

Contract for package travel, package holidays and package tours

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Abstract:

Aim: The aim of the paper is to structure the knowledge on the subject of the contract for package travel, package holidays and package tours (further on in the paper a “contract for package”), the obligations of the parties to the contract, and to propose *de lege ferenda* postulates. The vast majority of authors of scholarly books and publications concerned with the contract for package broaches this topic purely in theoretical terms, and consequently there is no uniform study of this issue which could be used by practitioners of law and consumers.

Conclusions/Findings: This paper represents a practical study within the scope of the contract for package, obligations and rights of the parties to the contract and it outlines the problems related to the failure to perform or improper performance of the contract for package.

Key words: *A contract for package, the legal nature of the contract for package, rights and obligations of customers of travel agencies, obligations of the tour operator, the elements of the contract for package, de lege ferenda postulates.*
JEL: K120, K 150

1. Introduction

The paper covers the issues related to the elements of the contract for package, the rights and obligations of the parties to the contract while attempting to define the legal nature of this contract together with the *de lege ferenda* postulates, being the outcome of this attempt at providing this definition.

The rapid growth of the tourist industry and the availability of pre-arranged packages has led to an increase in the number of Polish citizens participating in the packages organized in the country and abroad, which in turn has increased the number of cases where the contract for package was not performed or improperly performed by the organizers of the package or their sub-contractors. Examining the judgments issued by district courts shows that it has been ever more frequently that customers of travel agencies after coming back from their unsatisfactory holiday decide to bring a legal action against the organizers. Our experience as practitioners of law shows that customers who come back from unsatisfactory holidays, for which they blame the travel agency, try in the first place to receive compensation from the organizer and then, after their claim for compensation was rejected by the organizer, they turn for help to consumer organizations, e.g. Municipal Consumer Ombudsman.

Considering that only the most determined and dissatisfied tourists seek advice and professional assistance offered by legal advisors and lawyers, it would be difficult to speak about a specialization in purely tourist law in the reality of the majority of law firms.

2. Introductory remarks

The basic bond of law which links the parties is the contract for package often referred to as contract for a tour, contract for package, contract for a journey. The first two terms are legitimized in the Act of 29 August 1997 on Tourist Services. Moreover, “the contract for a journey” is advocated in the doctrine of law and jurisprudence, and it had also been used throughout the time preceding the entering into force of the Act of 29 August 1997 on Tourist Services. It should further be noted that the term a “contract for package” is used in the legal systems of other countries and in the European legislation (Act of 29 August 1997 on Tourist Services). The parties to the contract for package are the travel agency and the customer (a traveler or a person acting on his behalf) (Gnela 2008: 48 ff.). Travel agencies can act in their own name as a tour operator or as an agent of carriers, of hotel-keepers or of other travel agencies, or as one accepting the customer’s order, pursuant to Article 734 §1 of the Civil Code. The subject matter of the contract for package is a set of services to be provided to the benefit of tourists, e.g. within the scope of transport, board and lodging, entertainment, sightseeing, etc., which all make up a specific package itinerary.

3. The form of the contract for package

The contract for package has to be in writing for evidence purposes, pursuant to Article 14 §1 of the Act on Tourist Services; however, if the contract is concluded without observing the standard, pursuant to Article 74 §1 and 2 of the Civil Code, the stipulation of written form, be it a documentary or electronic form, without a nullity clause leads, if the stipulated form is not observed, in litigation to witness evidence or evidence in the form of declarations of the parties concerning the performance of the act, being inadmissible. However, this provision does not apply if observing the written, documentary or electronic form is stipulated merely to bring about the specific effects of a legal act.

Despite failing to observe the written, documentary or electronic form for evidence purposes, witness evidence or evidence in the form of declarations of the parties is admissible if both parties consent thereto, if the consumer so demands in a dispute with the entrepreneur or if the fact that the legal act has been performed is substantiated in writing.

In practice, it is not that difficult to conceive of a situation in which a tourist enters only into an oral agreement with a person providing tourist services, e.g. an agreement for a one-day trip, including some fishing using the equipment to be made available by the organizer, and pays in advance for the agreed on trip only to find out that although the trip does take place the organizer does not fulfill his obligation in that he fails to provide a fishing rod, which in turn is reflected in the tourist's being dissatisfied and bored. Is it then possible to pursue potential claims for improper performance of the contract, and if so, what would be the manner of proving the claim? Considering that the contract was not concluded in writing, and no document was produced on its account, it seems that the only way of proving the claim is witness evidence, provided the person providing the service is an entrepreneur.

