

QUALITY IS PROFITABLE

Conference on Leisure Tourism and Consumer Protection in the Mediterranean

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Conclusions and recommendations

Panel 3: “Instruments and Mechanisms for Consumer Protection”

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Throughout yesterday afternoon the experts invited to Panel 3 tackled the existing instruments and mechanisms for tourist consumer protection, on national, European and international levels.

National level

On the national level, Julio Carlos Fuentes Gómez from the Spanish Ministry of Justice’s Secretaría General Técnica (Technical General Secretariat) gave a comprehensive presentation on existing national regulations in the area of consumer protection, which have their origin in Article 51 of Spain’s Constitution of 1978; following this, the Ley General para la Defensa de Consumidores y Usuarios (General Law on Consumer and User Protection) was passed in 1984. From then on and with the incorporation of Spain to the European Community in 1986, it is the Community Directives that set the pace of development for Spanish legislation, especially in the area of contractual law.

In the process of applying the European Directives to the national scenario there were some problems; for example:

- those related to the terminology used;
- the very definition of consumer in the case of the Directive on abusive clauses (are only natural persons considered consumers or are juridical persons also included);
- confusion over protective rules specifically for consumers and rules that benefit citizens in general

As concerns anticipated developments for the near future, it should be noted that a significant advancement will be the “Texto Refundido de la Ley General para la Defensa de Consumidores y Usuarios” (Rewritten text of the General Law for Consumer and User Protection). Neither must we forget other regulations that, though they do not address consumers, are favourable to a great extent, as in the case of protection for the victims of crime in the EU; tourists, as potential crime victims, will benefit from such regulations.

Also at the national level, though dealing exclusively with the travel agency sector, José Manuel Maciñeiras, President of the Asociación Empresarial de Agencias de Viajes Españolas, (Business Association of Spanish Travel Agencies) went into detail about the specific Regulations in Spain that govern the practice of travel agencies' activities. These regulations offer a series of guarantees beginning with established minimums of share capital (between 60,000€ and 180,000€) deposits (between 60,000€ and 240,000€) and civil liability insurance (between 450,000€ and 900,000€).

Additional guarantees are provided by the Law on Package Travel, a transposition of the 1990 Community Directive defining what constitutes package travel, a tour operator and a retailer, as well as the responsibilities of each.

Among the problems faced by this sector, mention was made of the transfer of tourism responsibilities to the Autonomous Regions, which threatens market unity.

Ending this first round of talks centered on the national scenario, Alfonso López-Escobar, Secretary and Departmental Chief of the Junta Arbitral de Consumo de Andalucía (Consumer Arbitrage Board of

Andalusia), presented the innovative Consumer Arbitrage System with emphasis on the area of Tourist Arbitrage.

Among the characteristics of this system: it is voluntary, free of charge, binding and executive, quick and simple, and the parties are treated as equals (although the Arbitrage Associations are of tripartite composition.). The system is organized around the national Consumer Arbitrage Board and regional arbitration boards. The rulings on each case submitted for arbitration are issued by the Arbitrage Associations.

As concerns the section specifically referring to tourism, it fulfils the need for improving the profile of the Andalusia Community among tourists (over 3.8 million on the Costa del Sol). It was created in May 2002 under Andalusia's Strategic Plan for consumer protection; the hotel businessmen of the Costa del Sol and Málaga, the travel agencies, and the businessmen at the beaches of provincial Málaga all participate through specific agreements.

As relates to general Consumer Arbitrage, the tourist section introduces some differences such as the change of jurisdiction (the arbitral site is the domicile of the demanded party, not that of the consumer) the procedure's lack of formality, and omission of procedures prior to citation for an audience, which speeds up the process. Currently there are 1,022 establishments adhering to the system.

It is an agile and free means of resolving disputes, which still needs to be further publicized.

European level

Concerning Europe, Jesús Orús, Deputy Unit Chief from the European Commission's Directorate General for Health and Consumer Protection, presented a general overview of European legislation on timeshare, travel packages, distance selling and the rights of air passengers.

1. As concerns the 1994 Directive on timeshare, it includes a definition that, among other problems and as Jesús himself admitted, has become obsolete in a very short time. As examples he cited property shares in ships or for a duration of less than 3 years, the appearance of Holiday Clubs, exchanges and resale. He also mentioned some problems associated with this type of product such as aggressive marketing, incorrect information, requests for advance payments, etc. All these factors are being considered in the preparation of the new Directive. Among the safeguards it introduces are: a minimum trial period of 10 days, refund of the deposit during this period, flyers with truthful information which should be written in the official language of the consumer's country of residence.
2. With regard to the Directive on distance selling, it is considered a fundamental rule within the consumer field as it sets forth consumer rights to receive information, to cancel purchases within an established period and to receive refunds of money paid in advance, in case of cancellation. Some aspects of this Directive were submitted for consultation at the end of 2006. A legislative proposal will not be available before the end of 2008. Among the most significant aspects mentioned were the adaptations of commerce to mobile telephony and cancellation costs.
3. Regarding the Directive on travel packages, this regulates consumers' rights to receive information before and after making a reservation, their rights in case of cancellation or changes, the quality of service provided, rights to a refund should the tour operator go bankrupt. A consultation process is underway until the end of October 2008, on aspects such as the scope of the Directive or requirements for information for tour operators, among other parties. The new regulation must adapt to the reality imposed by Internet reservations, low-cost companies, creation of their own packages by the consumers themselves, and the web as an alternative to flyers.

