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The Entity Responsible for Ensuring Compliance with Safety Standards under the Package Travel Contract

Neglecting safety standards in any field may pose a threat to human life, health, and property. However, the risks extend further, potentially affecting the overall quality of an individual's personal life. The observance of safety standards by the responsible party is particularly important in the implementation of a package travel. A package travel is a service composed of multiple components, the fulfilment of which involves various entities. Nevertheless, within the framework of contractual obligations towards the tourist, a single party assumes responsibility. The failure to adhere to safety standards during the provision of services stipulated under a package travel contract may result in the cancellation or substantial devaluation of the trip, often accompanied by incidents involving bodily harm or damage to health.

International practice shows that, due to the specific nature of such agreements, approaches to identifying the responsible party and defining the scope of liability in the event of safety breaches vary significantly. This paper, based on international practice, explores the challenges related to determining the extent of the tour operator's civil liability when a service provider breaches safety standards.

Keywords: Tour operator, safety standards, package travel contract, damage.

1. Introduction

A package travel contract combines two or more services tailored to the interests of the tourist.¹ The tourist is a subject entitled to special protection, travelling for health-related, educational, business, sporting, religious, or other purposes, and typically possesses a particular interest in and high expectations for the journey.² The entity delivering the services included in the package travel may be a third party with whom the tourist has no direct contractual relationship, even though the tourist is the end recipient of the services.³ The tourist engages with the trader⁴ and reasonably expects that a

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¹ It is noteworthy that the Civil Code of Georgia recognises the concept of a “tourism contract,” while the Law of Georgia on Tourism refers to the term “package travel contract,” which is fully aligned with Directive 2015/2302 on Package Travel and Linked Travel Arrangements.

² Consumers of tourist services typically have the expectation that the host will demonstrate a heightened level of care towards them. Among other factors, this is reflected in the protection of their property, regarding which tourists tend to have higher-than-usual expectations – see *Cyril P.*, Tourists: Duty of Care, International Journal of Safety and Security in Tourism/Hospitality, No. 17, 2017, 1, 4.

³ Decision of the Supreme Court of Georgia of 22 November 2019 in case No. 36-1114-2019 (see the reasoning of the Tbilisi Court of Appeal).

⁴ Subparagraph “t” of Article 2 of the Law of Georgia on Tourism defines the concept of a trader, which may refer to a tour operator, a travel agency (travel agent), or a provider of linked travel services, www.matsne.gov.ge, 15/12/2023.

qualified entity will plan the package travel in accordance with the tourist's best interests, exercising due diligence in selecting the service providers. This inherently includes the obligation to offer safe services to the tourist.⁵

The growing popularity of the tourism industry and its rapid development have demonstrated that consumer behaviour plays a crucial role in shaping the conduct of business entities. Today's consumer is significantly more informed about their rights and places increasing emphasis on the quality of service in exchange for the price paid. Travel inherently involves certain risks, particularly as it typically occurs in unfamiliar destinations, distinct from one's permanent residence. These risks may be combined with limited knowledge of the local language, legal regulations, crime rates, and other relevant factors.

The obligation to provide detailed information to the tourist is one of the most effective mechanisms for ensuring tourist protection. It enables informed decision-making during the planning phase of a package travel. An analysis of international practice reveals that a variety of circumstances may arise during the utilisation of services under a package travel contract, potentially resulting in a diminished travel experience. As previously noted, the actual providers of services included in a package travel may be different entities, which complicates the issue of proper fulfilment of contractual obligations towards the tourist. Some circumstances that may lead to the cancellation or devaluation of a trip may fall outside the direct control or responsibility of the trader. In each case where the tourist suffers harm as a result of using a component of the package travel, the question arises: could the trader have reasonably foreseen the specific situation, and was there an obligation to assess the potential consequences and implement preventive measures?

It is worth noting that the Georgian courts have limited jurisprudence in evaluating the scope of a tour organiser's civil liability, in contrast to the extensive body of international legal doctrine, which includes numerous decisions concerning the obligation to adhere to safety standards. An analysis of international case law reveals that approaches to determining the liable party and the scope of liability for harm resulting from non-compliance with safety standards are often inconsistent. This divergence can be attributed to the specific circumstances of each case.

The aim of this paper is to assess the scope of the trader's civil liability in relation to the obligation to comply with safety standards, through the lens of international practice. The study seeks to offer relevant recommendations for the development of Georgian legal practice, grounded in a thorough analysis of international experience.

