

## CONTRACTS IN TOURISM AND EFFICIENT ENFORCEMENT OF THE RESPECTIVE LEGAL RULES

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### Abstract

*There are several types of contracts for the provision of tourist services in business practice and they are generally different according to the type of tourist services in concreto. What can be said with certainty is that these are all contracts of adhesion, the conditions of which are dictated by one, generally stronger contracting party, while the other can act on "take-it-or-leave-it" principle. In practice, there are very frequent cases of non-compliance with the contractual provisions, precisely by the contracting party which dictated the terms of the contract and did not abide by them. Therefore, the normal functioning of the provision of tourist services and further development of tourism as a very important and promising activity in the Republic of Serbia requires better control and supervision. Therefore, normal functioning of the provision of tourist services, and further development of tourism as a very important and promising activity in the Republic of Serbia requires better control and supervision of the adopted legal rules governing tourism contacts.*

Key Words: *contracts in tourism, tourist services, control of realization of contractual provisions*

JEL classification: *K12, K42, M38*

### Introduction

The main hypothesis for this paper above all is the assumption that if not all, than most tourism contracts are in the first place forms or standard form contracts, drafted by one contracting party as standard form and intended for regulating of unspecified number of the same or similar situations in which rights and obligations of contracting parties are

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predefined (Vujisić, 2009:23). These contracts most often refer to general terms and conditions of the party which drafts such a contract. However, authors of this paper have tried to develop the hypothesis by trying to link the assumption that the contracts are standard form with the concept of adhesion contracts or leonine contracts, as contracts between one contracting party, as a rule financially and in the market stronger party, which imposes all the rights and obligations from the contract. Although take-it-or-leave-it or adhesion contracts typically refer to the mode of entering into a contract, that mode has considerable influence on provisions of the contract and rights and obligations arising from it. Namely, some types of contracts in tourism are commercial contracts which have many specific characteristics compared to the other types of contract. Some authors point out that generally for commercial contracts the Law on Contracts and Torts ("Official Gazette of SFRY", No. 29/78, 39/85, 45/89 - YCC and 57/89, "Official Gazette SRY", No. 31/93 and "Official Gazette SMN", No. 1/2003 – Constitutional charter) does not prescribe definite form, which leads to conclusion that they may be entered into verbally, for example, all due to mass and fast circulation when these contracts are entered into, so that formalities would have been harmful and slowing down economic activities (Carić & Kapor, 2000:28). On the other hand, there are opinions that formalities regarding the very commercial contracts may facilitate entering into contracts and not hinder it. This second assertion was confirmed a number of years later, especially for tourism contracts (and for some other activities, such as insurance, banking etc.) All this points to two opposite conclusions:

1. That contract forms or standard form contracts in tourism are take-it-or-leave-it or adhesion contracts drafted, as a rule, by financially stronger contracting party, with greater market power, by means of which that party influences agreed terms of business (Škorić, 2009:16), while the second contracting party can only accept or refuse such contractual conditions; and
2. That contract in tourism is standard form contract, drafted in advance and ready for a more efficient conclusion, with predefined rights and obligations, intended for an indefinite number of cases, and that the other contracting party may demand changes of such a contract it was offered to sign.

Because of the large number of contracts in tourism, the above assumptions about contracts in tourism differ relating to a certain type of contracts since in case of some contracts contracting parties are different too, as well as the subjects (i.e. type of the tourism service of the specific

contract). However, conclusions will be of an exceptional importance not just for the specific contracting parties in each of the tourism contracts, but also in a broader sense, in understanding of operations of business entities which provide tourism services or intermediate in provision of those services, which may well influence overall development of domestic as well as international tourism. Quality of services in tourism, which are so much insisted upon, and are the basis for development of tourism in Serbia and in its strategic documents (The Tourism Development Strategy of the Republic of Serbia for the Period from 2016 to 2025 "Official Gazette RS" no. 98/2016), depend primarily on operations of entities which provide tourism related services, on the quality of people employed in tourism (Škorić & Jovanović, 2018), and consequently on the manner of drafting contracts regarding tourism services, and then on fulfilling of contractual obligations and quality of extending them. This raises the question who controls performing of those contracts and agreed on conditions and who participates in resolving possible disputes if one of the contracting parties does not fulfill its obligations.

