

## **Package Tour Contracts in Turkish Law**

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### **Abstract**

The changing the understanding of vacation has led people to package tours where all the facilities are provided within a single contract all inclusive, instead of classical-style holidays.

Package tours have become preferable because of the opportunities they offer and by saving the consumer from the time and effort spent on planning. However, with the spread of package tours, an increase is observed in legal disputes between the contracting parties. Therefore, examining the legal nature of package tour contracts and determining the rights and obligations of the parties will help in resolving legal disputes that arise in practice.

In our study, package tour contracts are examined in terms of their elements, legal nature, parties, contractual form condition, mandatory content, amendments, and termination. Also, suggestions are made for amendments in terms of some provisions.

**Key words:** Package Tour Contract, Consumer Protection, Travel.

**JEL Code:** K 12, K 13

### **1. Introduction**

Holiday contracts are regulated in the provisions of article 50 and article 51 of the Law on the Protection of the Consumer (Official Government Gazette, November 28, 2013, 28835) dated 7.11.2013 and numbered 6502. While article 50 of the law regulates time vacation, timeshare and long-term vacation contracts, article 51 is related to package tour contracts.

The most distinctive feature of package tour contracts is that the performance of more than one act is foreseen for the tour organizer. The content of these acts has been determined in the definitions in the law and regulation.

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According to the article 51/1 of Law on the Protection of the Consumer “package tour contracts are contracts in which at least two of the following services are sold or promised to be sold at an all-inclusive price by package tour organizers or intermediaries, and the service covers a period of more than twenty-four hours or includes overnight accommodation: a) Transport b) Accommodation c) Other tourism services not dependent on transportation and accommodation services.”

A parallel definition is also included in the at the article 4/1-f of Package Tour Contracts Regulation (Official Government Gazette, January 14, 2015, 29236).

There are also provisions regarding package tours in the Travel Agencies and Travel Agencies Association Law (Official Government Gazette, September 28, 1972, 14320) dated 14.9.1972 and numbered 1618, which regulates the obligations of travel agencies. The Law on the Protection of the Consumer has been referred to, for the definition of package tour in the provision of article 1/ç of the above-mentioned law.

Also, the concept of package tour is included in the “definition of travel agency” in article 1/e of the Travel Agencies and Travel Agencies Association Law. According to the provision of the article, a travel agency is a commercial enterprise working for profit purposes that is authorized to provide tourism-related information to tourists, to create package tours and tours, to give accommodation, transportation, excursion, sports, and entertainment services within tourism purposes, by means of its own or other travel agencies.

As it is understood from the provision, the authority to organize and market package tours in our country is given to travel agencies. However, those who are not travel agencies and organize package tours, even though they are not authorized, will be responsible like travel agencies, for the purpose of protecting the consumer. In addition, there will be legal sanctions due to the unauthorized activities of those persons.

In the Travel Agencies and Travel Agencies Association Law, there are also some regulations regarding package tours in the provisions regarding the obligations of travel agencies. The relevant provisions will also be examined in the relevant titles of this study.

## **2. Legal Nature of the Package Tour Contract**

The legal nature of the package tour contract is controversial in the doctrine. According to the majority opinion (Zevkliler and Gökyayla, 2020, p. 20; Gümüş, 2017, p. 7; Şahin, 2022, p. 69; Gülseren 2015, p. 56; Sert, 2015, p. 227), the person who organizes the trip in a package tour contract undertakes the acts of arranging the tour for a fee (a contract of work and services or a contract of

representation), providing accommodation (rent) and providing meal (sale on the condition of successive delivery), and there is a combined contract, which is a type of mixed contracts.

Some authors state that (Aslan, 2021, p. 253) the package tour contract has a legal name, that a contract that is even partially regulated in the law should not be qualified as an anonymous contract, and that these contracts, which are defined and named in the law, are now considered as named contracts.

Other authors (Ceylan, 2015, p. 76, 77), on the other hand, agree that since the travels may differ from each other due to the characteristics of the contract, it is necessary to determine which elements of the contracts contain separately according to the characteristics of the contract, or to decide by considering the elements in an average package tour contract, for this reason the package tour is a *sui generis* contract.

In mixed combined contracts, one of the parties is burdened with more than one primary performance obligation, while the other party is burdened with a single performance obligation. The single performance obligation in question is usually in the form of a payment of some money (Soylu, 2022, p. 59; Akkurt, Erdoğan, Tokat, 2020, p. 406). Since it meets the aforementioned conditions, we agree with the majority opinion that the package tour contract is a mixed combined contract.

It should also be noted that package tour contracts are perfect reciprocal contracts and create a continuous debt relationship. (Aslan, 2021, p. 253).

In the provision of article 3 (2) (b) (iii) of the EU Directive of 2015/2302 “On Package Travel and Linked Travel Arrangements”, it is stated that if a travel is “advertised or sold under the term ‘package’ or under a similar term” it will be subject to package tour arrangement. It is stated that the trust created that the traveller will be protected subject to package tour legislation is hereby preserved, and a clear regulation in this regard in our law would be beneficial. (Sayın, 2020, p. 985).

Travel models, called dynamic packaging are not included in our legislation. However, in the Article 3 (2) (b) (v) of EU Directive these are also included in the scope of protection. According to the article, “‘package’ means a combination of at least two different types of travel services for the purpose of the same trip or holiday, if: v) purchased from separate traders through linked online booking processes where the traveller's name, payment details and e-mail address are transmitted from the trader with whom the first contract is concluded to another trader or traders and a contract with the latter trader or traders is concluded at the latest 24 hours after the confirmation of the booking of the first travel service.” It may be beneficial to foresee a similar regulation in terms of our law.