2. The Primacy of Providing Safe Tourist Services

Modern tourism is one of the largest industries in the world,⁶ with tourism enterprises playing a significant role in its promotion. The growing popularity of tourism has highlighted the necessity of

⁵ The liability of the organiser of a package tour is not limited solely to errors or shortcomings directly attributable to the tour operator or travel agent, but also extends to deficiencies in performance by other parties involved in delivering the services included in the package. These parties participate in the performance of specific stages of the contract on the basis of a multilateral agreement – see *Alawan A. S. A.*, Civil liability of the Tourism and Travel Agency arising from the breach of its obligations to the tourist in the tour contract: A study in Bahraini and Jordanian law, *Journal of Positive Psychology & Wellbeing*, Vol. 6, No. 1, 2022, 2050.

regulating the sector.⁷ A key feature of the tourism sector is the unequal distribution of power among participating parties – for example, it is a well-established practice to regard the consumer, including the tourist, as the “weaker” party.⁸ When entering into a contract, the consumer’s primary aim is the fulfilment of private, personal interests, rather than the pursuit of profit.⁹ For this reason, the consumer is considered a subject of special legal protection.¹⁰ The objective of the law is to establish appropriate legal mechanisms to safeguard the interests of the tourist as the “weaker party”.

In accordance with international practice, a standard of conduct has been established for tour organisers: they are expected to act within a fiduciary duty, taking into account the tourist’s best interests. This entails exercising due care and particular attentiveness in both the planning and implementation of the package travel.¹¹ Tour operators fulfil an intermediary function in identifying tourism needs and delivering tourist services. Accordingly, their primary objective is to assist the tourist in organising and carrying out the journey.¹² The success of the tourism sector largely depends on the quality of service provided to consumers not only by tour operators but also by other business entities involved in the delivery of tourist services. This inevitably includes the obligation to ensure a safe travel experience for the tourist.¹³

There is no legal definition of “tourism safety,” but it is undisputed that it encompasses the implementation of preventive measures for safety, as well as the protection of a person’s life and health in the event that hazardous circumstances arise.¹⁴ In the tourism sector, the activities of any service provider are associated with certain risks, and according to general principles, the party that creates the risk is obligated to compensate for it.¹⁵ The risk inherent in travel is not unusual, especially when the tourist moves to a destination different from their usual place of residence. The tour organiser is obliged, using their knowledge and experience, to plan the trip and undertake all preventive measures within their competence to minimise the potential risks associated with the

⁶ Tarlow E. P., *Tourism Security (Strategies for Effectively Managing Travel Risk and Safety)*, Elsevier, 2014, 1.

⁷ “On Package Travel and Linked Travel Arrangements” Directive (EU) 2015/2302 of 25 November 2015, Recital 1 and 2.

⁸ Decision of the Civil Chamber of the Supreme Court of Georgia of 30 May 2022 in case №სს-910-2020.

⁹ Lakerbaia, T., The Concept of the Consumer in the Case Law of the Court of Justice of the European Union, *Orbeliani Journal*, No. 4, 2021, 88 (in Georgian). Lakerbaia, T., Zaalishvili, V., Zoidze, T., *Law on Consumer Protection*, Tbilisi, 2018, 35 (in Georgian).

¹⁰ Zoidze, T., Subjects of Consumer Protection Law, in *Besarion Zoidze Jubilee Collection 70*, University Press, Tbilisi, 2023, 276 (in Georgian).

¹¹ Wasserman R., Recent Developments Travel Agency Liable to Travelers When its Failure to Confirm Reservations Ruins Vacation, *Columbia Law Review*, Vol. 74, N5, Jun 1974, 989.

¹² “On Package Travel and Linked Travel Arrangements” Directive (EU) 2015/2302 of 25 November 2015, Recital 46.

¹³ Ilic D., Deri L., Stamenkovic P., Milicevic S., Service Quality as Travel Agencies Business Improvement Factor, *Conference Paper*, 2016, 203.

¹⁴ Tarlow E. P., *Tourism Security (Strategies for Effectively Managing Travel Risk and Safety)*, Elsevier, 2014, 5.

