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CONSUMER PROTECTION POLICY IN SERBIA IN THE AREAS OF TOURISM AND COMMERCE

Politika zaštite potrošača u Srbiji
u oblastima turizma i trgovine

Abstract

Despite the dilemma of the state or the market, some market relations, such as consumer protection, are traditionally regulated by state intervention. Modern tendencies in the development of market processes, as well as changes in culture and technology, create the need for improving the existing public policy. This particularly applies to the area of consumer protection, which is in the focus of this paper. We analyse, in addition to traditional travel packages, the so-called dynamic packaging of tourism services in modern online market. However, the traditional package holidays in new market conditions require a new regulation of consumer protection, to what the whole world witnessed during the recent volcanic eruption and/or revolutionary events in the Middle East. Still, in transition countries, such as Serbia, sophisticated advancement of certain market regulation segments cannot be effective without an effective implementation of the basic regulation, such as in this case, the Bankruptcy Law.

Key words: *consumer protection, commerce, tourism, travel package, travel guarantee, insurance*

Sažetak

Uprkos dilemi država ili tržište, neki tržišni odnosi, kao što je zaštita potrošača, tradicionalno su regulisani državnom intervencijom. Savremene tendencije u razvoju tržišnih odnosa, kao i tehnološke i kulturne promene, uzrokuju potrebu za unapređenjem postojeće državne politike. Kao uže područje zaštite potrošača, analizirana je zaštita putnika koji koriste paket aranžmane. Pored tradicionalnih paket aranžmana, u savremenoj *online* turističkoj ponudi se pojavljuje tzv. dinamičko pakovanje turističkih usluga. Međutim, i tradicionalni paket aranžmani u novim uslovima zahtevaju nova rešenja u regulisanju zaštite potrošača, u šta se ceo svet uverio tokom nedavne vulkanske erupcije ili revolucionarnih promena na Bliskom istoku. Ipak, u tranzicionim zemljama, kao što je Srbija, sofisticirana unapređenja pojedinih segmenata tržišne regulacije ne mogu biti efikasna bez efikasne primene osnovnih zakona, kao što je u ovom slučaju, stečajno zakonodavstvo.

Ključne reči: *zaštita potrošača, trgovina, turizam, paket aranžman, garancije putovanja, osiguranje*

Consumer protection as part of the public policy in tourism and commerce

Again, along with the escalation of the economic crisis on a global scale “the market vs. the state” issue has gained importance, although this question is important even if the market is functioning well [30, p. 11]. It can be said that the dilemma between government intervention and market forces is actually a false dilemma. This attitude may arise after reviewing the theoretical literature or based on experiences in the implementation of the economic policies of developed countries. On the one hand, the efficient management of trade flows can be entrusted only to the market and competition between retailers in the battle for consumers [28]. On the other hand, government intervention is necessary, but as a factor correcting market mechanism, directing its actions. This is especially important during periods of intense modernization, change and increased competition. Then, there may be a weakening market transparency endangering the interests of consumers [18].

There are a growing number of interested stakeholders at the various levels of marketing channel for the development of the mediators in the modern economy. The point where an integrated management process at the macro and micro level starts and ends up is the consumer [18]. This applies to intermediaries (traders) in goods and services, including tourism services. If we take into account the interests of different stakeholders, from consumers through intermediaries, manufacturers, service providers, and various agents that stimulate transactions, it is logical to assume that among them there are potential conflicts, especially [15]:

- Between different organizational institutions of retailing;
- Between the retail methods;
- Between retailers and consumers;
- Between retailers and their suppliers, and
- Cultural conflicts and conflicts related to the environment.

Listed conflicts appear in the trade of goods and (tourism) services and cause conflicts between corporate and public policy. In the new conditions of global and unpredictable market, conflicts are manifested in a special

way and special content. The complexity of disputes increasingly creates the need to respect the interests of the growing number of stakeholders, both at the corporate and the state level. Accelerated concentration and fierce competition caused conflict behavior in the following segments: the tendency for increasing market share to unprecedented proportion, striving for a privileged position among the members of the marketing channel, and effort to pursue the concentration in order to place small traders and small trade formats in a subordinate position, up to the extinction.

The retail trade development demonstrates two very important trends. First, when it comes to retail goods, there is a continuous and strong growth of large-scale retail chains simultaneously in a number of different national markets. On the basis of growth, purchasing power of retail chains strengthens, but on the same basis the distance between retail top management from the customers is rising. This dissociation from market requests more intense and more meaningful fight for customers in order to defend market position and achieved level of a turnover that is necessary for grown company to survive with high fixed costs [14, p. 118]. Second, when it comes to sales of (tourism) services, retailers remain fragmented and controlled by suppliers, often wholesalers (tour operators). The battle for customers is becoming imperative in the fragmented retail, largely fought at the local level and often at the level of retail formats. A number of micro-marketing activities and the emergence of multi-channel marketing are increasingly coming to the fore [17, p. 213].