### **Types of tourism contracts**

The number of tourism related contracts is the same as the number of services in this industry. Over time, with mass computer utilization, online booking etc. new types of services have appeared which are basically provided by legal entities from the tourism industry. However, since the subject "contracts in tourism" is very broad, this paper will analyze basic types or sorts of the contracts which are used in our country as well as in the region, mentioning other possible modalities. Those are: 1) Contract of organization of travel; 2) Intermediary contract of travel; 3) Contract of allotment, i.e. contract on an obligation to place at disposal accommodation facilities.

These contracts are also the contracts regulated by the Law of Contracts and Torts back in 1978, and subsequently only elaborated by other laws, such as Law on Tourism ("Official Gazette RS", No. 36/2009, 88/2010, 99/2011 –another law, 93/2012, 84/2015 and 83-2018 – another law) or other bylaws which indirectly influence the content, realization of contract, contracting parties or oversight of abiding by the terms of contract (such as, for example: Law on Inspection Oversight, Rulebook on Tourist Agencies etc.)

Apart from these contracts, in tourism there are (Bogdan & Mesarić, Peras, 2015):

- Direct contract on hotel services;
- Restaurant services contract;
- Innkeeper's deposit contract;
- Campsite contract;
- Contract on rental of apartments;
- Agent's contract on hotel services;
- Contract on rental (lease) of hospitality premises;
- Contract between agency and caterer;
- Contract on transportation of passengers;
- Insurance contract;
- Franchise contract;
- Timeshare accommodation contract or timeshare contract.

### **Contract of the organization of travel**

Contract of the organization of travel in Serbia is regulated by the Law of Contract and Torts (article 859-879) and Consumer Protection Act. On the international level, the International Convention on Travel Contracts was adopted in 1970. At the EU level, there is the Directive 2015/2302/EU on package travel and linked travel arrangements (Directive 2015/2302/EU on package travel and linked travel arrangements, 2019).

By contract of the organization of travel, a travel organizer (travel agency) assumes the obligation to procure to a traveler a set of services consisting of travel arrangements, accommodation, and other related services, while the traveler is obliged to pay for the services a flat price (total price). Essential elements of this contract are its subject and agreed on total price.

The subject of the contract of travel is a set of services or so-called service package which consists of transportation, accommodation and other services relating to them, such as meals, sightseeing etc. All these services are related to each other and combined as a whole, which makes so-called service package. There should be at least two services to make a set of services from the contract of organization of travel. Those (minimum) two services are usually organization of transportation of a tourist to the destination and his stay in a certain type of accommodation

(Vujisić, 2009:237). Until adoption of new Package Travel Directive 2015/2302, there used to be different opinions regarding the number and type of services as subject of contract of organization of travel in law theory due to unclear legal definitions<sup>3</sup>. Since the adoption of the new Package Travel Directive 2015/2302/EU, theoretical differences in terms of number and type of services that constitute package is not an issue anymore (article 3, paragraph 1 and 2).

In Serbia, linguistic analysis of the Law of Contract and Torts (article 859.) may easily lead to the conclusion that it requires at least three services: transportation, accommodation and other services related to them. However, logical analysis of the set shows that there are always at least two subjects, hence the set always means at least two services.

Consumer Protection Act (article 5, paragraph 25) tourist package or service package (package arrangement), considered transport, accommodation and other tourist services, or combination of two or more tourist services determined by the trader independently or at the request of the consumer, for a length of 24 hours or a shorter duration that includes one overnight stay, as well as a multi-day stay that includes only the accommodation service in specified terms or for a specified duration irrespective of the separate calculation or collection of individual services.

According to the contract of organization of travel, one of the obligations of travel organizer is to issue a travel certificate or a voucher, including data regarding place and date of issue, contract parties, date of departure and of the end of journey, details concerning transportation and stay, as well as other services included in the flat price. The certificate has multiple functions: first of all, it is a proof on entering into contract of travel (certificate is not a contract of travel); secondly, it serves for

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<sup>3</sup> According to the one of the former theoretical views, package was understood as a combination of at least two services, even when they were of the same nature (Vanderperren, 1968:343). According to the other one, a set of services had to contain at least two services, but one of them always had to be transportation, while the other one did not have to be of the same nature, but it had not be accessory to transportation obligation (Wineersch, 1974:206). This second opinion was being criticized because of the binding character of transportation since there were cases of transportation which was not a part of the contract of organization of travel in practice, e.g. when a traveler used his own vehicle (Gorenc & Šmid, 1999:95.).