¹⁵ Faure M., Weber F., Security Mechanisms for Insolvencies in the Package travel Sector: An Economic Analysis, *Journal of Consumer Policy*, 2013, 5.

journey. Risk is broadly defined as the likelihood of a negative outcome, characterised by a high probability of injury or loss.¹⁶

Travel involves the movement of people via transportation, accommodation for overnight stays, visits to various cultural and historical sites, and other activities.¹⁷ Tourists travel for health, educational, business, sporting, religious, or other purposes, during which there is a risk that they may become a “victim” or “injured” for various reasons. Each of these activities is characterised by increased risks, as they typically involve the gathering of a certain number of people in an unfamiliar environment. The most common risks associated with travel include the tourist’s expectations regarding the safety of the destination, a lack of information about the route, the consumption of low-quality products to address hunger, and others.¹⁸ It is reasonable to assume that there are risks inherent in travel, some of which are unforeseeable by the tour organiser in advance and thus fall outside the scope of their liability. For example, common risks in the tourism industry include infectious diseases, terrorism, and natural disasters.¹⁹

The difficulties encountered during the implementation of a package travel often have a significant impact on the quality of the journey, which negatively affects the level of tourist satisfaction. An informed tourist demands compensation for harm caused by the improper fulfilment of contractual obligations. In such cases, it becomes crucial to determine the responsible party and the scope of their liability.

Can a tour operator be considered the responsible party for compensating damages in the event of a trip becoming unsuitable due to a terrorist act? The answer to this question is not straightforward. Although the tour operator is not directly responsible for the occurrence of a terrorist incident, they have an increased obligation to inform the tourist about potential risks when travelling to a country with a higher incidence of such events.²⁰

In general, tour operators have broad responsibilities towards tourists, and the provision of services involves the regulation of various aspects. However, the primary duty during the planning phase of any package travel is for the tourism enterprise to consider the best interests of the tourist, with the primary focus being the provision of the safest possible services. The failure to adhere to safety standards during the implementation of a package travel is only recognised when the tourist

¹⁶ Mançi R. A., Determining Destination Risk Perceptions, Their Effects on Satisfaction, Revisit and Recommendation Intentions: Evidence from Sanliurfa/Turkey, *Journal of Multidisciplinary Academic Tourism*, 7 (1), 2022, 83. Cited in: Reisinger Y., Mavondo F. T., Cultural Differences in Travel Risk Perception, *Journal of Travel and Tourism Marketing*, 20(1), 2006, 13-31.

¹⁷ Landini S., *Travel and Tourism Contracts* (Design of Sustainable Tourism Systems), Antezza, 2013, 41-42. Binns A. C., Kempf J. R., *Safety and Security in Hotels and Home Sharing*, Springer, USA, 2021, 3-4.

¹⁸ Tarlow E. P., *Tourism Security* (Strategies for Effectively Managing Travel Risk and Safety), Elsevier, 2014, 6-7.

¹⁹ Karl M., Muskat B., Ritchie W. B., Which Travel Risks are More Salient for Destination Choice? An Examination of the Tourist’s Decision-making Process, *Journal of Destination Marketing & Management*, N. 18, 2020, 2. Cited in: Kozak M., Crofts J. C., Law R., The impact of the perception of risk on international travelers, *International Journal of Tourism Research*, 9(4), 2007, 233-242.

²⁰ World Tourism Organization, *Tourist Safety and Security*, Spain, 1996, 36-37. <https://sete.gr/files/Media/Ebook/110301_Tourist%20Safety%20and%20Security.pdf> [20.11.2024].

suffers harm due to non-compliance with the relevant standards, which, in turn, negatively affects the tourist's satisfaction and the quality of their holiday.

3. The specifics of breaching safety standards by the service provider and the responsible party

Consumer expectations regarding service quality are often contradictory, as they are shaped by subjective perceptions.²¹ From the outset of pre-contractual relations, the tourist has an expectation that the service provided by the obligated party will fully meet safety standards. Otherwise, the consumer would not agree to enter into the contract, particularly in the presence of significant risks to their life, health, or property.

The Directive on “On Package Travel and Linked Travel Arrangements” and the Georgian Law on Tourism establish that the tour operator is responsible for the provision of tourist services as outlined in the contract, even if such services are to be provided by another entity.²² The scope of the tour operator's liability is quite broad; they are considered the responsible party for the actions of all individuals involved in the implementation of services specified in the package travel.²³ The main argument for holding the tour operator liable for the breach of safety standards is the contractual relationship between the tourist and the service provider, which is based on a component of special trust.²⁴ Determining the scope of the tour operator's liability involves challenges due to the individuality of each case. Adherence to the standard of reasonable care is characteristic of fulfilling the obligations under the package travel contract. Therefore, when harm results from the violation of certain foresight norms, the tour operator must prove that they took the necessary measures and that the outcome was beyond their control, and that it was impossible for them to have foreseen such results.²⁵ If the court deems the imposition of liability on the tour operator for the breach of safety standards unjustified, the tourist may only seek compensation for damages from the service provider based on tort law, which complicates the process of satisfying their claim as the “weaker party.”

