

Consumer Protection in the Slovak Republic and Protection of Air Passengers' Rights

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Abstract

The authors analyse a legal regulation of consumer protection in the Slovak Republic, comprised (among others) the Civil Code, the Act on Consumer Protection and the Act on Consumer Protection in Provision of Certain Tourism Services. They refer to the specifics of consumer law, which undermines the basic principles of private law (the principle of equality of the involved parties and the principle of the dominance of dispositive legal norms), because it primarily serves for the protection of a weaker party of the consumer agreement – a consumer. They focus on the claims of consumers - air passengers. The conclusion is that air passengers' rights drive mainly from the EU law. They also present a survey regarding air passengers' rights and propose suggestions on how to improve their satisfaction. The aim of a paper is to start a discussion on air passengers' rights because the number of air passengers increases.

Key words

consumer agreement, consumer protection, travel law, claim, air passenger word.

JEL Classification: K15, K23

Received: 8.6.2018 Accepted: 26.10.2018

Introduction

The Slovak Republic became a member state of the EU on 1 May 2014. This fact represents an important milestone for the Slovak Republic. The free movement of goods, services, persons and capital. Beside of these economic advantages, the membership in the EU offers many other advantages of noneconomic character (e.g. social, legal, safety and other).

The EU membership is also linked with the need to harmonize the Slovak law with the EU law. This applies to protection of consumers' rights as a part of a consumer law as well. Transport services present inseparable part of each country's infrastructure.

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They relate with progress in economic, business, trade, social services and culture. According to Horvat et. al. (2017) a strong influence of EU legislation is seen when it comes to protection of consumer rights in all markets of transport services.

Consumer agreements were introduced into Slovak law by the Act No. 150/2004 Coll. amending and supplementing the Act No. 40/1964 Coll. Civil Code, as amended. This act, which entered into force on 1 April 2004, through an amendment of the Civil Code implemented into the Slovak law the Council Directive No. 93/13/EEC of 5 April 1993 on unfair terms in consumer agreements.

According to the provisions of the Civil Code, consumer agreement means each contract regardless of the legal form, concluded between a supplier and a consumer (Section 52 paragraph 1 of the Civil Code). The supplier means a (physical or legal) person, who, in concluding and performing the consumer agreement, acts in the framework of his trade or other business activity (Section 52 paragraph 3 of the Civil Code). The consumer means a physical person who, in concluding and performing the consumer agreement, does not act in the framework of his trade or other business activity (Section 52 paragraph 4 of the Civil Code).

The supplier (entrepreneur, seller, producer, importer) and the consumer are similarly defined by the Act No. 250/2007 Coll. on Consumer Protection and on amendment of the Act of the Slovak National Council No. 372/1990 Coll. on Offences, as amended.

A paper focuses on legal regulation of consumer protection in the Slovak Republic. It deals with survey regarding air passenger's rights.

1 Methodology

A paper deals with general legal regulation of consumer protection in the Slovak Republic. Our own (non-representative) research focuses on air passenger's rights. We wanted to inquire the respondent's (Slovakian air passengers) knowledge about their rights and through these questions realized them about their rights. A research was made during three weeks with 60 volunteers (40 women, 20 men), elder than 18 years, at the Bratislava airport (airport M. R. Štefánika) by the students of the subject "Tourism Law". Theoretical and empirical methods were used, e.g. analysis, synthesis, deduction and induction. To eliminate non-important and coincident from important and regular we also used method of scientific abstraction.

The questions for research:

1. What type of airline (low cost or classic/traditional airline) do you prefer?
2. Have you ever experienced a cancellation of a flight?
3. Have you ever experienced a delay flight? If yes, please provide details on the flight delay (1-hour delay, 2-hours delay, 3-hours delay, above 3-hours delay; experienced once, twice, 3-times, 5-times, 6-times and more).
4. Have you ever required a compensation from the airline?

