T., Totladze L. (eds.)*, Tbilisi, 2014, Introduction to §§ 249-253, VII, 120 (in Georgian).

³³ *Ibid.*, § 651a, VI, 492.

disappointment and the trip that left bad memories. The approach of the court was similar in the case when the travellers arrived at a hotel under construction and with an unfinished swimming pool. When imposing compensation for damages, there is usually no explanation of how the amount was calculated.³⁴

6. The Scope of Liability of the Travel Organiser under EU Law – Directive 90/314/EEC on “Package Travel, Package Holidays and Package Tours”

In terms of European integration, Georgia has an obligation under international agreements to implement the European standards of consumer rights, in accordance with the Partnership and Cooperation Agreement (PCA)³⁵ and the EU-Georgia Association Agreement³⁶. The EU regulates the selected areas through Directives within its legislative competence, including the types of contracts that are politically important for the effective functioning of the internal market.³⁷

Directive 90/314/EEC on “package travel, package holidays and package tours”³⁸ has been implemented by a number of states and Georgia has such obligation under the Association Agreement. This Directive has become important for the protection of consumers’ rights, as it regulates issues such as information to be provided to travellers, payment of service fees, changes in the contract, cancellation of the tour by the organiser, liability of travel organiser and other issues.³⁹

It is noteworthy that the question of whether EU law provides for the liability of the travel organiser in the event of travel cancellation to compensate for non-material damage sustained by the traveller for the ruined holiday was answered in one of the cases, namely when the family of Simone Leitner booked a travel package in Turkish Riviera. They spent their entire holiday in a hotel and there they took all their meals. A week after the start of the holiday, Simone Leitner showed symptoms of poisoning from food included in their travel package. Simone felt ill throughout and beyond the end of the holiday, accompanied by a variety of symptoms. Her parents had to look after her until the end of the holiday. Other guests at the same hotel also fell ill with the same illness and presented the same symptoms of illness. Simone’s family appealed to the court for damages, the court of first instance awarded the claimant only 13,000 ATS for the physical pain and suffering caused by the food poisoning and dismissed the remainder of the application, which was for compensation for the non-material damage caused by the holiday leave spent to no avail. The court justified this decision by

³⁴ CA Paris 29 Jan 2010, Numéro JurisData: 2010–001776; CA Bordeaux 4 Nov 2002, Numéro JurisData: 2002–196116. Seen in: *Palmer V. V. (ed.)*, *The Recovery of Non-Pecuniary Loss in European Contract Law*, United Kingdom, 2015, 359.

³⁵ Ratified by Decree № 347 of the Parliament of Georgia, International Treaty and Agreement of Georgia, 18/05/2000.

³⁶ Ratified by Decree № 2495-RS of the Parliament of Georgia, entered into force on 1 July 2016, International Treaty and Agreement of Georgia, 11/09/2014.

³⁷ *Serrat B., Maria J.*, *Selling Tourism Services at a Distance: An Analysis of the EU Consumer Acquis*, Spain, 2012, 6.

³⁸ Council Directive 90/314/EEC of 13 June 1990 on package Travel, Package Holidays and Package Tours.

³⁹ *Serrat B., Maria J.*, *Selling Tourism Services at a Distance: An Analysis of the EU Consumer Acquis*, Spain, 2012, 7.

saying that there is no express provision in any Austrian law for compensation for non-material damage of that kind. The claimant appealed the decision of the first-instance. Although the decision of the first instance court was upheld with reference to Austrian law, the Court considered that application of Article 5 of the Directive could lead to a different outcome, as it was not sufficiently precise and its interpretation could also have in view the compensation for non-material damage. Accordingly, the judge decided to suspend the proceedings and refer to the Court of Justice of the European Union for an explanation of Article 5, namely whether that article was to be interpreted as meaning that compensation is in principle payable in respect of claims for compensation for non-material damage resulting from failure to perform or the improper performance of the obligations inherent in the provision of package travel.