Ensuring the safety of the tourist is essential, and it is undoubted that this obligation primarily involves the provision of adequate information to the consumer, which serves to minimise risk factors. Additionally, it is crucial for the tour operator to control the implementation of the package travel and, if necessary, respond promptly to resolve any emerging issues. The obligation to inform the tourist in advance regarding safety standards is not explicitly outlined at the legislative level. This is logical under the conditions where compliance with safety standards is an unconditional responsibility for the

²¹ *Ilic D., Deri L., Stamenkovic P., Milicevic S., Service Quality as Travel Agencies Business Improvement Factor, Conference Paper, 2016, 204.*

²² “On Package Travel and Linked Travel Arrangements” Directive (EU) 2015/2302 of 25 November 2015, Article 13.1. Article 22, Paragraph 1 of the Law of Georgia on Tourism, www.matsne.gov.ge, 15/12/2023.

²³ *Barend Van L., European Standardisation of Services and its Impact on Private Law: Paradoxes of Convergence, Modern Studies in European Law, Bloomsbury, 2017, 124-125.*

²⁴ According to Article 24 of the Law of Georgia on Tourism, a notice sent to a travel agency (travel agent) is considered as having been sent to the tour operator, www.matsne.gov.ge, 15/12/2023.

²⁵ *McDonald M., Revisiting Organiser Liability under the Package travel Directive (Part Two), International Travel Law Journal, 2003, 214.*

business entity to carry out its entrepreneurial activities and the existence of these standards at the time of contract formation is not disputed.

Based on the analysis of international case law, instances of breaches of safety standards by the service providers involved in the package travel are identified, including issues related to slippery floors, malfunctioning lifts, inadequate lighting, faulty swimming equipment, non-compliance with hygiene and safety requirements concerning swimming pools, balcony safety, lighting, the use of glass doors in various spaces, and other similar concerns. These aforementioned deficiencies can be used to segment the primary risk factors, the protection of which may not directly fall under the tour operator's responsibility. However, in the event of damage, these risks may still fall within the scope of the tour operator's liability.²⁶

3.1. Violation of Fire Safety Standards

The regulation of fire safety standards is a matter of public law, aimed at protecting human life, health, and property from emergency situations. Consequently, high-risk entities are subject to fire safety supervision by the state. The responsibilities of the supervisory entity's management include, on the one hand, preventive measures (such as alarm systems), and on the other hand, the implementation of effective mechanisms for fire suppression (extinguishment) within the relevant spaces (e.g., hotels, airports, exhibition areas, and other spaces).²⁷

A breach of fire safety standards may result in harm to the service recipient, which could manifest as damage to health and/or property, as well as a disruption of the trip due to the loss of enjoyment. Logically, in the case of a hotel, the responsibility for ensuring compliance with fire safety standards lies with the management of the establishment. A violation of safety standards arises from the breach of objective regulations; otherwise, the existence of wrongful conduct cannot be established. To ensure the protection of tourist's interests, the EU Directive on Fire Safety in Existing Hotels is in effect, which includes several provisions aimed at reducing the risk of fire outbreaks in hotels.²⁸

It should be noted that the hotel management does not represent a party to the tourist package contract. Therefore, the question arises as to whether the tour operator is responsible for any defects resulting from actions attributable to the party responsible for ensuring compliance with safety requirements.

There is an interesting evaluation of a British court on a case regarding a tourist who sustained injuries due to a fire in a hotel where the fire door was locked. The tour operator claimed that they had recently inspected the fire safety regulations in the hotel and did not consider themselves responsible

²⁶ European Parliament Policy Department, Study of Safety and Liability Issues Regarding Package Travel, IP/A/IMCO/FWC/2006-058/LOT 4/C1/SC5, 30.
https://www.europarl.europa.eu/meetdocs/2004_2009/documents/dv/999/999000/999000en.pdf
[15.01.2025].

²⁷ Clifton D., Hospitality Security (Managing Security in Today's Hotel, Lodging, Entertainment, and Tourism Environment), CRC Press, London, 2012, 179.