Modern marketing shifts the focus from simple sale to a full accomplishment of the customer's needs and expectations. Thus, the focus is not only on how to sell a product or tourist services, but increasingly on how to predict and fulfill consumer needs [16, p. 124]. Marketing is evolving from traditional mass marketing aimed at an average buyer to the specific offer that is directed towards the individual customer. The above evolution gives rise to the concept of CRM, aimed at attracting and retaining customers, as well as fostering good relations with them. Individualized relationship with customers is expanding as well as the individual treatment of all other key stakeholders. This approach produces a rich database

and enables the retailers of goods and tourism services to offer personalized packages [3].

Customers actively participate in the new products and services creation, so creating new value, and the purchase becomes much more efficient and cost-effective [9]. With the development of CRM concepts, new questions in the field of legal and ethical standards arise. It becomes very challenging to formulate an answer to the question whether retailer or travel agency treats all customers equally, putting significant effort to provide the best service to some customers. This is because it is known that some consumers attach greater importance and some less. Distinct, individual clients' treatment opens some questions and dilemmas in developing long-term relationships with customers and other stakeholders [21].

The latest trend exposed, i.e. individual and differentiated treatment of customers, assures us that the challenges of the free market functioning are becoming more and more complex. The role of public policy in market relations regulation, particularly in consumer protection, remains very important in addition to the traditional areas of regulation, such as competition, support to (small) companies, regulation of public procurement, technical regulations, and other aspects of the wholesale and retail trade [13, pp. 469-481]. Consumer protection has a long tradition and is considered to be regulated area of market relations. However, market, competition and technology development cause that areas that are seemingly long settled, request a renewed attention. In the following parts of this paper, the analysis will be focused on the protection of consumers of travel packages.

Consumer protection in tourism: Case studies

Several cases in Serbian and European tourism practice imposed the insurance of travel packages as one of the very important questions that shape relationships between agencies and passengers in contemporary tourism. Let us remind the events of the volcanic eruption in Iceland, as well as two cases of business failure of local tour operators.

From Wednesday 14 to Wednesday 21 of April 2010, the ashes thrown into the air by volcanic eruption in Iceland caused a collapse in European air space. During

this week, about 100,000 flights were cancelled. Over seven million passengers missed scheduled flights. Total damage to the global GDP was about USD 4.7 billion, of which only the airline industry and tourism had damage over USD 2.6 billion [22, p. 2].

The other case happened at the beginning of July 2010, when Conte, tour operator from Belgrade, collapsed, leaving its' 92 passengers at the airport in Taba, Egypt, but also leaving many others who did not begin vacation without their advance payment. "The people who have paid for vacation packages to the travel agency Conte will not go on a planned vacation. A group of 20 people yesterday did not travel to Crete as they found out at the airport that they are not on the passenger list for the flight" [29]. After the intervention of the Embassy of Serbia in Cairo, Egypt hoteliers validated issued vouchers and enable passengers to be accommodated in rooms and continue vacations. Agency Conte, however, is closed with a loss of license for further work [27].

An article in the media of 21 August 2012, began with the following sentence: "JAT aircraft received a total of 137 passengers, that could not return to Serbia due to the unpaid debt of the agency Trinity travel to the Egyptian airliner. Visibly gloomy, they told reporters that some of them were thrown out of hotel rooms, and while waiting to fly to Belgrade, had to cope alone for food and water" [1]. The day before, on August 20, Takovo insurance company announced the official press release and duly informed the passengers that they are collecting claims for the payment of damages, up to the total sum of EUR 25,000, which is secured sum for Trinity travel agency Belgrade [31].

The negative consequences of these events for involved parties were numerous. On the global level, the damage suffered by passengers, airlines, hoteliers and insurers, were enormous. Trinity agency and Conte agency have lost licenses, which prevents from now on, their owners and/or managers the right to continue engagement in any travel business in Serbia. The owners of the said travel agencies were imprisoned and against them were filed criminal charges [2]. Takovo insurance company withdrew from travel agency insurance business. A number of passengers have been damaged in various ways.

Those who have traveled, experienced at the end of their holiday stress being expelled out from the hotel and faced with uncertain returns. Those who have not traveled, had neither summer holiday, nor most of their money paid in advance. Some travel agencies, that subcontracted air tickets through insolvent tour operators, needed to pay for the second time for transportation of their passengers, and all other agencies have suffered stress that reflected in their work. All passengers, after these events went on holiday in fear. The state budget paid for non-commercial prices for repatriation of Serbian citizens to domestic air carrier, and the carrier was not very happy to organize non-commercial flight in high season. Lawmakers once again faced the requirement that regulations have to be adapted so that the risk of tourist trips becomes adequately covered. The media began to take a special chronicle of passenger complaints and compensation [12].