On this issue, the European Court of Justice has clarified that Article 5(2) of the Directive provides that Member States may, in the matter of damage other than personal injury, allow compensation to be limited under the contract. This means that the Directive implicitly recognises the existence of a right to compensation for damage other than personal injury, including non-material damage. Consequently, in addition to material damage, non-material damage is also considered under it.⁴⁰ It is generally considered that in the event of doubt the interpretation of the provisions of the Directive should be made in favor of the person whose rights these provisions serve to protect. This can be determined by a systematic analysis of the text and purpose of the Directive. In the given case it is clear that the addressee of the Directive is a consumer who uses travel services.⁴¹

It should be noted that case law has already refined the concept of damage for the ruined holiday by specifying a series of indicators for that purpose (distance from the hotel to the sea, quality of the food, noise, lack of balconies and windows, etc.). If years ago there was a lack of clarity on this issue, today there are already regulations in the EU member states that provide for the possibility of compensation for non-material damage due to the ruined holiday (Belgium, Spain, the Netherlands, etc.).⁴²

7. Directive 2015/2302 on “Package Travel and Linked Travel Arrangements”

Directive 90/314/EEC on “package travel, package holidays and package tours” has been repealed and replaced by Directive 2015/2302⁴³ on “package travel and linked travel arrangements”, the implementation of which is not legally binding for Georgia under the Association Agreement. However, it would be interesting to review, since it is more in line with the internal market needs of

⁴⁰ Case C-168/00, *Simone Leitner v TUI Deutschland GmbH & Co. KG*, [12.03.2002] ECJ (Sixth Chamber), <<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62000CJ0168&from=EN>> [07.09.2021].

⁴¹ Opinion of Mr Advocate General Tizzano delivered on 20 September 2001, Case C-168/00, *Simone Leitner v TUI Deutschland GmbH & Co. KG*, [12.03.2002] ECJ (Sixth Chamber), <<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62000CC0168&from=EN>> [07.09.2021].

⁴² *Ibid.*

⁴³ The Directive 2015/2302 has been adopted by the European Parliament and the Council on 25 November 2015.

European countries and took into account the shortcomings that existed in the previous Directive. Moreover, the purpose of this Directive is to ensure the existence of a real customer-oriented internal market in the field of travel services.

In case of improper performance of the travel services, the Directive provides for the possibility of the traveller to have problems resolved and, in certain cases, the traveller should be able to do so himself and request reimbursement of the necessary expenses. Travellers should also be entitled to a price reduction, termination of the package travel contract and/or compensation for damages. Compensation should also cover non-material damage, such as compensation for loss of enjoyment of the trip or holiday caused by substantial problems in the performance of the travel services. Consequently, damage entails the possibility of claiming both material and non-material damage.⁴⁴

Moreover, the Directive 2015/2302 proposes a term “lack of conformity”, which is defined as a failure to perform or improper performance of the travel services included in a package.⁴⁵ The current Directive stipulates the right of the traveller to receive appropriate compensation from the organiser for any damage which the traveller sustains as a result of any lack of conformity. Moreover, compensation shall be made without undue delay. The traveller’s claim for compensation will not be satisfied if the organiser proved that the lack of conformity is attributable to the traveller or to a third party unconnected with the provision of the travel services and is unforeseeable and unavoidable. An obligation to pay compensation for damages does not arise if the damage is due to unavoidable and extraordinary circumstances in which the organiser is not at fault.⁴⁶

8. Difficulty of Determining Compensation Under Part 2 of Article 662 of the Civil Code

The spiritual pain inflicted on the victim has no corresponding monetary equivalent, as due to its legal nature it is impossible to assess individually and to express the amount of non-material damage inflicted on each individual.⁴⁷ This is why it is often difficult to assess moral damages in monetary terms, as there is no standard financial assessment tool and it affects the personal feelings of the individual. However, this definition conflicts with the requirements of the European Union, according to which the damage must be assessed in monetary terms and must be compensated.⁴⁸

As mentioned, there is no universal formula for determining the amount of compensation for moral damages; In each case, the court has the authority to take into account its individual characteristics, upon the request of the party, in particular, the degree and nature of the damage, the material state of the parties, etc.⁴⁹

⁴⁴ Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on Package Travel and Linked Travel Arrangements, Preamble (34).

⁴⁵ Ibid, Article 2 (13).

⁴⁶ Ibid, Article 14 (2)(3).

⁴⁷ *Chanturia L. (ed.)*, Commentary to the Civil Code, Vol. III, Tbilisi, 2019, 749 (in Georgian).

⁴⁸ *Koziol H., Schulze R. (eds.)*, Tort Law of the European Community, Tort and Insurance Law, Vol. 23, Germany, 2018, 579.

⁴⁹ *Bichia M.*, Analysis of an Article by Grigol Rtskhiladze “Compensation of Moral Damage”, Journal “Law and World”, № 8, 2017, 84.