²⁸ "On Fire Safety In Existing Hotels" Directive (EU) 86/666/EEC of 22 December 1986.

for the damage. However, the court did not accept this position and held the tour operator accountable for the breach of contractual obligations.²⁹ Considering the existing practice, the question arises as to what could be the legal remedy in such cases to exclude the responsibility of the tour operator. Moreover, it raises the question of why the tour operator should be held accountable when they systematically, or shortly before the incident, inspect the safety standards of the hotel, or whether the operator should be required to employ staff with appropriate qualifications who have the competence to assess safety regulations. To resolve this issue, it would be more reasonable to establish the obligation for the service provider to present a certificate or conclusion from the relevant supervisory authority, issued periodically, regarding the compliance with fire safety standards. This would serve as the basis for including their services in the tourist package and would subsequently exclude the operator's liability and the imposition of an unfair burden on them.

3.2. Violation of construction standards and other safety regulations

The tourist package contract may include services where compliance with construction standards is fundamentally linked to the proper execution of the services stipulated in the tourist package contract. In one case, the contract between the parties contained several services, including accommodation at "America Aruba". The claimant argued that the defendant had violated their duty of care, which was reflected in the choice of accommodation offered, which was unsafe for tourists. The claimant was injured while using the bathroom, as they slipped and fell. According to the claimant, the defendant had not adequately addressed the hazards, resulting in the bathroom not being equipped with anti-slip materials, which could have prevented the damage. The court did not accept the claimant's position and stated that the defendant was not aware of the issue, which could have come to light through complaints from other tourists, which had not occurred prior to this case. Furthermore, it was noted that the defendant was not obligated to investigate whether the bathroom contained anti-slip materials, as their duty did not involve such a specific investigation, as the claimant had wished to present during the case. Therefore, the court did not agree with the claimant's position, which suggested that the defendant's "carelessness in choosing" the service provider was the cause of the issue.³⁰

The New Jersey court's assessment on this issue is inconsistent. In one case, the claimant sought compensation for damages after slipping in a puddle of water in the hotel bathroom, which resulted in a broken leg caused by a defect in the shower. The claimant argued that the defendant was responsible for the trip booked and not proceeding as per the agreement, as their responsibility encompassed controlling the execution of the contract's components, ensuring cleanliness and maintenance, including the repair of the hotel's infrastructure, and other related matters. The court noted that the travel company was not an insurer or a guarantor, and it was unreasonable to expect that it would foresee and warn the tourist about all possible dangers that could accompany the trip. However, the fact that the travel company could not identify all risks did not exempt it from its fiduciary duty to

²⁹ *Alleweldt F., Tonner K., McDonald M. and others*, Study on Safety and Liability Issues Relating to Package Directive, Policy Department Economic and Scientific Policy, 7.

³⁰ *Sharon Plino and Anthony Plinio v. Americana Aruba Beach Resort Casino* [1999] 98-2745.

warn the tourist about the dangers it knew of or should have known about due to its activities, which fell within its responsibility. In this case, the court explained that the injury the claimant sustained, resulting in bodily harm, could not have been foreseen by the defendant.³¹ In another case, the court highlighted that a tourist could book a hotel on their own and, by chance, choose a hotel that carries certain risks. To mitigate this risk, the tourist turns to the relevant entity, expecting it to have the knowledge and experience required, thus trusting its recommendation regarding the hotel. The court determined that the travel organiser is responsible when the tourist trusts the travel organiser and, consequently, its recommendations, only to experience disappointment, including the discomfort of a hotel that turned out to be completely incompatible with safety standards. It was noted that a reasonable entity should have known about the problem and would not have given such a recommendation, which resulted in harm to the tourist's interests.³²

In the case of *Griffin v Mt Travel UK Ltd*, the court stated that the tour operator is obligated to periodically check the bed frame mechanism, the failure of which led to the tourist sustaining bodily harm at the hotel. The factual circumstances of the case revealed that checking this mechanism was not a common practice at the hotel, and the last check was conducted three years prior. According to the court, a diligent and reasonable tour operator, as well as a service provider, is required to periodically check the bed mechanism, for example, once a month.³³

It is clear that protecting the interests of the tourist, as the “weaker party,” justifies the imposition of an unreasonable and often unjustified burden on the tour operator. However, without such an imposition, the tourist would be left in a completely hopeless situation. Considering the low statistics of claims filed in court in Georgia, it is difficult to imagine a tourist initiating a lawsuit against a foreign entity in another country, especially given the value of the claim in question.