Regulations governing the travelling consumer protection rights

The international community and states try with different acts to regulate the area of organized travelling and the protection of participants in these activities. The World Tourism Organization of the United Nations General Assembly, in Santiago de Chile, in October 1999, two years after Istanbul meeting where draft document was presented and after careful harmonization process, adopted the Global Code of Ethics in Tourism [34] Resolution A/RES/406 (XIII). This document contains ten principles and it is not binding. However, states can voluntarily comply with generally accepted and reasonable principles.

Global code of ethics in tourism and its articles 6, 7 and 8, in particular, provide a basis for the protection of passengers' rights [35]. Article 6 regulates the obligations of stakeholders in the organization of tourist trips including, among other things, the obligation of the country of origin, the host country, and professional organizations to ensure that the necessary mechanisms are in place for the repatriation of tourists. The same article obliges professionals (tour operators, for example) to honestly inform visitors of the situation in the target country, the conditions of travel, as well as to provide financial compensation in the

event of unilateral termination of the contract. Article 7 regulates people's right to leisure and travel, including the right of workers in the framework of employment rights, and the right of persons with disabilities, etc. Article 8 regulates the right of tourists to freedom of movement, access to different places without any discrimination, like the people of the host country, along with the simplification of visa and other administrative regimes. The signing of this document by the representatives of the government and the private sector is constant and is one of the most important activities of the UN Secretary General of the WTO, dr. *Taleb Rifai* [11].

In an effort to develop a more operational instrument for the protection of passengers' rights, the UN World Tourism Organization has decided to form a working team composed of delegates from different countries [36]. The team is preparing a new operational legal instrument for the protection of passengers' rights in case of cancelled travel. It is difficult to formulate multilateral document of this type which could provide financial obligations of the signatory countries governments, so there are difficulties in formulating a document with regard to the obligation of the national budgets. Working team identified four options: a) binding international convention, b) non-binding guidelines, c) two separate instruments d) a single instrument combining a binding and a non-binding part [36]. The aim of the group is to formulate a document that will be able to provide a minimum level of coverage for travelers and tour operators. The group's task is to examine the existing regulations, find a link between them and propose a possible upgrade. Due to the presence of a large number of members from Europe, on the EC meeting in Belgrade it was particularly stressed the need to comply with European directives [25].

The European Union is even in 1990 adopted the Directive on package travel, package holidays and package cruise, which initiated harmonization of the legislation in member states in this area [5]. Article 6 provides that the tour operator or retailer (agency) compensate passengers in case of canceled tour, with two exceptions: the number of travelers below minimum number to travel organized, and *Force Majeure* (as was the case of volcanic eruptions). Article 7 of the Directive states that tour operators and

retailers are required to provide proof of sufficient funds to refund the money paid and the repatriation of passengers in the event of insolvency.

Directive, during its validity period, solved many of the incidents, but the development of tourism industry in the twenty years has caused the need to update and modernize, especially after the advent of Internet sales and the emergence of the so-called “dynamic packages”. The European Commission has adopted in July 2013 and sent to the European Council a new draft directive, after the reconciliation that began 2009, which has led to a version that protects travelers (and other stakeholders) whose participation in the new type of the travel arrangements is clearly growing [7]. According to the authors of proposal, previous directive is fully protecting only pre-arranged traditional package holidays, whose participation in trade now is only 23%, partially protects users of the arrangements where the agency at a single point of sale “packs the package” for the customer (share in turnover 17%) and does not protect passengers in the case of independent travel arrangements (54%) or in the case of combinations arranged via linked websites (6%).

The text of the new Directive is in the process of the European Council and upon its completion, it is expected to be implemented in the laws of the Member States. Proposal of the Directive may resolve a part of the problems already present in Serbian tourism [7]. This primarily refers to the obligation of the Bidder, provided in Article 4 for the required information, regardless of whether it is a pre-arranged package tour or a package that the customer individually assembled. Among the required information should be highlighted: the basic characteristics of tourism services (destination, category of accommodation, visits and excursions included in the price, but also the language in which services are provided, access for people with limited mobility, etc.), also, the name and address of the organizer and seller of the services, total price, payment method, the minimum number of passengers, information on visas and confirmation that it is a package of services within the meaning of this Directive.

Article 11 regulates situations in which due to unforeseen circumstances it is not possible to organize the passenger service as agreed or return to the starting

destination. Tour operator is obliged to offer suitable alternative services in cases where the planned return is not possible, even to bear the costs of their stay up to three nights and up to the amount of EUR 100, until alternative return is not provided.