protection of interests of a tourist/traveler since the traveler learns about his rights, obligations and responsibilities from it. Contract of organization of travel is a consensual contract and a certificate on travel does not have constitutive character, but is simply a proof of its existence. That is why this contract is entered into and legally binding even if the certificate is not issued. The services described in the travel certificate testify on the content of the contract of travel and they may be the only instrument informing the traveler on the complex content of the contract he entered into, hence the travel organizer is liable for all losses sustained by the tourist/traveler due to his failing to issue the travel certificate or because of its incorrectness. Travel certificate, which is a proof of existence and content of the contract, creates rebuttable presumption, *prima facie* proof that content of the certificate corresponds with the subject of the contract; however, it is possible that such correspondence does not exist and in such cases content of the travel certificate is considered to be correct as long as the contrary is not proved. Travel organizer serves the traveler with a program of travel. Program of travel is a detailed travel arrangement. It contains elaborated content of the organized travel regarding dates and places the traveler will be provided with some services; flat price of services; services not contained in the flat price; advice and information regarding services which are part of the travel arrangement; general conditions of travel etc. If the program of travel does not contain the same data as the travel certificate, and if the traveler was served with it prior to issuing the travel certificate, then travel certificate may include only reference to the program of travel (Vujisić, 2009:237-238).

As far as other characteristics of the contract of organization of travel are concerned, in our theory there is consensus that it is a nominate, bilateral, binding, simple and consensual contract, while rare authors add one more characteristic of it – that this contract is most often adhesion contract or standard form contract (Vujisić, 2009:238).

That is to say that there is no general consensus about it, but the practice is mainly such, so it well reinforces the theory that this contract, apart from the fact that it is drafted as standard form so it is an adhesion contract, the traveler may accept all the terms and conditions of the contract or refuse them. Some provisions which do not suite the traveler are rarely replaced by new ones or modified in the way they better suit the traveler.

### **Intermediary travel contract**

Intermediary travel contract in Serbia is also regulated by the Law of Contract and Torts (article 880-884). According to its nature, intermediary travel contract is a separate type of travel contract on which legal rules on organization of travel may be applied too in the absence of specific rules (Carić & Kapor, 2000: 498).

By an intermediary travel contract, the intermediary (travel agency as a rule) assumes the obligation to conclude, on behalf and for the account of a traveler, either a contract of organization of travel, or a contract of performing one or several particular services (i.e. travel or accommodation), while the traveler assumes obligation to pay a fee in return. By intermediary travel contract intermediary is authorized to procure on behalf and for the account of a traveler services relating to the travel or accommodation by entering into contracts with service providers and take other appropriate legal actions. Based on the intermediary travel contract, the intermediary is legally connected with the traveler and not with the service provider, since intermediary concludes a contract with service providers on behalf and for the account of the traveler. As for the traveler, he is legally connected with the intermediary (intermediary contract of travel) as well as service providers (intermediary on behalf and for the account of the traveler concludes a contract on transportation, hotel accommodation, or a contract regarding some service related to the travel, or a contract of organization of travel). Based on the intermediary travel contract, the intermediary is authorized to conclude certain contracts, i.e. to take some legal actions relating to the travel or stay on behalf and for the account of the traveler; this power of attorney is, as a rule, a special one. In other words, a traveler authorizes an intermediary to procure one or several precisely specified services, i.e. to conclude some contracts. Most often traveler gives intermediary instructions and intermediary is obliged to abide by those instructions in taking legal actions. Instructions may refer to service providers, transportation, accommodation etc. If those instructions are precise, clear and beyond any doubt, intermediary has to abide by them strictly since the traveler expects him to do so, or rather requests. If a traveler provides only general instructions, the intermediary has to show greater initiative and act in good faith and with due professional care when choosing service providers, concluding contracts with service providers etc. In case of accepting obligation to conclude contract of travel based on the intermediary travel contract, intermediary is obliged at the conclusion of