Pursuant to Article 74 §4 of the Civil Code, the provisions on written, documentary or electronic form stipulated for evidence purposes do not apply to legal acts in relations between entrepreneurs, which will be of practical relevance for disputes arising from the contract for package concluded between an organizer who is an entrepreneur and an entity who runs a business and concludes the contract on behalf of third parties, e.g. his employees.

4. Elements of the contract for package

The contract should state who the package organizer is, its number entered into the register, its tax identification number, first name and surname and the capacity of the person who on the organizer's behalf signs the contract; the travel destination or its route, its duration, the itinerary encompassing the category, quality and dates of the services to be provided – including the type, characteristics of transport to be used, as well as the dates, times and points of departure and return; the location, type and category of the hotel establishment in accordance with the laws of the host country, or a description of the main features of the facilities that are not classified as a particular type and category; the meal plan; the sightseeing program and other services included in the price of the package; the price of the package plus any fees, taxes and charges required, unless they are included in the price; and a clear definition of the circumstance that may lead to an increase in the price¹,

The method of payment, the type and scope of tourist insurance and the name and address of the insurer, the deadline for informing the customer in the event of cancellation of the package or the tourist service on the grounds that the number of persons enrolled in the package is insufficient if the performance of services depends on the number of persons enrolling in the package; the deadline for notifying the organizer about the transfer of the customer's rights and obligations to a third party²; the manner of making complaints in connection with the performance of services by

¹ See Article 17 of the Act of 29 August 1997 on Tourist Services:

1. *The prices laid down in the contract shall not be subject to increase unless the contract expressly provides for the possibility of upward revision and provides evidence of how the price was affected by one of the following circumstances*
 - 1) *an increase in the transportation costs;*
 - 2) *an increase in dues, taxes or fees chargeable for certain services, such as landing taxes or embarkation or disembarkation fees at ports and airports,*
 - 3) *increase in the exchange rates.*
2. *During the twenty days prior to the departure date stipulated, the price stated in the contract shall not be increased.*

² See Article 16 of the Act of 29 August 1997 on Tourist Services:

1. *The customer may transfer his booking and all the services he is entitled to under the contract, without the organizer's prior consent, to a person who satisfies all the conditions applicable to the package, provided such person takes over all the obligations arising under this contract.*

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the organizer or the person cooperating with him plus the period within which such complaints must be made³; special requirements about which the customer already notified the organizer or the agent and to which the parties agreed; legal bases of the contract and legal consequences under the contract⁴.

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2. *The transfer of rights and the assumption of obligations, referred to in §1, shall be enforceable against the organizer if the customer notifies the organizer before the departure within the deadline laid down in the contract.*
 3. *For the unpaid portion of the package and the costs incurred by the organizer as the result of changing one participant of the package for another person, the customer and the transferee shall be jointly liable.*

³ See Article 16, §1 and 2 of the Act of 29 August 1997 on Tourist Services:

1. *If the customer finds out over the course of the package that there is a significant failure of performance of the contract, he should notify the service provider and the organizer immediately thereof in a manner that is relevant for this type of service.*
2. *The contract should define clearly the customer's obligation within the scope referred to in §1.*

⁴ See more on the subject of the organizer's obligations – Article 14, §2a of the Act of 29 August 1997 on Tourist Services:

- 2a. *The person who concluded the contract for the provision of tourist services is obligated to directly provide the customer with the copy thereof.*
3. *The organizers, organizing packages abroad shall conclude an accident and medical treatment insurance policy on behalf of person participating in those packages.*
4. *The organizer and travel agent provide the customer, who makes a payment due under the contract or an advance payment exceeding 10% of this amount, with a written proof of having financial collateral, referred to in Article 5 §1 point 1, and indicate how to seek being paid through this collateral in cases specifically provided for in the act.*
5. *If the organizer finds that before the departure he is constrained to alter significantly any of the essential terms for reasons beyond his control, he shall notify the customer as quickly as possible. In such situation the customer shall inform the organizer as soon as possible whether:*
 - 1) *he accepts the alterations to the contract,*
 - 2) *he withdraws from the contract and is immediately reimbursed for all the payments made and without penalty.*
6. *If the customer withdraws from the contract pursuant to §5, or the organizer cancels the package for whatever reasons, other than the customer's fault, the customer shall be entitled to choose between:*
 - 1) *either to take a substitute package of equivalent or higher quality. If the substitute package offered is of lower quality, the organizer shall refund the difference in price to customer;*
 - 2) *or to be repaid as soon as possible all sums paid by him under the contract.*