5. Do you know about your right:
- a) in case of cancellation/delay of the flight exceeding 3 hours within the territory of EU you have the right to compensation of 250 EUR – distance of 1500 km or less, 400 EUR – for a distance above 1500 km?
 - b) in case of cancellation/delay of flight exceeding 3 hours between an EU airport and non-EU airport you have the right to compensation of 250 EUR – distance of 1500 km or shorter, 400 EUR for a distance between 1500 km and 3500 km or 600 EUR for a distance longer than 3500 km?
 - c) if your flight is delayed for more than 2 hours, you have the right to refreshment and free, fax or e-mail communication?
 - d) if the following flight is postponed until the night hours, you also have the right for accommodation to be provided?
 - e) if your flight is delayed for 5 hours or more, the carrier is obliged to offer you a refund of air ticket?
 - f) in case of lost, damaged or late delivered luggage your compensation can amount up to 1.220 EUR?
 - g) if during turbulence the stewardess spills a drink and damages your clothes, you have the right to refund the cost of a cleaning shop?

2 Literature review

Although the Civil Code defines the consumer agreement, it is not a special type of agreement, but merely a certain type of agreement. Consumer agreements are characterized by fragmented regulation. They are regulated not only by the Civil Code, but also by other legal regulations (e.g. the Act on Consumer Protection; the Act No. 161/2011 Coll. on Consumer Protection in Provision of Certain Tourism Services and on Amendment of Certain Acts, as amended, etc.). We can find variety of Acts on consumer protection in the legal regulation of the financial market. (Slezáková, 2017).

According to Magurová et. al. (2016) a character of consumer agreement has e.g. the contract on passenger transport, the contract on acquisition of a tour, the contract on accommodation and other contracts. The decision whether an agreement is or is not a consumer agreement depends, among others, on the position of the parties of a shared contract - supplier and consumer (Magurová, 2017).

The consumer agreement may be concluded in any form. That means not only in writing, but also orally or by conduct (tacitly). The Civil Code sanctions (by absolute invalidity) written agreements that indicate the subject of agreement and the price in smaller font than the other parts of agreement. That's because in practice the smaller font often caused consumer's overlooking of provisions, which provided a unilateral advantage for the supplier. A smaller font can only be used in the name of the agreement and in its headings (Section 53c of the Civil Code).

The Civil Code defines terms that must and must not be contained in consumer agreements. Contract terms, which cause considerable imbalance in the rights and ob-

ligations of the contracting parties to a disadvantage of consumer are called unacceptable contract terms. Some of them are characterized in Section 53 paragraph 4 of the Civil Code. They (e. g.) include provision that:

- a) the consumer is obliged to comply with and that had not been made available to her/him before conclusion of the agreement;
- b) exclude or limit the consumer right in claiming liability for defects or damage;
- c) limit access to evidence or impose on the consumer the burden of proof which, according to the law, governing the contractual relationship should be borne by the other party and many others.

Unacceptable terms in consumer agreements seriously damage the consumer, therefore the Civil Code declares them as invalid (Section 53 paragraph 5 of the Civil Code). We note, that invalid is only the unacceptable contract term, not the whole consumer agreement. However, we do not exclude the possibility that such invalidity will affect the whole consumer agreement. A term concerning the main subject of performance or price, which is expressed clearly and comprehensible or individually agreed, cannot be regarded as unacceptable (Krajčo, 2011).

As mentioned above, consumer agreements are regulated not only by the Civil Code, but also by other legal regulations by the Act on Consumer Protection, which entered into force on 1 July 2007. It is the most comprehensive public-law regulation on consumer protection because its Annex No. 2 contains list of transposed legally binding acts of the EU law relating to consumer protection (Veterníková, 2015).

Pursuant to Article 3 paragraph 3 of the Act on Consumer Protection each consumer has the right to the protection against unacceptable terms in consumer agreements. If a consumer regards one or more terms of the consumer agreement as unacceptable he has the right:

- a) to approach the Commission for Assessment of Terms of Consumer Agreements, reporting to the Ministry of Justice of the Slovak Republic, which submits proposals to legal persons founded or established for consumer protection (so-called consumer protection associations). Consumer protection associations may initiate legal proceeding on behalf of the consumers. In this case the burden of proof that the contract terms were agreed individually rests on the supplier. In case of doubts, the interpretation more favorable for the consumer will be applied (Section 54 paragraph 2 of the Civil Code);
- b) to request the competent court to decide that the contract term has the character of an unacceptable term and is invalid.