the contract to issue an acknowledgement of travel and indicate in it that he is acting in the capacity of an intermediary (this acknowledgement may be issued only after conclusion of contract with travel organizer on behalf and for the account of traveler); if intermediary fails to indicate his capacity in the acknowledgement of travel, he is considered as the travel organizer. If intermediary travel contract is related to procuring of a specific service, the intermediary is obliged to issue an acknowledgement relating to such a service, indicating the amount paid for the service; intermediary is, as a rule, obliged to issue the acknowledgement when concluding a contract relating to such a service (exceptionally, he might also issue acknowledgement at the conclusion of intermediary travel contract if for the demanded service he represents service provider at the same time). If the intermediary fails to issue acknowledgement of travel or if data contained in it are incorrect, intermediary is liable for loss caused by him to a traveler. Acknowledgement of travel is a proof of conclusion of intermediary travel contract and its content. Simultaneously with issuing of acknowledgement of travel, intermediary provides traveler with documents necessary for provision of obtained services (fairs etc.). Performance of contractual duties from travel contract, i.e. conclusion of separate contracts relating to transportation, accommodation etc. on behalf and for the account of traveler, a legal connection between traveler and service provider is established. Traveler assumes all the rights and obligations from the contract concluded on his behalf and for his account with service provider. Intermediary assumes no obligation for execution of the contract concluded towards traveler or service provider providing that he acted with due professional care and within the limits of orders and instructions he was given. If intermediary breaches the limits of instructions received, such legal transaction is legally effective for the traveler regarding the service provider if such breach under special circumstances benefited the interests of the traveler. In the reverse case breach of the given instructions would result in legal transaction which is not legally effective for the traveler, and the intermediary would be liable for loss caused to the service provider (in respect to the traveler intermediary he would have been managing business without an order), unless traveler subsequently approves such legal transaction (Vujisić, 2009:244-246).

### **Contract of allotment (contract of engaging catering capacities)**

Contract of allotment in Serbia is also regulated by the Law of Contracts and Torts (article 885-896). By this contract caterer is obliged to place at



the disposal of a tourist agency in course of a specified period of time a number of beds in a designated facility, to provide catering services for persons sent by the agency, and to pay a specified fee, while the agency is obliged to endeavor to fill those capacities or to inform within the determined time limit that it is not possible, and to pay the price for catering services supplied if engaged hotel capacities are used. In practice, contract of allotment is concluded for the purpose of exercising the provisions of contract of organized travel. By this contract tourist agency provides accommodation (and other services) for its clients/persons for whom the travel is organized. It is concluded between tourist agency and caterer (more precisely a hotel), while traveler uses the contracted catering services (the person sent by the tourist agency), who may demand from the travel agency exercising the rights from the contract for organized travel and from the caterer based on the contract of allotment. Although contracting parties are tourist agency and caterer, the caterer does not provide the contracted services to the agency, but to the person sent by the agency, in other words, the guest. The guest is user of services and is in position of the person authorized to receive fulfillment of the contracted services of accommodation, meals etc. The guest is not a direct client of the caterer, but of the tourist agency. Contract of allotment is usually concluded for the period of one season. If contracting parties have not agreed upon its duration, it is assumed that catering facilities are at the disposal for one year. Contract of allotment is a nominate, bilateral, binding contract with permanent considerations and it is a formal contract, it has to be drafted and signed (Carić & Kapor, 2000:499).

Described contracts are in the same way regulated in the region, which is not strange at all since all former SFRY countries have the same legal heritage and until separation of those countries the Law of Contract and Torts was enforced in all of them since 1978, and it is still enforced in the Republic of Serbia with some changes. Analysis of regulations governing contracts of tourism in those countries, and especially in the Republic of Croatia in which tourism as an industry has considerable participation in total gross domestic product, which is not the case in Serbia (Škorić & Jovanović, 2017), shows some common characteristics, as well as certain novelties imposed by the new "millennium". In addition to that, sometimes contract law in tourism as an industry is wrongly neglected by strategic documents about improving quality and total development which neglect significance of normal functioning of legal side of tourist services which may affect quality of services provided. After all, it is a common fact that people are the key factor of success in all industries of a country.

Only good coordination and complementing between so-called material and personnel substrate may provide good business results (Škorić & Jovanović, 2017:603), but this correlation has to be coordinated and controlled through mutual rights and obligations.

### **Contracting parties**

In the above-described contracts, there are following contracting parties: 1) Tourist agency and traveler in the contract of organization of travel; 2) Tourist agency and traveler in the intermediary contract of travel; 3) Tourist agency and caterer in the contract of allotment. Therefore, there are three contracting parties – traveler, tourist agency and caterer.