It should be noted that the legislator laid down in the provision of Article 14 of the Act on Tourist Services very precisely the elements to be specified in the contract, which in turn is very useful for customers when it comes to exercising their rights in the case of failure to perform or improper performance of the contract, e.g. the organizer, according to the contract, was supposed to provide all-inclusive board basis, but in fact ensured only HB⁵; the organizer was supposed to provide a three-star hotel, etc.

5. The organizer's obligations

Apart from the basic obligations laid down in the contract, the package organizers provide detailed information on the package through additional materials such as, for example, brochures, leaflets, catalogues which are binding on the parties, except as otherwise provided in the contract in this regard⁶. Under the contract and according to additional materials, the organizer or the travel agent shall indicate in a legible and comprehensible manner the following information: the price of the package or tourist service or the manner of its arrangement, the destination or the route, the means, characteristics and categories of the transport used, the type of accommodation, its location,

7. *In cases provided for in §6, the customer may seek compensation for non-performance of the contract, unless the cancellation of the travel:*

1) *is on the grounds that the number of persons enrolled for the package is less than the minimum number required and the customer is informed of the cancellation in writing within the period indicated in the package description; or,*

2) *cancellation is for reasons of force majeure.*

⁵ See the basic definitions of board options in hotels: BB (bed & breakfast) – only breakfast, HB (half board) – breakfast and dinner, FB (full board) – is comprised of breakfast, lunch and dinner, AI (all inclusive) – full board which consists of breakfast, lunch and dinner plus, usually local drinks, alcohol beverages and snacks between meals; OV (overnight) – only accommodation without board, SC (self-catering) – means that guests prepare meals by themselves, PP (program package) – meals are provided according to a program, ZPR – meals are provided according to the hotel program or the description of the package.

⁶ See more in the standard of the contract for package of tour operators – TUI Poland Sp. z.o.o., Exim Tours, which normally contain only basic information on the date of departure and return, the price of the package, the board basis, etc. while further information, i.e. the standard of the hotel, its furnishings and equipment, meal times, availability of the hotel attractions, e.g. a swimming pool, a tennis court, a gym, etc. is indicated in the catalogues or brochures attached to the contract which are also binding on the parties when seeking to establish whether the organizer failed to perform or performed improperly the contract.

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category according to the laws of the host country, the number and type of meals, the sightseeing and tourist attraction itinerary, either the monetary amount or the percentage share of the advance payment in the price of the package or the tourist service and the timetable for payment of the balance, whether a minimum number of persons is required for the package to take place and if so, the deadline for informing the customer in the event of cancellation, legal basis for the contract and legal consequences arising therefrom, general information on passport and visa requirements and health formalities required for the participation in the package (Article 12 of the Act of 29 August 1997 on Tourist Services).

If errors occur in tour offers offered in catalogues and by the organizer (e.g. brought about by subsequent alterations to the accommodation location or the itinerary, etc.) the organizer is liable for improper performance of the contract. The performance that is not in compliance with the information indicated in the catalogue and which the organizer failed to correct in the contract should be deemed as an improper performance of the contract and as such the consumer is entitled to withdraw from the contract and to seek adequate compensation. This position is also supported by the decision of the Court of Competition and Consumer Protection of Warsaw (CCCPoW) which took the view in its ruling of 21 June 2006, in case XVII Amc 76/05 that the following provision was unlawful: The travel agency excludes its liability for non-compliance of the services to be provided with the offer in the case of special offers (Judgment of the CCCPoW of 21 June 2006, case XVII Amc 76/05). The agency reserves the right, without prior notification, to alter the itinerary or the service in relation to the information included in the catalogue and the contract – statement of participation – with such alterations being only allowed in exceptional circumstances, while the scope and standard of services shall be preserved (Judgment of the CCCPoW of 21 July 2005, case XVII Amc 89/03).