3.3. Violation of food safety standards

During a trip, one of the pleasures for tourists is discovering local cuisine, and for some, this component is the main interest of the journey. A tourist package may include meals as part of the services offered. The obligation to provide food products of adequate quality to the customer arises from consumer protection legislation.

In the case of *Antcliffe v Thomas Cook Tour Operations Ltd*, the court held the tour operator responsible for the damage caused by the use of substandard products. A married couple booked a two-week holiday, organised by the tour operator. In total, five tourists suffered health damage due to food poisoning, and they requested a reduction in the cost of the tour package and compensation for the loss of enjoyment. The claim was made on the grounds of poor performance of obligations arising from the package holiday, as well as from the “sale of goods and provision of services” concerning the delivery of “unsatisfactory quality” food. One of the tourists sustained an injury after vomiting and subsequently falling. The court did not agree with the claimants' position that there was an overall devaluation of the holiday, as the first week had been enjoyable, and when considering the price

³¹ Schwartz v. Hilton Hotels Corporation [2009] 639 F. Supp. 2d 467.

³² Josephs v. Fuller (Club Dominicus) [1982] 451 A.2d 203.

³³ Griffin v My Travel UK Ltd [2009] NIQB 98.

reduction, only the second week of the trip was taken into account. The court accepted the position of the defendant, the tour operator, and where the claimants sought compensation for bodily injury and loss of enjoyment, it was considered that the bodily injury claim also encompassed the loss of enjoyment.³⁴ This approach was not shared in later court decisions, which must be rightfully considered as correct.

In one case, the court stated that it is unreasonable for tour operators to become guarantors of the quality of food and beverages worldwide when meals are part of the tourist package and their contractual obligations. The court focused on the unjustifiability of such an extension of responsibility, but acknowledged that, depending on the circumstances, the imposition of liability on the tour operator could still be possible.³⁵

4. Warning Signs as a Means of Informing the Tourist

The presence of various warning signs along tourist routes and in accommodation facilities serves the obligation to provide information. In this regard, one notable precedent is the decision in the case of *Blades v Thomas Cook Tour Operations Limited* – the claimant purchased a tourist package that included accommodation in a hotel in Greece. At 9:30 AM, the hotel staff asked the tourist for permission to clean the room. To avoid interfering with the cleaning process, the claimant went out onto the balcony, and upon returning to the room, slipped and fell due to a wet floor. According to the claimant, there was no warning sign to inform them of the potential slip hazard. The court's decision partially upheld the claimant's request, explaining that both parties were at fault for the injury. Specifically, the claimant should have known and anticipated that there was a risk of slipping upon entering the room, while the hotel representatives should have ensured there was no slip hazard and, for this purpose, placed a warning sign. The dispute arose over the fact that although the hotel used a warning sign, it was not a legal obligation under local legislation, and as such, was not considered a violation of safety standards.³⁶

The court attributed a different significance to the presence of warning signs in another case – the claimant, along with their minor grandchild, was heading from the hotel pool to the beach when they crossed a tiled area and slipped, resulting in injury. It was revealed that the tiled area was frequently wet, and other guests had also expressed dissatisfaction due to similar experiences. The claimant approached the court against the tour operator and pointed out that under Turkish law, the presence of warning signs is mandatory, and that they were not warned that the area was wet and posed a slipping hazard. The claimant argued that had warning signs been present, they would have been more cautious and would have avoided the injury. The court agreed with the claimant's position and stated that it could “almost certainly” be said that the presence of a warning sign indicating the surface was wet and posed a slipping hazard would have prevented the accident from occurring.³⁷

³⁴ *Antcliffe v Thomas Cook Tour Operations Ltd [2012] 7 WLUK 97.*

³⁵ *Wood v TUI Travel PLC (2017).*

³⁶ *Blades v Thomas Cook Tour Operations Limited, Croydon County Court, 7th December 2015.*

³⁷ *Revill v TUI UK Limited, Sheffield County Court, 14th October 2016.*

In another case, a tourist slipped on a wet staircase and sustained health injuries. The court considered that such an outcome fell within the responsibility of the tour operator, as there was a failure to fulfil the contractual obligation, which resulted from a lack of proper care and skills, specifically manifesting in the disregard for local safety standards. However, the court also noted that assigning responsibility to the tour operator in cases where the damage was not a direct result of the breach of the contractual obligation would lead to an increase in the cost of package holidays.³⁸

The presence of warning signs serves to inform the tourist and prevent risks. Warning signs must be visible, clear, and placed in such a way that they allow for reasonable prior notification to the customer. It is logical that in the case of a breach of this obligation, the tourist has the right to claim compensation for the damage caused by the breach of the duty of care. Where there is no legal obligation for the presence of warning signs, it is important that the tourist is provided with appropriate information in an oral form or another perceivable manner.