Clearly, each of those separate contracts is bilateral, which means that they are concluded between two contracting parties, but these three mentioned are always parties to the contract, at least indirectly. Although the Law describes the rights and obligations of contracting parties in details, it is actually a very frequent case that in providing of tourist services both tourist agency and caterer are very important regardless of the fact that, for example in case of contract of organization of travel caterer is not one of the contracting parties. For example, if a tourist agency as organizer of a travel accepts obligation of some organization for traveler, while at the same time it enters into another contract with caterer which does not fulfill its obligations, the very concept and the contracted obligations from the contract of organization of travel may arise disputes. It is the same in case of an intermediary contract of travel in which traveler authorizes a tourist agency to procure on behalf and for the account of traveler specified tourism service. Therefore, if tourist agency is not cautious enough and professional enough in finding the best offer and service for its traveler, if it concludes contracts with a caterer or transporter it has not sufficiently checked etc, the matter of exercising the basic intermediary contract rights and obligations is questionable again. This very easily leads to the conclusion that the traveler as a contracting party in each of tourism contracts is the most "vulnerable" because he is not a professional, nor does he use those services daily (3-4 times a year on the average), which causes more damage to him arising from failure to fulfill all provisions of a contract than to tourist agency or caterer. Precisely for this reason, number and complexity of relations in the tourism market influence complexity of connections established by a tourist agency with other legal entities and travelers or tourists as consumers of their services. Therefore the subject of so-called three-

dimensionality of tourism law relations is frequent (Vukonić, 1993:74). The additional factor influencing complexity of the relations in operations on the tourism market is cooperation with foreign business partners. It is common for small legal entities in the field of agency business, too, because of the nature of their business to cooperate with legal entities from other countries (caterers, providers of transportation services, hotels etc.), as well as foreign tourists (Spasić, 2011:207). In a situation like this legal position of tourist agencies as contracting parties in tourism market in Serbia needs to be addressed at least partially.

Tourist agency in the Republic of Serbia is defined by the Law on Tourism as "a company, entrepreneur or other business entity or a foreign company branch performing business activities of tourist agencies under conditions prescribed by this law" (article 3, paragraph 1, item 12), while the same Law defines operations of a tourist agency as "organization, offer and sale and realization of tourist journeys, trips and providing other services common for tourism business" (article 3, paragraph 1, item 12a). From their occurrence in the mid-XIX century, tourist agencies were primarily intermediaries in tourism. They started organizing tourist travels in the mid-XX century when this business activity gradually takes over intermediary activities (Spasić, 2011:4). The first tourist agency in Belgrade was established in 1919 and it was a branch of the international Wagon Lits Cook, selling tickets in the rail traffic. The first domestic travel agency "Putnik" was established in 1923 in Belgrade as a stock company in which main stock owners were the Ministry of Trade and Industry and the Ministry of Traffic (Putnik travel, 2019). Almost a century later in Serbia, if only tourist agencies – members of the National Association of Tourist Agencies YUTA are observed, there are more than 300 tourist agencies (YUTA, 2019). However, quality of tourism services does not depend on the number of agencies, nor on the number of years of their existence, as we all witnessed that even those tourist agencies with a long tradition and confirmed reputation in tourism market may violate contractual provisions and thus incur losses to travelers. For this particular reason, control and supervision of respective operations of tourist agencies is very important.

As for the travelers, statistics of the Statistical Office of the Republic of Serbia recorded percentage increase in the number of both foreign tourists in Serbia as well as increase in the number of domestic tourists compared to previous years (Statistical Office of the Republic of Serbia, 2019), although those data for this paper may be only partially relevant since the

above mentioned contracts refer to domestic tourists travelling abroad, too.

### **Specific rights and obligations of contracting parties**

In order to fully understand the implementation of a contract, i.e. its legal meaning, we should refer to some particular rights and obligations of contracting parties in case of each of these contracts.

For example, in case of the contract of organization of travel, apart from the obligation of the organizer to provide organization of tourist services agreed upon and traveler's obligation to pay agreed, flat fee, there are some particular rights and obligations of contracting parties, such as:

1. **Replacing a traveler with another person** – A traveler may determine another person to use the services instead of him on condition that such a person meets particular requirements for the specific travel and that passenger reimburses to the travel organizer the expenses incurred by the replacement unless otherwise stipulated by the contract (Article 875 of Law on Contracts and Torts).
2. **Traveler's right to withdraw from the contract** – A traveler may at any time withdraw from the contract, entirely or partially. Should the traveler withdraw from the contract (regardless of the cause of withdrawal), the travel organizer shall be entitled only to reimbursement of current office expenses. In case of an untimely withdrawal from the contract, the travel organizer may request from the traveler compensation in a percentage of the stipulated price. If the traveler withdraws from the contract due to circumstances impossible to avoid or eliminate and which, had they existed at the time of entering into contract, would have amounted to a justified ground for him not to enter into contract, or if the traveler has provided a corresponding replacement for him, or the replacement has been found by the organizer himself, the organizer of the travel shall be entitled only to reimbursement of expenses incurred. Should the traveler withdraw from the contract after the travel has commenced, and the grounds for it were not the circumstances previously specified, the organizer shall be entitled to the full amount of the stipulated price of the travel (Article 877 of Law on Contracts and Torts).
3. **Right of travel organizer to withdraw from the contract** – A travel organizer may withdraw from contract, entirely or partially, without being obliged to redress losses, should prior or in course of performing the contract extraordinary circumstances take place which