The organizer or a travel agent is obligated to provide the customer before the conclusion of the contract with the following information: general information on passport, visa and sanitary requirements, in particular waiting time for issuing a passport or a visa, as well as health requirements for participants of the package; information on the optional conclusion of an insurance policy to cover the cost of cancellation and on the scope of the accident and medical treatment insurance policy; the organizer is also obligated to inform the customer about particular threat to a human health and life in the host regions and the option of obtaining the relevant insurance policy. Moreover, before the start of the journey the organizer shall provide in good time

the customer with the name of the organizer's local representative (or other institution) who can be contacted when necessary, as well as his address and telephone number, the travel destination, and where periods of stay are involved the relevant periods with dates; detailed information on transport connections and what kind of place the customer is to occupy in the means of transport, in particular a cabin on a ship or a sleeping compartment on a train; while with respect to packages for children – the information on how to contact directly the child or the person in charge at the place of the child's stay.

The required information indicated in Article 13 of the Act of 29 August 1997 on Tourist Services which the organizer or the travel agent is obligated to provide the customer with before the conclusion of the contract should be given in writing. The imposition of the obligation by the legislator to provide information to customers in writing by organizers or travel agents before the conclusion of the contract is very desirable in practical terms as it prevents dishonest organizers or travel agents from abusing the rights in that they claim that the information was communicated to the customer orally, e.g. about the threats to health and life across the regions to be visited by the customer, when in fact the customers were not informed at all about the risks that may occur.

Apart from the obligation of informing customers in writing (Article 13, §1-3), the legislator also imposed on the organizer the obligation to provide care to tourists during their stay, which is crucial for a customer who is in a foreign country and has no knowledge as to where to find medical facilities and diplomatic missions, cannot speak the local language, and does not know the legal system in force in the country concerned.

The obligation of care towards tourists must be distinguished from the obligation of providing assistance to the affected customer during the package.

The obligation of providing assistance to the affected customer lies with the travel agency also when the organizer's liability for non-performance or improper performance is excluded pursuant to Article 11a §1 of the Act of 29 August 1997 on Tourist Services. In practice the scope and implementation of this obligation raise doubts which have to some extent been clarified by jurisprudence and the Office for Competition and Consumer Protection (UOKiK). In particular one ought to agree with the interpretation of the District Court of Warsaw as regards Article 11a §2 of the Act of 29 August 1997 on Tourist Services, where the court made a decision on the pecuniary

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interest of the provision of assistance to the customer⁷, and further, to agree with the scope of the assistance defined in the UOKiK Report of 2008 as “assisting in dealing with necessary administration matters, providing information necessary for the obstacles preventing the use of services to be removed. In this way the care role of the organizer is performed towards the participant in the package” (UOKiK 2008: 43).

Article 14, §3 of the Act of 29 August 1997 on Tourist Services imposes the obligation on organizers who organize packages abroad to conclude accident and medical treatment insurance policy on behalf of third parties. Since Article 13, §1 of the act does not expressly stipulate that the obligation to provide information in this regard is only when the organizer has to conclude an insurance policy on behalf of the customer pursuant to Article 14, §3 of the Act, then it is reasonable to assume that it refers to both situations. This means that when the package is not organized abroad and the contract does not provide for the customer’s insurance policy, the organizer should indicate this clearly to the customer.

A specific obligation in the form of the provision of a substitute package occurs on the part

⁷ The problem concerned with bearing the costs for providing assistance to the affected customer was brought to light in connection with the prolonged stay of a tourist who was unable to end his travel according to schedule because all flights had been cancelled due to volcanic dust. The claim brought by the tourist against the travel agency for compensation for the costs of accommodation and board during the time between the end of the package and the date of the returning flight, based on Article 11a §2 of the Act of 29 August 1997 on Tourist Services, was rejected by the District Court of Warsaw, following the Court’s consideration of the defendant’s appeal, by issuing the decision of 23 June 2012, case V Ca 916/12, unpublished. The plaintiff argued that the defendant failed to meet his obligation of ensuring assistance, referred to in the above provision, since he only informed the customer that he might move to a cheaper hotel at the plaintiff’s cost and to extend his accident and medical treatment insurance policy, and informed the plaintiff on the situation related to his possible return, whereas the assistance should be provided free of charge. The District Court, however, concluded that contrary to the plaintiff’s position, there was no obligation on the part of the organizer to provide a substitute package, but to provide assistance – and these are two different obligations arising from the provisions of the act. For it must not be the case that in the place of the original service which could not be rendered because of *force majeure*, the travel agent would be required to provide a substitute service considering that his liability pursuant to Article 11a §1 of the Act is in such case excluded. The return journey to the initial point of departure is not in this case the substitute service category within the meaning of Article 16a of the Act. The costs of assistance should be borne by the customer, unless otherwise provided for under the contract for a journey. This interpretation is further supported by the recognition that should the legislator’s intention be the provision of free-of-charge assistance in the case of *force majeure*, this would have been explicitly laid down in the act.