5. The Issue of Establishing a Causal Link for the Purposes of Damage Compensation

For damage compensation, it is essential to determine the person's subjective attitude towards the action and the result, which is reflected in the person's fault. The action performed by the person must, in turn, be unlawful and must violate a rule defined by law. The action must be directly related to the negative result, and the fact of damage must objectively exist in order for all the prerequisites for damage compensation to be met.³⁹

In one case, the court focused on the consequences of not using anti-slip paint around a swimming pool. However, based on the circumstances of the case, the court could not determine that the damage was a direct result of the defendant's wrongful actions. It was undisputed that the relevant standard was not followed, specifically the use of a preventive measure around the swimming pool to prevent slipping. Despite the court establishing the defendant's fault, a causal connection between the action and the resulting damage was not proven. The facts of the case were as follows: the claimant purchased a tourist package from a tour operator. During the trip, the claimant sustained an injury because the surface around the pool was not treated with anti-slip paint, causing the claimant to slip and break their neck. The court noted that despite the breach of safety measures, which was reflected in the failure to treat the surface with anti-slip paint and increased the risk of harm, it was not proven that the damage would have been avoided even if the requirements had been followed.⁴⁰ Thus, it was noted that mere failure to meet the appropriate safety standard would not constitute grounds for holding the tour operator liable, as all necessary conditions for liability must cumulatively exist.

Compliance with safety standards is not a panacea and does not guarantee the prevention of negative outcomes; however, by similar logic, if adherence to safety standards cannot be considered a guarantee against the occurrence of damage, then non-compliance with these standards should be more likely seen as a contributing factor to the occurrence of harm. A tourist has an expectation regarding

³⁸ Loughheed v. On the Beach Limited [2014] EWCA 1538.

³⁹ Tsertsvadze, G., Dzlishvili, Z., et al., Contract Law, Meridian, Tbilisi, 2014, 677–678 (in Georgian). Vashakidze, G., et al., Commentary on the Civil Code (Book III), Tbilisi, 2019, 587–589 (in Georgian).

⁴⁰ Clough v First Choice Holidays and Flights Ltd [2006] EWCA Civ 15.

the adherence to safety standards, and accordingly, their behaviour aligns with this pre-formed expectation. It is important to note that a tourist lacks the knowledge and practical ability to verify in advance whether the safety standards meet the established requirements. It is precisely this trust-based relationship that creates an expectation that the service offered by a qualified entity will be safe for their life and health. Therefore, the existence of a causal link should only be relevant in cases where the connection between the action and the outcome is practically unclear. However, if the link cannot clearly be excluded, even a formal breach of safety standards should be considered a contributing factor to the occurrence of damage, and this should lead to the responsibility of the relevant party.

6. Predictability as a basis for compensation

The assessment of foreseeability is essential for establishing fault, since if a risk was not foreseeable in advance, a person cannot be held liable for breaching the relevant duty of care. Foreseeability is considered a matter based on knowledge and anticipation, in contrast to probability, which is a scientific concept.⁴¹ Therefore, foreseeability is a crucial factor in risk assessment and in identifying the responsible party. Foreseeability entails the assumption that if an incident has occurred once, there is a relatively higher likelihood (risk) of it occurring again. Each subject's prior experience serves as a useful indicator for evaluating foreseeable danger. Thus, it is entirely reasonable to consider that if a responsible party fails to take preventive measures to avoid foreseeable harm, the question of their liability becomes relevant if the harmful outcome materialises. Accordingly, if damage is caused as a result of a breach of safety regulations and the responsible party has taken no steps to avert the foreseeable damage, liability should likely be imposed.⁴² In light of the above, it is a matter of debate whether a tour operator is obliged to assess customer satisfaction. A negative response to this would render the tour operator's fiduciary duty meaningless. As such, a tour operator should indeed be considered obligated to monitor tourist satisfaction; otherwise, it would result in an unreasonable narrowing of the scope of the duty of care. Researching customer satisfaction is an effective mechanism that helps the tour operator to identify service-related deficiencies, ultimately serving to ensure tourist satisfaction.