Furthermore, Article 15 stipulates that the only tour operator or agency (retailer), which participates in the formation of assisted travel arrangements, shall provide guarantee in case of insolvency in order to refund amounts paid in advance or to repatriate passengers. Directives from 1990 predicted this requirement for tour operators and agencies, which proved to be double burden. On the other hand, the need to protect passengers in the so-called “assisted travel arrangements”, in which the agent advises passengers, was not recognized. Assisted travel arrangements (*Potpomognuti putni aranžmani*) are different from the packages because the agent in its office or via the Internet, helps the traveler to combine services and directs him/her to the various providers of individual service contracts, as set out in paragraph (9) in the preamble this Directive. The translation in brackets is taken from an official document of the European Parliament in the Croatian language, which gives the draft opinion on this directive [20]. According to proposed Directive, the agent in assisted travel arrangements acts as a tour operator, and therefore, as responsible, assumes liability stemming from that action. Article 17 states information that must be disclosed to the passenger when combining assisted travel arrangements. Directive brings even more simplifications and significant improvements, but those are not in the focus of this paper. Just to mention, less obligations in printing of various brochures (unnecessary cost in terms of online business) or leaving business travel out from guarantees (since insurance relationships are already based on the contractual relations between the two companies).

However, a key problem that Serbian tourists and industry stakeholders are faced with, is regulated by the previously Directive 90/314/EEC. It is the risk of insolvency. In such a situation, usually, tour operator takes money from passengers in advance and do not meet its obligations to its suppliers, among which are the most sensitive airlines and hoteliers. When risk estimate of further cooperation

with such organizer is too high, carriers refuse to accept passengers for two reasons. One is to put pressure on the tour operator to make the payment, and the other is to reduce the risk of new cost if the payment fails. In such a situation, as we have already shown, Article 6 of the Directive envisages compensation and Article 7 sufficient evidence of security for the refund of money paid over. How is it regulated by Serbian legislation?

Law on tourism since 2005, as well as after latest changes, has regulated the protection of consumers introducing travel guarantees [41]. Article 52 of this Law stipulates that two types of travel guarantees are condition for obtaining the tour operator's license. First, in case of insolvency, tour operator must have either an insurance policy or a bank guarantee. Second, in case of damages due to failure to meet the obligations to travelers fully or partially, tour operator must have one of the three optional guarantees, i.e. insurance policy, bank guarantee or cash deposit. Article 53 of this Law regulates the area covered by the two guarantees. Guarantee for insolvency covers the cost of emergency accommodation, food and repatriation of passengers. Guarantee in case of any damage covers those damages arising from unmet, partially met or inadequately fulfilled contractual obligations (e.g., delay, loss of connection flight, etc.) Also, this article recognizes guarantee beneficiaries: travelers and those who, following the prescribed procedure, bear the costs covered by the guarantee (repatriation, e.g.). Furthermore, the same article refers to the bylaw acts that in details regulate this area.

Bylaw that in details regulates travel guarantees has been developed from 2009 and still, it is to be improved. The current version is the result of a compromise and must undergo some changes [23]. Travel guarantees in case of insolvency are regulated by Articles 2-5. The most challenging area, the amount of travel guarantees, regulated by Article 5, is graded and correlated with turnover: up to EUR 50,000 of revenue, insured sum is EUR 25,000, up to EUR 100,000 insured sum is EUR 40,000, and so on, to the last step where for the annual turnover of more than EUR 1,000,000, insured amount is EUR 300,000. This article has provoked great controversy between lawmakers, on one side and business associations and agencies, on the other side. Business community requested relaxation of this

article, arguing that high insurance premiums will turn off the small tour operators and increase unemployment.

Not neglecting the interests of the industry, the real problems actually arise from unprotected interests of consumers, and partially, of the state. Consumers are faced with a number of problems. In some cases, insurance companies are avoiding the activation of an insurance policy (the case of Conte), referring to the statements of authorized representatives in the media that "the criminal charges have been filed against the responsible person on suspicion of cheating and damaging the tourists" [27]. According to the Law of Obligations, Art. 920, in terms of intent or fraud, preclusion of the insurer's obligations arise. With reference to this provision, insurers postpone any payments until it is unambiguously confirmed that it is not a crime of intentional fraud of passengers. Bearing in mind the length of the investigation and court proceedings in Serbia, it is almost like release of the insurer from liability.

In some cases, insurance companies have accepted to activate policy, regardless of similar allegations of fraud in the media (the case of Trinity). The reason was more to protect the image of the insurance company as a solid insurer, but a clear legal situation. However, a problem of the amount of insurance emerged. Small agencies, that suddenly in a single season make huge turnover, remain insured for the amount that has to do with last year's turnover (the insurance amount of EUR 25,000). This problem is solved for the newly formed agency, with no balance from the previous year, which compulsory carries a policy of EUR 100,000 (which may be barrier to the establishment of new agencies). For existing small agency, still there is no solution, so that insured amount, however, is hardly enough to cover one airplane flight (e.g. Hurghada – Belgrade). It happened, however, that risky agency sent by plane several groups of tourists. In these planes, some other tour operators were able to book a certain number of seats, as subcontractors, paying in advance partially or fully to risky agency their obligations. Of course, there are also travelers who partially or completely fulfilled their commitment to high-risk agency. They remain without a trip and their money at a time when the agency terminates its business. The first problem, the activation policy is somehow resolved with the latest amendments of the Rulebook. Article 12 envisages that the policy triggers

the one who bears the cost of default for insured agencies (traveler or someone who, for example, hire a plane), and the insolvency is determined by the act of any of the several state authorities, thus providing the basis for the activation policy. When all damaged persons, however, dutifully file their claims and the policy is activated, limited amount is proportionally divided, so that covers sometimes less than 10% of the real costs.