Consumer rights relating to unacceptable contract terms include, among others:

- a) the right to compensation for damage caused to consumer by an unacceptable term in the consumer agreement;
- b) the right to account for unjust enrichment or
- c) the right to adequate satisfaction, which is independent from the right to compensation of damage and from the right to account for unjust enrichment.

According to the provision of Article 298 paragraph 1 of the Act No. 160/2015 Coll. Civil Procedure Code, as amended, in its judgement the court may, even without being

requested to do so, declare a contract term unacceptable. In the judgement the court will indicate the term in the wording as agreed in the consumer agreement or in other contract documents relating to the consumer agreement. Whenever the right to a payment of an amount from the consumer agreement is exercised in relation to a consumer (as defendant), the court will not issue the payment order if the consumer agreement or other contract documents related to the consumer agreement contain an unacceptable contract term (Article 299 paragraph 2 of the Civil Procedure Code).

General consumer rights include (among others) the right to: products and services in standard quality; lodge a complaint; a compensation for damage; information; the protection of health, safety and economic interests; lodge complains to supervisory and control bodies and to municipality for infringement of the consumer rights granted by the law; etc.

The Act on Consumer protection defines unfair and aggressive commercial practices. Unfair commercial practices are prohibited. Unfair commercial practices are, among others, misleading acts and misleading omissions and aggressive commercial practice. The list of commercial practices, which are unfair under any circumstances, is contained in Annex No. 1 to the Act on Consumer Protection.

Misleading commercial practice is e. g. making a false statement, that a product will be available only for very limited time or on particular terms, with the aim to elicit an immediate decision and deprive consumer of sufficient opportunity or time to make an informed choice or describing a product as "gratis", "free", "without charge" or similar, if the consumer has to pay anything other than unavoidable costs for responding on commercial practice and collecting or paying for the delivery.

Aggressive commercial practice is e.g. giving an impression to the consumer that he may not leave before she/he concludes an agreement or inclusion of direct enticement for children in advertisements to buy advertised products or persuade their parents or other adults to buy these products.

The supplier is obliged to inform the consumer about the conditions and the procedure of lodging a complaint properly, including where the complaint may be lodged. The complaint means claiming liability for defects of a product or service. It must be handled not later than 30 days following the date of lodging. After the vain expiration of the period for handling of complaint the consumer has the right to withdraw from the agreement.

Supervision of fulfilment of the obligations determined by the Act on Consumer Protection is executed by the supervisory bodies. Where competences of the supervisory body cannot be determined, the supervision and control are executed by the Slovak Trade Inspection.

By adoption of the Act on Consumer Protection in Provision of Certain Tourism Services, which entered into force on 1 July 2011, the Directive 2008/122/EC of EP and the Council of 14 January 2009 on consumer protection in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts was transposed into the Slovak law. This act regulates the rights of consumers and the obligation of the seller related to timeshare, provision of long-term recreational services, their exchange and mediation of their resale, the content of these consumer agreements and competences of supervisory bodies.

Contracts on provision of certain tourism services mean:

- a) contracts on timeshare,
- b) contracts on provision of long-term recreational services,
- c) contracts on participation in the exchange system and
- d) contracts on mediation of resale.

A body supervising compliance with the provisions of the Act on Consumer Protection in Provision of Certain Tourism Services is the Slovak Trade Inspection. It may impose a fine up to the amount of 30.000 EUR on the seller for violation of the same obligation or for violation, which represent a danger to the rights of two or more consumers.