of the organizer who over the course of the duration of the package fails to perform the services contracted for and which constitute a significant proportion of the the package itinerary. The substitute package should be provided at no-extra cost to the customer, and the quality of such service should be adequate, which, however, does not imply that it should be exactly the same type of service. If the quality of the substitute package is lower than the quality of the service specified in the itinerary of the package, the consumer has the right to demand that the price of the package be reduced accordingly (Article 16a, §2 of the Act). It should be noted that there is no reason why a substitute package could not involve, for instance, one-day optional trip in exchange for shortening the duration of the package (unless the tourist does not give consent to the substitute package⁸). The nature of the substitute package was defined more precisely in the Council Directive 90/314 EEC of 13 June 1990 whose implementation constitutes the Act on package travel, package holiday and package tour. Article 4 §7 of Directive 90/314 states that the organizer is liable to the consumer for compensating him for the difference between the services offered and those supplied. The substitute package may therefore be of a different type than the service contracted for, while the quality criterion should refer to the price of specific services (Cybula 2012).

6. Unlawful contractual provisions

The contract for package, general terms and conditions, general regulations and the standard form of the contract shall not contain clauses that are not compliant with the Act on Tourist Services, other acts, unlawful contractual clauses indicated in Article 385³ of the Civil Code, in particular unlawful clauses included in the Register of Standard Contract Provisions Deemed

⁸ Cf. Article 16a, §2 of the Act on Tourist Services:

If it is impossible to provide a substitute package, referred to in §1, or these are not accepted by the consumer for good reasons and the customer withdraws from the contract, the organizer shall, where appropriate, provide the consumer, at no extra cost, with equivalent transport back to the place of departure, or to another return-point to which the customer has agreed.

As “good reasons” in accordance with the views indicated in the legal doctrine should be such circumstances which make it impossible for the customer to use the service owing to his health condition, age or skills, as well as those which objectively run counter to the purpose for which the customer participates in the package.

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Unlawful kept by the President of the UOKiK⁹, which when entered into the register become effective not only with regard to the parties before the Court of Competition and Consumer Protection but also in relation to third parties – other entrepreneurs.

The control of the standard contracts, general terms and conditions, general regulations, etc. that organizers apply may be individual (as a result of the plea raised by the consumer against a travel agency) or abstract in nature (as a result of legal action taken by the District Court of Warsaw – the Court of Competition and Consumer Protection on the grounds that the provision was unlawful).

Although the confines of this paper do not allow for reviewing even the most representative unlawful clauses, it is still worth demonstrating at least a few of them, which in the authors' subjective view appear to be the most useful in the practice of the legal advisor profession:

- Any disputes arising out of the contract shall be settled amicably and if failing that, they shall be settled by civil sections of the competent court for the seat of the Travel Agency (Judgment of 20 August 2004 of the CCCPoW, case XVII Amc 59/03);
- The Travel Agency reserves the right to minor revisions of the itinerary and the price of the package as a result of the changes in transportation costs, hotel services, exchange rates, etc. (ibid.);
- In the case of a last minute package the consumer may not pose the same requirement as for packages purchased for the full price, while the organizer guarantees only the basic conditions provided for in the contract (Judgment of 19 October 2004 of the CCCPoW, case XVII Amc 95/03);
- In the case of the offers of the “last minute” Joker type (with no specific place of accommodation) the organizer guarantees only a specific category of accommodation and it does not have to be the facility presented in the catalogue or sales offer (...). For last minute offers no claims are possible (Judgment of 18 February 2004 of the CCCPoW, case XVII Amc 32/03);
- In case of force majeure, e.g. war, strikes, natural disaster or other reasons beyond the organizer's control, the contract with the consumer shall cease to be in force (Judgment of 16 December 2004 of the CCCPoW, case XVII Amc 109/03);
- The Travel Agency shall not be liable for any damages, losses, theft and other events which may occur in rooms, hotels and means of transport throughout the duration of the package organized abroad (Judgment of 23 February 2004 of the CCCPoW, case XVII Amc 6/05);
- If there are any changes as to the hotel (apartment) or the place of accommodation, they may be for reasons attributable to the organizer's contractors or to force majeure. If these changes do not cause substantial alterations in the itinerary of the package nor in its standard, the customer waives all his claims for such changes (Judgment of 17 March 2005 of the CCCPoW, case XVII Amc 118/03);
- With regard to services provided by local service providers, the organizer's liability is limited if such liability limitations arise out of the laws applicable in the host country (ibid.);
- The Travel Agency is not liable for damages caused by the activity of third parties such as theft, robberies, fire. The Travel Agency is liable for failing to perform or improper performance of the contract on the basis of fault (Judgment of 19 October 2004 of the CCCPoW, case XVII Amc 95/03);
- The amount of compensation shall be calculated on the basis of the lost proportion of the package with its value being defined