Comparative analysis of the experiences in travel guarantees

Knowing the problems with liability insurance in travel business, along with the efforts of the ministry in charge of tourism, from 2011, this problem has occupied more and more the attention of the travel agencies. YUTA, the

largest professional association of travel agencies in Serbia, in cooperation with the European Association of Tourist Agencies, ECTA, began to explore the possibility of forming a guarantee fund. In fact, after initial resistance to raising the amount of the guarantee, the travel organizers alone, realized that confidence of tourists in all agencies has been declining since citizens were exposed to frequent and deterrent news about the problems that domestic tourists are faced with in distant destinations.

The Ministry itself has formed a working group, supported by a prominent German expert in this field, Professor *Wolfgang Richter*. One of the first steps was to do a comparative analysis of the types of travel guarantees in different countries. A cross-country overview of instruments made on the basis of preliminary material of the working group is presented in Table 1.

Table 1: Overview of the guarantee instruments over the countries

Country	Authority	Type of instrument			
		Insurance	Bank guarantee	Deposit	Guarantee fund
Netherlands	Authority for Consumers and Markets (ACM)				+
Denmark	Travel Guarantee Fund				+
Italy	Department for Development and Competitiveness of Tourism at the Prime Minister's Office				+
Swiss	The Fund Administrator	+			+
France	Financial Guarantee Supplier	+			+
Great Britain	UK Civil Aviation Authority and Committees approved by BIS (Department of Business, Innovation and Skills)	+			+
Norway	The Fund Administrator		+		+
Austria	Federal Ministry of Economy, Family and Youth	+	+		
Croatia	State Inspectorate	+	+		+
Sweden	The Legal, Financial and Administrative Services Agency	+	+		
Spain	DG Tourism of every Region	+	+	+	
Slovenia	Chamber of Tourism and Catering within Chamber of Commerce and Industry of Slovenia	+	+		
Slovakia	Slovak Trade Inspection / state supervisory body	+	+		
Romania	Ministry of Tourism	+			
Poland	Regional Marshall Offices	+	+		
Latvia	Consumer Rights Protection Centre	+	+		
Ireland	Commission for Aviation Regulation and the National Consumer Agency	+	+	+	
Hungary	Hungarian Trade Licensing Office	+	+	+	
Greece	Greek National Tourism Organization (GNTO)	+	+		
Germany	Local competent Trade Office	+	+		
Finland	Finnish Consumer Agency	+	+		
Cyprus	ACTA (Association of Cyprus Travel Agents) and Ministry of Commerce, Industry and Tourism	+	+		
Bulgaria	Ministry of Economy, Energy and Tourism	+			
Belgium	Belgian Federation Ministry of Economy	+			
Czech Republic	Ministry for Regional Development (in charge of tourism)	+			
Malta	Malta Tourism Authority	-			

Source: [38]

Prevailing number, 21 of 26 surveyed countries, require agencies to be insured from liability in operations [6]. In 15 countries, bank guarantees are required, in a way that in 14 cases a combination of the insurance policies and bank guarantees exists, and only in the case of Norway, the bank guarantee is combined with the guarantee fund. Only in three cases, holding of cash deposits is compulsory, while in the eight most developed countries (Scandinavia, Great Britain, Italy, etc.), there is a guarantee fund to cover the costs of damaged passengers. Serbian Law on Tourism defines precisely the most common combination, i.e., insurance policy or bank guarantee, which the tour operator shall obtain during the licensing procedure and maintain all the time. In addition, when it comes to guarantee for damages, the agency, instead of the two mentioned instruments, may choose cash deposit. Despite the prescribed possibilities, since 2010 there have been no cash deposits as a travel guarantee, and only in one case a bank guarantee was obtained. So, all other travel guarantees were insurance policies.

Travel guarantee amount varies by country. In some countries, such as Great Britain, the guarantee is relatively low, starting from GBP 6,000 (approximately EUR 7,000) as a minimal payment to the Guarantee Fund for the new agency. Over time, amount of payment declines, but it is accumulated in the Guarantee Fund. Typically, in such situations, there is another restriction – a new agency in UK cannot make turnover more than GBP 40,000, which is to say that from the outset premiums 15% of its risk is covered. In Greece, the insurance premiums are low (about EUR 11,000) and there are no limits of turnover. However, small agencies usually deliver domestic services so that risks are lower. In some countries, the prescribed amounts of insurance are fixed regardless of the size of the agency and may be relatively high (about EUR 120,000 in Spain) or a bit softer (EUR 50,000 in Romania). In most countries, however, the amount of the guarantee depends on the size of the traffic agency and varies from EUR 4,500 (Poland), EUR 10,000 (Austria) to EUR 30,000 (Norway) for small agencies.