The practice of determining the amount of compensation for damage is different in European countries, however, when determining the amount due to the loss of the enjoyment of holiday, the severity and intensity of the breach, the degree of fault of the travel organisation, the purpose of the trip, as well as its cost are taken into consideration. There is a practice when the amount is calculated by days and the damage for each day is about 50-60 EUR.⁵⁰

As mentioned, when determining the amount of compensation in money, the importance and purpose of the holiday for the traveller should be taken into account, in particular, the traveller may have been able to enjoy the vacation for the first time in the past two years⁵¹ or the trip coincided with a public holiday. The damage sustained during this period further aggravates the spiritual state of the victim.⁵²

The practice of the German courts places a limiting value on the cost of the tour package, in particular, the courts generally consider the total price of the package to be the maximum amount of compensation, hence in this case the determination of the cost of the service becomes essential. It does not matter if the traveller enjoyed an alternative trip during this time, stayed at home or was working.⁵³

It should be noted that in international practice we come across the cases where the maximum compensation for damages is determined. In particular, the International Convention on Travel Contracts (CCV)⁵⁴ defines the liability of the travel organiser for any loss or damage caused to the traveller as a result of non-performance, in whole or in part, of its obligations to organise as resulting from the contract or the Convention. In addition, for damages that do not represent personal injury or damage to property and represents any other damage, the amount of payable compensation for each traveller is limited to 5,000 francs.

In determining the amount of compensation for non-material damage, it is considered that its imposition on the defendant should be carried out in an amount that does not constitute a heavy property burden for the defendant and, in financial terms, does not endanger further activities.⁵⁵ As it was mentioned, currently the activities of travel organisers in Georgia are not subject to any special regulation, therefore, the state does not have complete information about the entities that organise travel activities. Starting and carrying out the activities of such a nature is quite simple in the absence of any special preconditions, therefore it is a source of income for many people. Therefore, when imposing compensation for moral damages on a travel organiser, it is important to consider an amount

⁵⁰ *Palmer V. V. (ed.)*, The Recovery of Non-Pecuniary Loss in European Contract Law, United Kingdom, 2015, 375.

⁵¹ Article 35 of the Organic Law of Georgia – Labour Code of Georgia provides for the exceptional cases for the paid leave to be carried over to the next year. Organic Law of Georgia – Labour Code of Georgia, № 4113-RS, LHG, 75, 27/12/2010.

⁵² AG Montabaur, 15 C 316/05, 05.09.2005, seen in: A Collection of Summaries of Special Decisions made by the German Federal Courts in respect to Non-Material Damages, 80, <<http://library.court.ge/index.php?id=9388>> [24.02.2021].

⁵³ BGH NJW 2005, 1047 (1049s), seen in: *Magnus U.*, Damage for Non-Pecuniary Loss in German Contract and Tort Law, The Chinese Journal of Comparative Law, Vol. 3, № 2, 2015, 306.

⁵⁴ Article 13, International Convention on Travel Contracts (CCV), Brussels, 23/04/1970); *Racine J., Sautonie L. & others*, European Contract Law, Munich, 2008, 255.

⁵⁵ Decision of July 26, 2017, № AS-1011-972-2016, Supreme Court of Georgia.

that will not jeopardize its subsequent activities and, at the same time, will be of preventive importance for the proper performance of further travel services.

9. Conclusion

GCC allows the traveller to claim appropriate monetary compensation for the ruined holiday due to failure to perform or improper performance of the travel services. The scarcity of research papers and cases heard by the common courts in connection with the travel service contracts in Georgia makes this issue even more crucial, especially in the context of the obligation of Georgia to implement international agreements to ensure the rights of consumers.

Conducting the research revealed following reality: currently there are no special legal requirements for starting tourism activities in Georgia, the existence of which would allow the state to control the internal market and thus provide greater protection for travellers. It is important that the activities of such entities are subject to mandatory licensing under Georgian law, as these activities are characterized by an increased threat to human life or health, which has been proven as a result of a number of unfortunate facts in Georgia.

In accordance to Part 2 of Article 662 of GCC, there is a possibility of compensation for non-material damage in case of the ruined holiday. However, the case when the traveller is not involved in labour relations and purchases a travel service from a travel organiser stays outside of the regulation of this norm, because the definition of “leave” in this norm causes certain ambiguity.

Moreover, as mentioned above, Georgian legislation distinguishes between paid and unpaid leave, therefore the content of this article may be disputed. It is advisable to consider any leisure time that a traveller uses for travel purposes as a holiday leave, however, it would be appropriate to focus not directly on the ruined holiday, but on compensation for the loss of enjoyment of the trip or holiday, as it is mentioned in the preamble of the Directive 2015/2302 on “package travel and linked travel arrangements”. The mentioned solution of the issue ensure the protection of the rights of each traveller who, due to the lack of conformity attributable to the travel organiser, failed to receive the services required within the agreed terms.

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