3 Results and discussion

Airline transport services are popular among inhabitants of the EU, because they can travel even long distance fast and comfortable. The rise of airlines and air passengers causes that there is a discussion about protecting their rights. A leading role in protecting air passengers' rights plays the EU regulation, comprised (among others):

- a) Council Regulation (EC) No. 2027/97 of 9 October 1997 on air carrier liability in the event of accidents;
- b) Regulation (EC) No. 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No. 295/91;
- c) Regulation (EC) No. 1107/2006 of the European Parliament and of the Council of 5 July 2005 concerning the rights of disabled persons and persons with reduced mobility when travelling by air;
- d) Regulation (EC) No. 2111/2005 of the European Parliament and of the Council of 14 December 2005 on the establishment of a Community list of air carriers subject to an operating ban within the Community and on informing air transport passengers of the identity of the operating air carrier, and repealing Article 9 of Directive 2004/36/EC;
- e) Regulation (EC) No. 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community.

Slovak civil air force is regulated by the Act No. 143/1998 Coll. About Civil Air Force (Aviator Act) and on Amendment of the Acts, as amended.

An airline trade being huge, therefore the airlines compete about air passengers, using various marketing strategies, e. g. the price of air ticket or provided services. However, airlines are not often correct to their passengers. Therefore, we wanted to inquire the respondent's (Slovakian air passengers) knowledge about their rights.

A limiting factor of result is the fact, the inquiry was held only in one airport in the Slovak Republic, so it's not applicable to the whole Slovak Republic.

Based on the results of research, 55% of passengers prefer classic/traditional airline. This preference probably results from the fact that classic/traditional airlines provide a higher standard of services. Majority of passengers would prefer to pay more for air ticket and provided services rather than accept a lower travel comfort. In concrete 66,7% of women (22 respondents) and 33,3% of men (11 respondents) prefer classic/traditional airline for their travelling. Low-cost airlines are preferred by 45% of passengers. We assume that the airfare is important for this category of passengers and that services provided by the airline to passengers does not mean a lot by selection of their airline.

Tab. 1 Type of a preferred airline

	Number of respondents	%
Low-cost airline	27	45
Classic/traditional airline	33	55

Source: Authors

Based on the inquiry, 20% of passengers have experienced a cancellation of flight, while 80% of passengers have not had this negative experience.

Tab. 2 Experience with a cancellation of a flight

	Number of respondents	%
No	48	80
Yes	12	20

Source: Authors

Based on results of research, 48,3% of passengers have not yet experienced a flight delay but more than a half (51,7% of passengers) have already had this negative experience. Of course, unexpected problems may occur sporadically, but we are not sure whether such a high percentage of delayed flights are justified and whether it is not simply caused by the lack of responsibility of airlines or by circumstances, that could have been foreseen.

Tab. 3 Experience with a delayed flight

	Number of respondents	%
No	29	48,3
Yes	31	51,7

Source: Authors

Passengers have most often experienced a 1-hour flight delay (51,6%), 29,9% of passengers have experienced a 2-hours delay, 3,2% of passengers 3-hours delay and 16,1% of passengers a flight delay longer than 3 hours.

Tab. 4 Time of an experienced flight delay

	Number of re-spondents	%
1-hour delay	16	51,6
2-hours delay	9	29
3-hours delay	1	3,2
Above 3-hours delay	5	16,1

Source: Authors

Passengers (29%) have most often experienced a flight delay once and 3-times, 22,6% of passengers had experienced it twice and 9,7% of passengers have experienced it 5-times and more often.

Tab. 5 Number of an experienced flight delay

	Number of re-spondents	%
Once	9	29
Twice	7	22,6
3-times	9	29
5-times	3	9,7
6-times and more often	3	9,7

Source: Authors

Most passengers (91,7%) don't require a compensation from the airline.

Tab. 6 Requirement of a compensation from the airline

	Number of respondents	%
No	55	91,7
Yes	5	8,3

Source: Authors

Most of passengers (70%) don't know about possibility of compensation in case of cancellation/delay of flight exceeding 3 hours within the territory EU.

Tab. 7 Knowledge about rights in case of cancellation/delay of flight exceeding 3 hours within the territory of EU

	Number of respondents	%
No	42	70
Yes	18	30

Source: Authors

Most of passengers (70%) don't know about possibility of compensation in case of cancellation/delay of flight exceeding 3 hours between an EU airport a non-EU airport.