In almost all countries guaranteed amount depends on the amount of turnover. Very often, the sum insured is directly expressed as a percentage of turnover. This

percentage also, may be prescribed to determine the premium payments (2-3% of turnover), or to determine the minimal percentage of turnover that has to be ensured. Thus, for example, in Slovakia it is necessary to insure at least 25% of turnover, while in Belgium the obligation to ensure that the amount of 100% of turnover from last year.

A large number of different insurance systems have similar disadvantages:

- Travel guarantee level is based on the last year turnover. Germany has solved this lag between last year turnover and current insurance by deciding to introduce compulsory insurance premiums ranging up to 0.28% of turnover.
- New agencies may, thanks to the rapid growth, expose to a risk both travelers and insurers. Therefore, some countries, such as Great Britain, introduced constraints on growth.
- Large agencies that come to the insolvency problem may jeopardize the insurance companies. This applies particularly to large markets in which giant tour operators are generating turnover of several billion EUR. Therefore in Germany, there is the upper limit of insurance to EUR 110 million, while insurer may require from the insured agencies even additional deposits.
- Different types of arrangements cause different levels of risk. That is why some countries have introduced special insurance for tour operators that hire charter flights. This practice exists in Hungary, where a large tour operator must insure 20% of turnover from the previous year, a minimum of EUR 60,000 if it arranges charter flights. More stringent rules apply in Austria, where tour operator with charter flights must cover with warranty 10% of the turnover, but at least EUR 363,000. From this harsh demand were partially spared only tour operators that occasionally “rise” charter flights and prepay the full amount of flight to carriers.

One of the biggest disadvantages of a large number of national regulations on travel guarantees is the rigidity. In fact, it is necessary to bear in mind that the insurance of liability is typical business contract that should be

based on mutual risk assessment. Prescribing the sum or percentage of the insurance by the legislator introduces an element of arbitrariness in the contractual relationship. In the economies with developed market and efficient judicial mechanisms, efficient bankruptcy and liquidation procedures, insurance companies and banks normally take this set of standards as a minimum. In individual cases, they are contracting with the insured tour operators even stricter insurance requirements. Therefore, insurance services are more expensive, the price of the packaged travel arrangement is slightly higher, but the security is also on higher level. And it's not just the coverage of the passengers which is the ultimate goal. In fact, the higher is the security for the manager of insured agency (business hedge), the same is that of the providers of guarantees, i.e. insurers, banks and guarantee funds.

Finally, the debate on covering damages caused by liability from operations generally flows in two directions. When it comes to *Force Majeure*, initial total reluctance of insurers to cover unexpected expenses gives way to a reasonable division of risk. Pressure is coming from two directions: public opinion and lawmakers. So, in a crisis situation with the volcanic ash, at the beginning, some of the UK insurers even refused to cover travelers' personal insurance policies (Tesco, Cook, etc.), while others (Marks & Spencer, HBSC, John Lewis, etc.) accepted it [33]. Yet, general attitude during the eruption in New Zealand, two years later, was that the lesson had not been learned, and situation repeated like in 2010, when the travelers, tour operators and hoteliers themselves bore their risks that default insurance did not cover [8]. However, tour operators are covered by their travel guarantee and the guarantors trying to comply with their policyholders are suffering financial pressures. Thus, the British Trust for ensuring travel agents (ATTF – Air Travel Trust Fund), recorded loss in 2010 in the amount of GBP 31.8 million and 2011 as much as GBP 42.3 million. The reason was the failure of a large number of the tour operators (41 in 2011 alone), caused primarily by the revolution in the Middle East and previous problems with volcanic ash [37]. And, that leads to another direction of discussion about travel guarantees, which refers to the risk of insolvency.

Insolvency of the tour operators

Solvency (of banks) is the ability to pay mature liabilities, whereas it is important that there is a sufficient volume of high-quality assets that can cover total liabilities, regardless of when such obligations are yet to be paid [10, p. 850]. Insolvency, in general, occurs when an individual or an organization is unable to meet its financial obligations to the creditor or creditors when obligations are due. The term insolvency occasionally appears in the laws of Serbia, mostly as taken from foreign literature and regulations, which already establishes an indirect relationship with the local regulations in this area. Listing the reasons for the bankruptcy proceedings, legislators in Serbia rather than insolvency introduces the concept of permanent disability for payments, threatening disability for payments and over-indebtedness, in the Art. 11 of the Bankruptcy Law [40].