4. As for the rights of air passengers, in 2004 their rights relative to delays and cancellations were regulated, and later the Montreal Convention introduced rights concerning loss of baggage. Similar regulations are foreseen for the future, for other means of transport (ship, train, bus).

To sum up, Jesús mentioned his responsibility as coordinator of the network of European Consumer Centres, a network created with the goal of assisting consumers with problems related to cross-border transactions within the European market. Currently there are European Consumer Centres in 25 Member States plus Norway and Iceland (Bulgaria and Romania are expected to begin operating next year).

International level

On the international level, Henryk Handszuh, Chief of the WTO's Department of Market Trends, discussed the matter of Government Recommendations for travellers, highlighting the following aspects as being fundamental for a quality service: information and informative transparency. From among different sources of information, he focused on those provided by Governments to inform international tourists (the so-called "travel recommendations").

He pointed out the international controversies that sometimes arise with respect to the content and wording of these communications. They can have an enormous dissuasive impact on individual travellers and on intermediaries

Henryk presented a series of guidelines that countries should follow when preparing their "travel recommendations":

1. Use information gathered from various sources, both governmental and non-governmental;
2. The recommendations should be precise, relevant and timely, avoiding ambiguous or biased expressions;
3. They should be published on the government's central website, be easy to consult and well-known, and regularly updated.
4. Travellers should be urged to consult all sources of information, both governmental and non-governmental, before travelling;
5. Announcements of threats should specify geographical location, providing maps and distances;
6. The nature of threats should be specified (political, social, terrorism, environmental, industrial, related to health, means of transport);
7. The criteria of prudence and moderation should be taken into consideration, if possible by indicating scale, probability or imminence;
8. Recommendations must be reviewed on a permanent basis, indicating publication date.
9. The affected countries will inform of any change in circumstances.

In closing, José Ignacio Paredes, legal consultant for the European Consumer Centre in Spain, discussed some of the international aspects of intra and extra-Community consumer contracts. Regarding the former, he explained the principle of non-discrimination and the preservation of Community protection standards. As for extra-Community contracts, he talked about fundamental aspects such as international trade's interest in them, and international harmony in solutions.

He gave special attention to consumer contracts excluded from Article 5 RRI, explaining cases of material exclusion as well as those of spatial exclusion (service supply contracts when the services should be provided exclusively to the consumer, in a country different from that of his habitual residence).

II. Main conclusions

During yesterday's afternoon session we were able to respond to a series of questions related to consumer protection mechanisms on the national and European levels, that we had set as objectives, which were

basically three: there are sufficient consumer protection instruments in existence, they should be improved, and new instruments are needed.

1. It is evident that a wide range of consumer protection instruments and mechanisms of different types already exist on national, European Community and international levels; these are mainly legislative but not only of that kind.

Of these, the outstanding ones are: the Constitution itself, the General Laws such as the General Law for Consumer and User Protection, the European Directives -with special reference to those on timeshare, distance selling, travel packages and the rights of air passengers-, Regulations that affect specific sectors (as is the case of travel agencies).

Together with these legislative mechanisms, mention was made of the Consumer Arbitrage system and its application specifically to tourism, governmental recommendations to travellers, intra and extra-Community consumer contracts, and the important role of the European Consumer Centre network in assisting consumers with cross-border transactions.

2. Though we may conclude there are numerous consumer protection instruments in place, they are not free of problems related to certain aspects such as: the difficulty of applying the European Directives to national scenarios, the distortion occasionally resulting from decentralization of responsibilities for tourist matters, putting them in the hands of the Autonomous Regions, lack of publicity and awareness of consumer rights and of protective instruments at their disposal, and in general of problems for adapting those instruments to the reality of a tourist industry undergoing enormous changes.
3. Finally, looking to the future, we must acknowledge the significant development that is foreseen for a good many of these instruments and mechanisms; doubtless this is a sure sign of their good health. However, at times they are not sufficiently publicized or made known to the users, so it would be necessary to bring this to the attention of the pertinent Administrations in order to promote communication and increase visibility of same on the national, European and international levels.