⁹ See the Register of Unlawful Clauses published on the website of the Office for Competition and Consumer Protection: <http://uokik.gov.pl/rejestr/> [17.06.2018].

in relation to the price paid. The amount of compensation may not exceed the price the participant paid on the day of signing the contract (Judgment of 14 January 2008 of the CCCPoW, case XVII Amc 125/07);

- The participant shall cover the cost of damages caused by himself (...) throughout the duration of the package and in the place where those damages occurred (Judgment of 7 July 2009 of the CCCPoW, case XVII Amc 263/08).

7. Customers' rights and obligations

The customer's basic obligation is to pay the remuneration laid down in the contract. In some cases, the customer may have to bear the costs of extra fees, e.g. fees at ports, visa fees, airport fees insurance fees.

Moreover, the customer has secondary obligations which arise from the tour itinerary, i.e. arrival at the airport, sea port at the hour indicated, having the passport on him, suitable clothing, receiving preventive vaccines, etc.

Failing to meet the above requirements may expose the customer to risk or render his participation in the journey or sightseeing impossible, e.g. a tourist wearing unsuitable clothes will not be able to sightsee a mosque, while a customer who purchased goods subject to an export prohibition and was therefore detained at the airport will have to bear by himself the costs of return transport in spite of the fact that he missed the flight for reason of his own doing

It should, however, be noted that the organizer shall not be liable in the cases indicated only when he provided the customer with all necessary information, pursuant to Articles 12 and 13 of the Act on Tourist Services.

The customer has the right to require that the organizer perform the service in accordance with the contract signed. If the organizer fails to perform the services provided for in the contract, he is obligated to provide a substitute package¹⁰. In the event the organizer fails to perform the contract or in the event of its improper performance for reasons attributable to the organizer, the customer may pursue claim for material injury and seek compensation for a ruined holiday.

8. Conclusion and *de lege ferenda* postulates

In legal writings there have been numerous attempts made at defining the legal nature of the

¹⁰ See more on the substitute services in the Act on Tourist Services, Article 16a.

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contract for package with the effect being that there is a number of controversial views of which only two might be considered, in our opinion, as representative. This contract is also known as a mandate contract, a specific work contract, a carriage contract, a forwarding contract, a contract of sale, a *sui generis* contract (see: Nesterowicz 1974: 29 ff.; Couvrat 1967; Wiswald 1964).

The first of the dominant views holds that the contract for package is a mixed-purpose contract, which comprises elements characteristic for a specific work contract, a contract for carriage, for renting accommodation, for storage and also having its own elements such as the obligation to ensure consumer's safety during the implementation of the package itinerary, whereby – which is crucial – it is a contract of result, and not of a diligent performance on the part of the organizer. This legal classification of the package contract as a contract bearing no specific name – a mixed-purpose contract also seems to be supported by the judiciary¹¹. However, the consequence of espousing such view is that it becomes necessary to recognize the contract for package as a contract comprised of many services which fall within different legal provisions, and that implies that for each service a different legal regime has to be applied, which, in turn, seems to run counter to the regulation contained in Articles 11a and 11b §2 of the Act on Tourist Services, creating the organizer's liability as a strict liability.