Permanent disability for payments means that the debtor does not pay the due obligations within 45 days or suspend all payments within 30 days. Threatening disability for payments means that the debtor makes it probable that the existing financial obligations will not be fulfilled. The very notion of threatening disability for payments, as a reason for bankruptcy, introduces subjectivity into the realm of the bankruptcy proceedings. Additional problems come with the over-indebtedness. For the tour operators, which tend to have a disproportionately small property in relation to the turnover, almost any delay in the payment of the liability might automatically be treated as a reason for bankruptcy, according to law. Namely, since the criteria are laid down so sharply, in the Serbian economy characterized by a decrease in business activity, insolvency, business losses and delay in settlement of obligations, the major part of the companies would be eligible for the opening of bankruptcy [19]. In such circumstances, it is almost safe to predict that the opening of bankruptcy proceedings is the exception rather than the rule. This is exactly what has happened with the trip organizers, where the crisis manifested in some indicators always before the bankruptcy proceedings, but only after the outbreak of the crisis in public, bankruptcy was subsequently launched. In such situations, without initiated bankruptcy

proceedings, the activation of guarantees in the cases of Serbian travel agencies is quite difficult. What is the case in other countries?

German Civil Code in its article 651 that contains sections starting from (a) through (m), regulates the relations of parties involved in the implementation of package tours, as well as passengers, [4, p. 1600]. For this occasion, section (k) is of particular interest, which regulates travel insurance. Tour operator shall ensure that passengers reimburse the price paid or return to place of commencement of travel “in the event of insolvency or the filing of the petition to open bankruptcy proceedings against the assets of tour operator.” Name of the contract is the Contract on insurance of clients’ money. Furthermore it is said, in order to meet these obligations, that “tour operator is obliged to provide the traveler directly exercising the right to insurer clients money and also prove the handover of certificates issued or provided by the insurer (an insurance policy).” If an intermediary agency delivers proof of insurance to a traveler, this agency is required to check the validity of this certificate for the entire period of the last trip.

This document, certificate of insurance, allows passengers that, using it as a kind of security, easily “pay” transport to the place of departure from distant destinations, even individually, if the reaction of the insurance company or other institution fails. In practice, however, rarely comes to the individual actions of passengers on package tours. Issuer of this guarantee knows that the individual arrangements (accommodation or return) are rather more expensive than when the same services are being organized for the entire group. Therefore, they are taking advantage of an efficient bankruptcy procedure. At their request, the court shall in a very short period of time (which is measured by hours) designate bankruptcy trustee who immediately takes office. Respecting its obligation to operate in the interest of the company whose bankruptcy trustee, he/she immediately responds to the request of the insurer and usually hires other tour operators, looking for the cheapest way to accommodate and/or return travelers. Detail notes on the new accommodation/transport he/she urgently sends to passengers, often before they become aware that their tour operator is in the problem. Emerging

costs of accommodation/transportation shall be borne by the insurer, which in this way ensures that costs are far lower than if the passengers solve it individually by purchasing these services.

Even according to German regulations, amounts to be paid to passengers may be reduced in relation to the amount paid to the tour operator. This happens if the reported damage exceeds the maximum insured sum of EUR 110 million. However, up to this amount, the insurance companies are required to pay the full amount of money to insured clients. This mechanism imposes the obligation of insurers to be very careful dealing with risk assessment of each insured tour operator.

Therefore, in general terms of insurance, which define the contractual obligations of the parties, usually it is very carefully defined the obligations of the tour operator who enters into a contract with an insurer (the guarantor of travel). Thus, the contract of one of the leading insurers, DRS, Munich, it is emphasized the tour operators obligation to make available all required information on its operations, to notify any significant changes in their operations changing the level of business risk or creditworthiness, to notify the insurer of their lending activities, not guarantee the other partners based on their assets without the knowledge of the insurer, and so on. Thus, for example, the tour operator shall, reporting on changes in operations which alter the level of business risk, be sure to inform the insurer of intent, in addition to bus arrangements, if start selling arrangements based on charter flights. In the event of such changes, the insurer has the right to ask for greater collateral and/or premium, to request exclusion from the new risks to their contract or to terminate the contract of insurance.

In any case, the insurer becomes an active partner in the operations of the tour operator. Insurers shall in case of damage pay the full insured amount of money and that motivates them to actively monitor the tour operators before the crisis and in particular in case of the emergence of the crisis. Before the crisis, the insurer estimates preventive operation of the tour operator and its exposure, focusing primarily on debt, undertaking risky ventures (for example, a large group or charter), the mortgage and the like. Insurer contract also limits the size of the advance

payment that the insured tour operator can collect from the passengers in order to limit their exposure to risk in the event of insolvency. At the moment of crisis, the insurer is active participant, making efforts to minimize claims for expenses refund, organizing the most economical return of travelers who have already left, but organizing and in the most economical manner departure of passengers who have paid arrangements and expect to travel or to take money back. In this regard, the bankruptcy trustee under the supervision of insurers urgently gets in contact with other tour operators, especially those who are offering the same destinations in order to make a deal and serve the passengers of insolvent tour operator.