Tab. 8 Knowledge about rights in case of cancellation/delay of flight exceeding 3 hours between an EU airport and a non-EU airport

	Number of respondents	%
No	42	70
Yes	18	30

Source: Authors

Most of passengers (60%) don't know about a right to refreshment and free telephone, fax or e-mail communication.

Tab. 9 Knowledge about rights in case of a flight delayed more than 2 hours

	Number of respondents	%
No	36	60
Yes	24	40

Source: Authors

More than a half of passengers (56,7%) know about their right to be provided by accommodation when the flight is postponed until the night hours.

Tab. 10 Knowledge about rights in case of a flight postponed until the night hours

	Number of respondents	%
No	26	43,3
Yes	34	56,7

Source: Authors

Most passengers (78,3%) don't know about their right to be offered a refund of air-ticket in case the flight is delayed for 5 or more hours.

Tab. 11 Knowledge about right in case of a flight delayed for 5 or more hours

	Number of respondents	%
No	47	78,3
Yes	13	21,7

Source: Authors

Most passengers (73,3%) don't know about their right of a compensation in case of lost, damaged or late delivered luggage.

Tab. 12 Knowledge about rights in case of a lost, damaged or late delivered luggage

	Number of respondents	%
No	44	73,3
Yes	16	26,7

Source: Authors

Almost all passengers (91,7%) don't know about their right of a compensation of the cleaning shop cost in case of damages on clothes, caused by stewardess.

Tab. 13 Knowledge about right in case of damages on clothes caused by stewardess

	Number of respondents	%
No	55	91,7
Yes	5	8,3

Source: Authors

The results of the inquiry show, that most of the air passengers (60 respondents) do not know about their rights. They are not enough informed. These questions confirm that passengers actually need to be informed.

Therefore, we recommend the airlines to issue to the passengers, together with purchased air tickets, free brochures informing them about their rights. By doing so, the airline providing such brochures will gain good reputation on the market and overrun the competition, because the loyalty of passengers will increase with the certainty, that the airline would take care of them in case of delay or other unpleasant situation.

When the passenger feels unique and protected by the airline, she or he will recommend the airline and spreads its good reputation. With increasing loyalty of the passengers, profits of the airline will grow up too. With the right marketing strategy, the airline could make part of well-known and preferred airlines. We came to this inclusion based on interviews with passengers conducting during inquiry, when the respondents have indignantly described their negative experience.

Conclusion

The rise of airlines and air passengers in EU causes, that there will be more discussions about air passenger's rights and their better protection. A leading role in protecting air passenger's rights plays the EU regulation. It adopts the minimum standard of rights, granted to air passengers. Even the fact, the national legislation can grant broader scope of rights, this is not case of the Slovak Republic. The results of the inquiry show, that most of the air passengers (60 respondents) don't know about their rights because they are not adequately informed. Therefore, we recommend the airlines to provide to passengers (together with purchased air tickets), free brochures informing them about their rights.

References

- Horvat, M., Magurová, H., & Srebalová, M. (2017). Protection of Consumers' Rights in Railway in the Slovak Republic. *Yearbook of Antitrust and Regulatory Studies*, 10(16), 177-190.
- Krajčo, J. (2011). *Spotrebiteľská zmluva v aplikačnej praxi v SR a EÚ*. Bratislava: Euro-union, spol. s r.o. – Ikarus.SK.
- Magurová, H. et al. (2016). *Základy práva v cestovnom ruchu pre ekonómov*. Bratislava: Wolters Kluwer.
- Magurová, H. (2017). Ochrana spotrebiteľa a právo v cestovnom ruchu. In *Paneurópske právnické fórum 2017*. (pp. 483-494). Bratislava: Paneurópska vysoká škola.
- Slezáková, A. (2017). Die Klienteneinstufung und die daraus folgenden Informationspflichten im Sinne des slowakischen Finanzvermittlungsgesetzes. *Wirtschaft und Recht in Osteuropa (WiRO)*. (pp. 45-48). München: C.H.Beck.
- Veterníková, M. (2015). *Vybrané kapitoly zo spotrebiteľského práva*. Bratislava: Ekonóm.