Since the organizer is liable for failure to perform or improper performance of the contract for package, unless the failure to perform or improper performance is for the following three reasons – acts or omissions of the customer, acts or omissions of third parties who do not participate in the provision of services laid down in the contract, if such acts or omissions could not be foreseen or avoided, or *force majeure* – then one cannot consider that there is a legal basis in the applicable provisions for the application, even if it be proper, of the rules regulating other contracts defined for relevant services which make up the contract for package; because, for instance, for carriage the organizer would be liable on the basis of his own fault or that of the carrier (Article 474 of the Civil Code). The absence of anchoring the above concept in the applicable provisions stating that the contract for journey should, depending on the services it consists of, fall within the provisions governing the individual contracts defined appears to be confirmed by repealing Article 18 of the Act on Tourist Services, which allowed for limiting the organizer's liability, for instance, when specific provisions so provided.

¹¹ Resolution of the Supreme Court of 25 February 1986, case III CZP 2/86, OSN 1987, no. 1 item 10 with the gloss by M. Nesterowicz (Nesterowicz 1988: 108).

Thus, considering the need to look at the package travel, package holidays and package tour as a whole and considering the content of the cited Article 11 of the Act on Tourist Services, the second view that dominates the doctrine calls for adopting a uniform regime for the organizer's liability based on strict liability, independent of the basis for and potential limitations of liability of individual sub-contractors used by the organizer.

It is our view that none of the above attempts made at defining the legal nature of the contract for package fully corresponds to the very essence of this contract, which although made up of many services cannot directly fall within various provisions governing the individual contracts already defined. The Polish doctrine has stated that it is a mixed contract which encompasses elements of the specific work contract, contract for carriage, rental of accommodation, of sale, storage and also its own elements such as the obligation to ensure customers' safety during the performance of the package itinerary (Nesterowicz 1974: 66; Tyczka 1982: 219 ff.). Moreover, its classification as a mixed contract¹² is advocated by the jurisprudence of the Supreme Court¹³. However, considering the problems that one encounters in practice in terms of the application of the provisions relevant for determining the organizer's liability (e.g. within the scope of assistance to the affected consumer) and for making the consumers' claims more precise, what appears to be a reasonable *de lege ferenda* postulate is one calling for a comprehensive legal regulation of the contract for package under the Civil Code or the Act on Tourist Services. At the same time the growth of tourist industry and an increased number of packages purchased by consumers justifies the need for an easy and quick access to the provisions governing the rights and obligations of parties to the contract for package, as well as the basis for the organizer's liability for failing to perform or improper performance of the contract, which supports the implementation of those provisions into the Civil Code.

References

Beyer W. (1976), *Umowy w turystyce międzynarodowej. Wybrane zagadnienia*, Wydawnictwo Prawnicze, Warszawa.

Ciemiński M. (2015), *Odszkodowanie za szkodę niemajątkową w ramach odpowiedzialności ex contractu*, Wolters Kluwer Polska, Warszawa.

¹² See more on the legal nature of the contract for package in: Zacharasiewicz (1975: 189), Beyer (1976: 35), Nesterowicz (1974: 142 ff.; 1988: 108), Łętowska (1999: 392), Cybula (2008: 119).

¹³ Resolution of the Supreme Court of 25 February 1986, case III CZP 2/86, OSN 1987, no. 1 item 10 with the gloss by M. Nesterowicz (Nesterowicz 1988: 108).

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Couvrat P. (1967), *Les agences de voyages en droit français*, PhD Thesis, Université de Poitiers Faculté de droit & des sciences économiques, Poitiers 1967.

Cybula P. (2008), Charakter prawny umowy o imprezę turystyczną, in: *Turystyka a prawo. Aktualne problemy legislacyjne i konstrukcyjne*, Cybula P, Raciborski J. (ed.), https://wtir.awf.krakow.pl/pdf/rozne/zaklad_prawa/turystyka_a_prawo/12-piotr_cybula.pdf [17.06.2018].

Cybula P. (2012), *Usługi turystyczne. Komentarz*, Wolters Kluwer Polska, Warszawa.

Gneta B. (2008), Zakres podmiotowy przepisów ustawy o usługach turystycznych, dotyczących ochrony klienta (konsumenta) a zakres podmiotowy umowy o imprezę turystyczną, in: *Turystyka a prawo. Aktualne problemy legislacyjne i konstrukcyjne*, Cybula P, Raciborski J. (ed.), https://wtir.awf.krakow.pl/pdf/rozne/zaklad_prawa/turystyka_a_prawo/08-boguslawa_gneta.pdf [17.06.2018].

Gospodarek J. (2007), *Prawo w turystyce i rekreacji*, Wydawnictwo Difin, Warszawa.