Austrian regulation on travel guarantees, unlike the German, regulates stages in insured sum, starting with EUR 10,000 (for EUR 90,000 turnover in the previous year), up to EUR 72.600 for agencies that do not organize charter flights, or EUR 363,000 for those which organize charter flights. Although the Serbian model of travel guarantees is based on this model, there is lack of provisions that Austrian regulations provides. First of all, there is lack of separation of the tour operators regarding the charter flights, with a significantly higher sum insured for more risky charter business. Furthermore, there is lack of obligations of the tour operators, predicted in Article 4, paragraph 4 [26], to report the intended change in turnover of more than 5% , in which case insured sum is connected to the intended turnover (with responsibility if the insured turnover is different from the reported). Also, taking advance payments from clients for travel is strictly regulated. Thus, the advance should not be taken earlier than 11 months before the trip, and amounts over 20% of the price cannot be collected until 20 days before departure, followed by delivering to the client travel documents. Advance payment over 10% of the package price leads to the correction of terms of insurance, caused by the higher the risk exposure of the insurer.

Both examples of Germany and Austria indicate active participation of the guarantor (the insurer) in the assessment and monitoring of tour operators insured business. Also, both examples point to a very high level of guarantor protection against irresponsible tour operators. Tour operators are directed to engage in those business

activities which they are capable (primarily financially) to handle. Consequently, the passengers' rights, which were the starting point, are given the highest level of protection.

Recommendations – Instead of conclusion

During the crisis, which may result in the bankruptcy of the tour operator, the choice of actions must be taken very carefully and the implementation must be highly efficient. Official representatives of state institutions and, consequently, the media, must avoid hurried statements or actions that may create an alibi for non-fulfillment of obligations. This primarily relates to statements about fraud of tourists by the tour operators, which may undermine some agency on the basis of rumors (sometimes initiated by competitors) or delay (even cancel) liability insurer to the insurers' policy activation and payment of compensation to passengers.

Rulebook which specifies travel guarantees must get a dynamic component that binds to a change of the insured sum once contracted turnover exceeds the upper limit of turnover. This would mean, for example, the tour operator which for the first time exceeds the cumulative turnover of EUR 50,000 per year, automatically has an obligation to ensure the sum of EUR 40,000. That would prevent small agencies, that either independently or with the help of business partners, suddenly, in one season contract two, three or more flights a week to remote destinations, while, at the same time, their insurance policy barely covers the repatriation of one group.

It can be implemented in the existing regulations the differentiation of the tour operators activities. Thus, it is possible to prescribe a lower guarantees for travel agencies that organize trips within the country, higher guarantees for those that take travelers to foreign countries (bus, train, regular lines of air transportation), and a maximum guarantee for those who are organizing charter flights.

Among the travel guarantee instruments, the guarantee fund as a voluntary instrument of insurance may be introduced as complementary and/or in limited circumstances, an alternative to existing instruments. The establishment of the fund may take some time, until

the accumulated amount will be sufficient to cover the risks of active tour operator. However, such an instrument would be good hedging instrument, which, in addition, is quick and efficient instrument to protect the reputation of businesses and the entire tourism industry.

It is necessary to regulate the issuance of “certificates” of insurance or other document to be delivered to passengers prior to departure. With this certificate, the customer can guarantee the payment of the necessary accommodation and repatriation, or to request reimbursement of funds in the event of insolvency or bankruptcy proceedings against tour operator. This confirmation, clearly and in advance regulates the relationship between the three sides (passenger, tour operator and institution that issued the guarantee). Being in the possession of passengers, allows that he/she is protected in distant destinations even if the organized repatriation to the country of departure fails.

Under the current regulations regarding the travel guarantee, it is useful to change the logic of scale of insurance. Instead of the minimum sum insured, depending on the turnover of the tour operator, it is better to introduce a maximum value insured by the insurance companies, obliged to pay the full amount to insured passengers up to this limit. This amount, which in Germany is EUR 110 million in Serbia may be lower, but not below five million. This is the amount that actually protects the insurance company from bankruptcy, limiting upper limit of possible damage. In this case, the insurance company would finally start to deal with the risk assessment of tour operator’s business, which makes the essence of the issue of insurance guarantees. Competition will direct them to determining the lower premium, while on the other hand, caution forces them to estimate the maximum possible sum insured. If the stepwise expression of the sum insured is kept, depending on the amount of traffic, it is necessary to prescribe the increase of insured sum, which has already been mentioned.

Finally, it is necessary to improve the basic regulation, in order to stimulate market flows. In case of tour

operator insolvency, this is bankruptcy procedure. There is no guarantee instrument, which could be efficient, if there is no authority that can activate it and handle its implementation. In the bankruptcy procedure, it is trustee. It is essential for the trustee to be appointed very efficiently (even in couple of hours), to be obliged and authorized to act quickly and to be responsible for the bad decisions (including delays). And, not to forget, efficient bankruptcy procedure is important to protect interests of consumers, which is discussed in this paper, but also the interests of the suppliers, business partners and even owners of the business. There is no benefit from sophisticated tourism legislation, or any other specialized legislation, if the basic legislation is inefficient.

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