could not have been foreseen, avoided or eliminated, and which – had they existed at the time of entering into contract – would have amounted to a justified ground for the travel organizer not to enter into contract. The travel organizer may withdraw from contract without being obliged to redress the loss should there be no minimum number of travelers as anticipated in the certificate of travel, on condition that the organizer notifies the traveler accordingly and in due time (the time shall not be shorter than five days prior to the scheduled date of travel). In case of withdrawing from contract prior to its being performed, the organizer shall retribute to the traveler the entire amount received by him. If the organizer withdraws from contract in course of its performance, he is entitled to equitable compensation to cover the services realized and provided by contract, while he is obliged to take all necessary measures to protect the interests of the traveler (Article 878 of Law on Contracts and Torts).

4. **Change of travel program** – Changes in the travel program may be effected only if caused by extraordinary circumstances. Expenses caused due to changes in the program shall be at the charge of the travel organizer, while reduction of expenses shall be to the credit of the traveler. Changing the stipulated lodging may be effected only by using a facility of the same category, or by using the premises of a higher category and in the place as stipulated by contract – at the charge of the organizer. If essential changes are made to the travel program without justified ground, the travel organizer is obliged to retribute to the traveler the entire amount paid to him if the traveler withdraws from travel due to this. If essential changes in the program are made in course of performing the contract, the traveler – if he withdraws from the contract – bears only actual expenses of the services realized until then (Article 879 of Law on Contracts and Torts).
5. **Raising a stipulated price** - A travel organizer may demand an increase of the stipulated price (only) if, after entering into contract, the foreign currency exchange rate or carrier's tariffs affecting the price of travel have been changed. If the increase of stipulated price exceeds ten percent, the traveler may terminate the contract without being obliged to redress the loss and is entitled to reimbursement of the price paid to the travel organizer (Article 876 of Law on Contracts and Torts).

As far as liability of the travel organizer is concerned, it depends on the fact whether that travel organizer performs some services or he entrusts

other entities to do that. In law theory there are several opinions: according to one of them, travel organizer is liable only for his actions, including liability for bad choice (*culpa in eligendo*), while for actions of third parties he may not be held responsible; according to the second opinion, travel organizer is liable for actions of a third party as service provider, too (Gorenc & Šmid, 1999:107-108). A draft of the International Convention on Travel Contracts contained provisions regarding travel organizer's liability for losses incurred to traveler by complete or partial failure to provide services, while the final document differentiates between losses caused to traveler by failure of travel organizer to provide services from the liability for losses incurred in connection with providing services that may be referred to as *culpa in eligendo* (Vujisić, 2009:243).

In case of an intermediary contract of travel, the intermediary is obliged to perform entrusted services according to the intermediary contract of travel and professional rules of conduct, acting with due attention of travel intermediary. The intermediary is obliged to act in accordance with instructions of a traveler, which usually refer to modalities of accommodation, transportation, place and time etc. If the instructions are of imperative nature, the intermediary is obliged to fully respect them; however, if, according to the intermediary's opinion as a connoisseur of its profession it would not be in the best interest of the traveler, he is obliged to warn him about that and request new instructions. If the instructions are not of imperative nature or if the traveler does not provide the necessary instructions, the intermediary is obliged to proceed in accordance with the best interest of the traveler. Intermediary is obliged to take care of the best interests of travelers, to respect their instructions and to carefully choose service providers, to protect as confidential everything he has learned about the traveler, his luggage, the names of his travel companions etc. Intermediary is obliged to inform traveler on the process of performing of the contract, if circumstances change in the course of performance of services, intermediary is obliged to inform the traveler about that, as well as on occurring complications and ask for new instructions (especially if the previous instructions were of imperative nature). Upon performed intermediary contract of travel, intermediary is obliged to inform the traveler of the legal transaction (the traveler must know that the legal transaction has been concluded, its content, the service provider that should provide the services etc.) Travel intermediary is also obliged to give the traveler all the necessary documents relating to the concluded contract with service provider (fairs etc.) so as to enable

traveler to present himself to the service provider as a legitimate beneficiary of the rights acquired on his behalf and for his account (Kapor & Carić, 2000:498-499).