Gwoździčka-Piotrowska M. (2008), Pojęcie klienta w ustawie o usługach turystycznych w świetle definicji konsumenta w prawie wspólnotowym i krajowym, in: *Turystyka a prawo. Aktualne problemy legislacyjne i konstrukcyjne*, Cybula P, Raciborski J. (ed.), https://wtir.awf.krakow.pl/pdf/rozne/zaklad_prawa/turystyka_a_prawo/09-matylda_gwozdzička_piotrowska.pdf [17.06.2018].

Łętowska E. (1999), *Prawo umów konsumenckich*, C.H. Beck, Warszawa.

Nesterowicz M. (1974), *Odpowiedzialność cywilna biur podróży*, Wydawnictwo Prawnicze, Warszawa.

Nesterowicz M. (1988), Glosa do Uchwały Sądu Najwyższego z dnia 25 II 1986, sygn. akt III CZP 2/86, OSN 1987 nr 1 poz. 10, „*Nowe Prawo*”, no. 9, p. 108.

Nesterowicz M. (2008), Projekt regulacji umowy o podróż w kodeksie cywilnym, in: *Turystyka a prawo. Aktualne problemy legislacyjne i konstrukcyjne*, Cybula P, Raciborski J. (ed.), https://wtir.awf.krakow.pl/pdf/rozne/zaklad_prawa/turystyka_a_prawo/turystyka_a_prawo_full.pdf [17.06.2018].

Tyczka M. (1982), *Prawo turystyczne*, Akademia Wychowania Fizycznego w Poznaniu, Poznań.

UOKiK (2008), Raport z kontroli wzorców umów stosowanych przez organizatorów turystyki, <https://www.uokik.gov.pl/raporty2.php> [17.06.2018].

Wiswald J.P. (1964), *Les agence de voyages*, Lausanne 1964.

Zachariasiewicz M.A. (1975), Odpowiedzialność biur podróży za jakość świadczonych usług, „*Acta Universitatis Wratislaviensis. Przegląd Prawa i Administracji*”, no. 6.

Legal acts

Act of 23 April 1964 – Civil code, Official Journal 1964, No. 16, item 93, as amended.

Act of 29 August 1997 on Tourist Services, Official Journal 1997, No. 133, item 884, as amended.

Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours, Official Journal of the European Communities, L 158, 23.06.1990.

Judgment of the Court of Competition and Consumer Protection of Warsaw of 23 February 2004, case XVII Amc 6/05.

Judgment of the Court of Competition and Consumer Protection of Warsaw of 20 August 2004, case XVII Amc 59/03, UOKIK Unlawful Clauses, entered on 20 August 2004, under entry number 92.

Judgment of the Court of Competition and Consumer Protection of 19 October 2004, case XVII Amc 95/03, UOKIK Unlawful Clauses, entered on 19 October 2004, under entry number 258.

Judgment of the Court of Competition and Consumer Protection of Warsaw of 19 October 2004, case XVII Amc 95/03, UOKIK Unlawful Clauses, entered on 22 February 2005, under entry number 258.

Judgment of the Court of Competition and Consumer Protection of Warsaw of 18 February 2004, case XVII Amc 32/03, UOKIK Unlawful Clauses, entered on 01 March 2005, under entry number 350.

Judgment of 17 March 2005 of the Court of Competition and Consumer Protection of Warsaw, case XVII Amc 118/03, UOKIK Unlawful Clauses, entered on 17 March 2005, under entry number 446.

Judgment of the Court of Competition and Consumer Protection of Warsaw of 16 December 2004 case XVII Amc 109/03, UOKIK Unlawful Clauses, entered on 05 May 2005, under entry number 429.

Judgment of the Court of Competition and Consumer Protection of Warsaw of 21 July 2005, case XVII Amc 89/03, UOKIK Unlawful Clauses, entered on 07 October 2005, under entry number 536.

Judgment of the Court of Competition and Consumer Protection of Warsaw of 21 June 2006, case XVII Amc 76/05, UOKIK Unlawful Clauses, entered on 25 August 2006, under entry number 841.

Judgment of the Court of Competition and Consumer Protection of 14 January 2008, case XVII Amc 125/07, UOKIK Unlawful Clauses, entered on 07 April 2008, under entry number 1370.

Judgment of the Court of Competition and Consumer Protection of Warsaw of 7 July 2009, case XVII Amc 263/08, UOKIK Unlawful Clauses, entered on 28 September 2009, under entry number 1693.