In one case, the court took into account the fact that a tourist sustained physical injuries due to a failure to comply with safety standards at a hotel. It was revealed that other hotel guests had also expressed dissatisfaction regarding breaches of safety regulations by the service provider, with such concerns being publicly shared on various well-known travel websites. Consequently, in such a case, it is entirely reasonable to assume that the damage was foreseeable and predictable for the obligor, and that monitoring customer satisfaction falls within the scope of their duty.⁴³

Unlike the consumer, the business entity is expected to have detailed knowledge of the quality of the materials used, the outcomes of their use, and the associated potential risks, and should

⁴¹ *Andrew D., Cane P., Sheldon D., Macintosh I.*, Review of the Law of Negligence (Final Report), 2002, 102-103.

⁴² *Clifton D.*, Hospitality Security (Managing Security in Today's Hotel, Lodging, Entertainment, and Tourism Environment), CRC Press, London, 2012, 10-11.

⁴³ *Revill v TUI UK Limited*, Sheffield County Court, 14th October 2016.

therefore bear responsibility for the consequences. In a specific case, it is possible that the tour operator may not be directly at fault for the damage caused by a third party's breach of safety standards, nor may they have had the practical ability to verify compliance with those standards. However, as the provider of services, the tour operator should not be exempt from liability towards the weaker party on these grounds. If, for example, the service provider fails to use the appropriate quality paint, this at the very least constitutes negligence, which falls within the scope of the tour operator's responsibility. The tour operator would then retain the right to seek reimbursement of damages from the actual service provider (e.g., the hotel) through the principle of recourse. Accordingly, in cases where the availability of information about foreseeable risks to the tour operator is undisputed, the issue of excluding their liability should not even be considered.

7. Conclusion

A tourist's conclusion of a package travel contract is based on the expectation that a qualified business entity (the tour operator) will plan the package with the tourist's best interests in mind. Both international and domestic legal instruments establish the obligation of the organiser to provide the tourist with detailed information, which is intended to enable the tourist to make an informed decision. Moreover, the legislature seeks to prevent informational burnout on the part of the consumer and therefore separates the obligation to provide information into two distinct stages. The essential terms of the package travel contract are defined by law. In addition, due to the specific nature of such contracts, package travel agreements are characterised by the presence of "implied terms," the fulfilment of which is essential for the proper performance of the contractual obligations. Based on the analysis of international practice, it is clearly established that one of these implied terms is the strict observance of safety standards by the provider of travel services.

Within the scope of reasonable care, the tour operator has a duty to provide the tourist with relevant information concerning their safety – information which, as the stronger and more qualified contracting party, must be accessible to them. However, this does not imply an obligation to deliver detailed information to the tourist regarding every safety regulation, as such an interpretation could in fact be detrimental to the interests of the consumer. The tour organiser must process information related to compliance with safety standards and offer only services that meet those standards. Attention should be drawn to the fact that the tourist relies on the tour operator's expertise and expects that the services offered are in full compliance with applicable safety standards. Accordingly, it is entirely reasonable that a tourist is not provided with specific details – such as whether fire safety or food hygiene regulations are observed at the hotel – yet it remains the responsibility of the organiser, within the bounds of the reasonableness standard, to ensure that such matters are properly investigated.

Based on the analysis of international practice, it has been established that the tour operator is the party responsible for compliance with safety standards under the package travel contract. This paper discusses a case in which the court did not consider the tour operator to be the liable party in relation to the tourist, thereby contributing to the development of a divergent approach. It was noted that imposing such responsibility on the tour operator would represent an unjustified burden and would lead, unreasonably, to an increase in the cost of the package holiday.

In order for the tour operator to be considered a liable party for compensating damages, all prerequisites for imposing liability must cumulatively be present. The present study, based on an analysis of court practice, reveals that in some cases it may be difficult to establish a causal link – specifically, even when a breach of safety requirements is evident, the court may question the existence of causation, arguing that the avoidance of the harmful result (damage) cannot be confirmed even if the safety requirement had been met. Such an approach only complicates the consumer's ability to substantiate their claim for damages. Therefore, even a formal breach of safety standards should be regarded as a contributing factor to the occurrence of the damage and should result in the corresponding party being held liable.

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