In case of a contract of allotment, in which contracting parties are tourist agency and caterer, obligation of the tourist agency is to fill the capacities placed at his disposal (obligation of trying to fill caterer's designated facilities, i.e. in contracts with clause *del credere* to fill all caterer's facility).

Tourist agency is obliged to issue all persons sent by it on the ground of an allotment contract a particular certificate/voucher, order (made out to name or to a specific group of persons; it is not be transferrable and contains an order to the caterer to supply services indicated therein; it serves as proof that the person indicated is a client of the tourist agency which concluded the contract of allotment with the caterer; this certificate serves as a ground for settling mutual claims between the tourist agency and the caterer.)

A caterer is obliged to make available, during a specified period of time, the stipulated number of beds and to supply the persons sent by the tourist agency with services indicated in the particular certificate (the caterer may not make an agreement with another tourist agency for engaging capacities which have been already reserved on the ground of an allotment contract). A caterer is obliged to supply persons sent by the tourist agency with services of the same quality as the ones extended to persons with whom he has entered into a direct agreement on catering services. Furthermore, the caterer is obliged to provide agreed quality of services (Vujisić, 2009: 249-250).

Some travelers as the third party sustained losses exactly arising from this kind of contract last year since contract of allotment between tourist agency "SAB" from Serbia was not performed with caterers (some of them) from Greece, according to claims of owner of the agency (Mondo, 2019). Against this agency offence proceeding was initiated as well as proceeding for withdrawal of license.

### **Enforcement of rules governing contracts in tourism**

From a legal perspective, most of the concluded contracts in tourism are performed without any issue and need for any control over their

realization. However, a question of what if some of the parties does not fulfill its obligations arises. Only in that case, there is control and oversight which may be multiple and on several different levels. They are legally regulated by the Law on Contracts and Torts, the Law on Consumer Protection, the Law on Tourism and Law on Inspection Oversight. In the first place, there is so-called preventive control and oversight of operations of every licensed tourist agency by tourism inspectors in accordance with the Law on Tourism and the Law on Inspection Supervision. Additionally, introduction of licensing of tourist agencies, among other things, imposed providing specific kinds of insurance from professional liability of tourist agencies. Penalty clauses of the Law on Tourism stipulate considerable fines for some failures in operations which may act as preventive measures on future operations of agencies as the means to avoid paying of high fines. Some bylaws regarding operations of tourist agencies contain precise provisions on obligations of agencies relating to registering every single contract and data they are obliged to save in their offices.

The National Association of Travel Agencies (YUTA) has a significant role in the protection of travelers as consumers, which enables resolving of disputes before arbitration of the association if the agency is its member. On the other hand, tourist agencies may enforce their rights before competent courts if travelers fail to fulfill their obligations arising from the concluded contracts. However, it is evident that tourist agencies have definitely developed a good mechanism for protection of their rights and that travelers are those who need to require protection of their rights more frequently. Their basic right to the realization of the stipulated and organized travel, if it may not be realized, turns into the right to claim losses due to unfulfilled contractual obligations of tourist agency. However, a part of those losses which has to be calculated in the incurred losses is not solely of financial nature – reimbursement of the money paid etc. but also other types of losses caused by cancellation of travel arrangement which may have been planned several months in advance. That type of damage called non-economic loss is hard to be presented in terms of money and it is very hard to prove it during certainly long lasting and exhausting court trials and arbitration.

### **Conclusion**

Based on the analysis of available regulations relating to the mentioned tourism contracts, theoretical disputes regarding contracting parties, their



rights, obligations and responsibilities, as well as the means of control of their performance and the protection of violated contractual rights due to unfulfilled obligations etc., and starting from the primary hypothesis that the contracts in most cases are the contracts of adhesion, the authors of the paper have come to the following conclusions:

1. Contracts in tourism, and especially the contract of organization of travel, are contracts of adhesion drafted by travel organizers, while travelers have only the choice to take them or leave them. They rarely have the right to influence its content and modify it. There are attempts to make this claim somewhat less important by stating the fact that there is a large number of travel organizers (although they are mostly tourist agencies), so travelers still have a choice between licensed organizers which do not need to have the same terms and conditions for organizing travels.
2. Travelers are those with the most vulnerable rights in all contracts and those who may indirectly suffer losses from, for example, bad business operations of an agency and/or bad choice of business partners which are supposed to extend certain tourist services to travelers.
3. Current mechanisms of supervision and control in the first place of operations, as well as the realization of legal affairs of tourist agencies, are brought to a higher level of protection of travelers relative to the previous period due to the adoption of the new Law on tourism.
4. The quality of tourist services most definitely depends on the realization of contracts in tourism and it is a considerable part of it since the contracted tourist services if realized precisely as stipulated are considered to be of satisfactory quality and they provide a good basis for further development of tourism as a business.

### References

1. Bogdan, Lj., Mesarić Peras, M. (2015). Važnost turističkih ugovora u Republici Hrvatskoj te kratki prikaz ugovora i prava putnika u Saveznoj Republici Nemačkoj, *Zbornik radova Međimurskog veleučilišta u Čakovcu*, Vol. 6 No. 2, 35-40.
2. Carić, S., Kapor, V. (2000). *Ugovori robnog prometa*, Centar za privredni konsalting, Novi Sad.

3. Consumer Protection Law ("Official Gazette of RS" No. 62/2014, 6/2016 – another law and 44/2018 – another law).
4. Directive 2015/2302/EU on package travel and linked travel arrangements <https://publications.europa.eu/en/publication-detail/-/publication/d9dbbde8-9fd7-11e5-8781-01aa75ed71a1/language-en> (20 January 2019).
5. Gorenc, V., Šmid, V. (1999). *Poslovno pravo u turizmu i ugostiteljstvu*, Zagreb.
6. Law on Contracts and Torts ("Official Gazette of SFRY", No. 29/78, 39/85, 45/89 - YCC and 57/89, "Official Gazette of SRY", No. 31/93 and "Official Gazette SCG", No. 1/2003 – Constitutional charter).
7. Law on Inspection Oversight ("Official Gazette of RS" No. 36/2015, 44/2018 – another law and 95/2018).
8. Law on Tourism ("Official Gazette of RS" Nos. 36/2009, 88/2010, 99/2011 - another law, 93/2012, 84/2015 i 83-2018 – another law).
9. Mondo, *Turistička agencija SAB travel ostaje bez licence* <http://mondo.rs/a1114359/Info/Drustvo/Turisticka-agencije-SAB-Travel-ostaje-bez-licence.html>. (20 January 2019).
10. *Putnik Travel*, [www.putniktravel.rs](http://www.putniktravel.rs) (20 January 2019).
11. Škorić, S. (2009). *Tržišna dominacija i njena zloupotreba*, Zadužbina Andrejević, Beograd.
12. Škorić, S., Jovanović, V. (2017). Impact of state aid and legislation on development of rural tourism. *The Second International Scientific Conference "Tourism in function of development of the Republic of Serbia"*, Vrnjačka Banja, 1-3 June, 411-428.
13. Škorić, S., Jovanović, V. (2018). Trends of engagement of workers in tourism - registered and employment (Persons in employment), in: *Thematic Proceedings "TOURISM IN FUNCTION OF DEVELOPMENT OF THE REPUBLIC OF SERBIA - Tourism in the Era of Digital Transformation"*. Faculty of Hotel Management and Tourism in Vrnjačka Banja, Vrnjačka Banja, 31 May-2 June, 603-621.

14. Spasić, V. (2011). *Poslovanje turističkih agencija i organizatora putovanja*, Univerzitet Singidunum, Fakultet za turistički i hotelijerski menadžment, Beograd.
15. Statistical Office of the Republic of Serbia [www.stat.gov.rs/sr-latn/oblasti/ugostiteljstvo-i-turizam/turizam](http://www.stat.gov.rs/sr-latn/oblasti/ugostiteljstvo-i-turizam/turizam) (20 January 2019).
16. The Tourism Development Strategy of the Republic of Serbia for the Period from 2016 to 2025 ("Official Gazette RS" no. 98/2016).
17. Vanderperren, W. (1968) *Travel agents and travelers*, Antwerpen.
18. Vujisić, D. (2009). *Poslovno pravo – trgovinsko pravo*, Besjeda, Banja Luka.
19. Vukonić, B (1993). *Turističke agencije*, Školska knjiga, Zagreb.
20. Wineersch, E. (1974) *Le contrat touristique*, Brisel.
21. YUTA, [www.yuta.rs](http://www.yuta.rs) (20 January 2019).