### **3. Parties to the Contract**

In terms of package tour contracts, it is seen that one of the parties of the contract is the consumer and the other is the package tour organizer or its intermediary.

The real or legal person acting for non-commercial or non-professional purposes is called a consumer. However, people who benefit from package tour services within the framework of their commercial or professional activities are also considered as consumers within the article 51/9 of the Law on Consumer Protection.

Since those travelling for professional or commercial purposes are also dependent on the organization of the package tour organizer and they need to be protected against the multitude of acts and providers, they are also entitled to benefit from the rights provided to other travellers (Sayın, 2020, p. 982; Şahin, 2022, p. 69).

Package tour organizer is the person who organizes the package tour including more than one service. The package tour organizer can market the package tour he/she has prepared, or he/she can use the intermediary to market it. Thus, the intermediary is the person who markets the package tour prepared by the organizer. According to Article 17 of the Package Tour Regulation “In cases where the package tour organizer does not have a representative in Turkey, the package tour intermediary is responsible as the package tour organizer.”

Independent service provider is the real or legal person who offers one or more of the services included in a package tour to the participant in accordance with the contract made with the package tour organizer or intermediary. Independent service providers perform acts such as transportation, hosting, taking on tours, as a performance assistant. Liability here is the liability for the actions of the auxiliary persons (Aslan, 2021, p.252) within the scope of article 116 of the Turkish Code of Obligations (Official Government Gazette, February 2, 2011, 27836) dated 11.01.2011 and numbered 6098. There is no contractual relationship between the independent service provider and the consumer, the consumer is the third person the contract is made in favour of, however, claims arising from tort may be brought against the independent service provider (Aslan, 2021, p.252).

### **4. Terms of Package Tour Contracts**

#### **Providing at Least two of the Tourism Services Together**

For a package tour to be mentioned, one of the transportation or accommodation services must be included in the package tour as an essential act. In cases where one of them is included in the package tour, at least one of the

services that are not considered as auxiliary services should be included in the package tour. Therefore, a package tour may consist of transportation and accommodation services. Or it may include transportation and excursion service. Alternatively, accommodation and concert services can be found. In summary, the package tour must include at least one of the two primary acts, and in tours where only one of the two primary acts is present, one of the other tourism services must be present. The regulation foresees other tourism services as renting a car, visiting cultural, historical, or touristic places, organizing or watching shows, concerts or sports events or guiding.

To be able to mention a package tour, it is important that the integrity of the acts is ensured (Şahin, 2022, p.69; Aslan, 2021, s. 246; Gülseren, 2015, p.57). If at least two of the individual travel acts, which are transport and accommodation (accommodation-staying overnight), transport and tour, accommodation and tour, are performed, the integrity of the acts is mentioned (Aslan, 2021, p.246; Şahin, 2022, p. 69). Due to the different nature of the acts, the fact that they are fulfilled by different people does not harm the integrity of the essential acts in the package tour contract (Sert, 2015, p 224).

### **All Inclusive Price**

In principle, for a contract to qualify as a package tour contract, the all-inclusive price must be agreed. As a matter of fact, the law includes the statement that “it is sold or promised to be sold at an all-inclusive price”.

Pursuant to Article 51/2 of the Law on the Protection of the Consumer, the provisions of this article are also applied in cases where the details of the tour are determined by the package tour organizer, intermediary or consumer or if the services within the same package tour are billed separately.

In conclusion, a package tour contract will be deemed to have been created, even if there is separate invoicing for the acts included in the package tour content.

Package tour organizer or agent cannot charge any other fee than agreed fee (Şahin, 2022, p. 70).

The fact that the consumer pays a single fee in return for the services included in the package tour contract constitutes a presumption that the travel acts are performed. The purpose of the "all-inclusive price" concept in the law is that the party who has drawn up the contract cannot increase the agreed fee in violation of the good faith rule (Sert, 2015, p. 225).

Another issue that should be evaluated in terms of package tour contract is the extra tours that take place during the trip. (Sayın, 2017, p. 54; Kaynar, 2019, p. 17; Şahin, 2022, p. 70). At this point, it should be noted that in when it is clearly stated from the beginning that some services are extra, it cannot be expected that

the services where participation is optional are included in the all-inclusive price (Kaynar, 2019, p. 17).

According to article 14 9.36 of the Kütahya Chart (TÜRSAB Tourism Consumer Demand Evaluation Chart); ‘‘Extra tour means a tour that is prepared in the form of a half-day, full-day, or night tour, including guidance, transportation, and services, and which is subject to a separate fee, organized in the presence of a certain number of participants. If the tour is not specified as an extra in the contract, it is included in the price and it is possible to participate without paying.

Those who do not participate in the extra tour should be dropped off at a suitable place by the guide and picked up from the same point at the end of the tour (Sayın, 2017, p. 54; Kaynar, 2019, p. 17; Şahin, 2022, p. 70).

### **Duration of the Contract**

According to the Law on the Protection of the Consumer, the service provided must exceed twenty-four hours or include overnight accommodation. The duration included here is related to the element of the integrity of the acts (Şahin, 2022, p. 70). As a result, day tours or excursions are not accepted as package tours. (Öksüz, 2006, p. 339; Şahin, 2022, p. 70). The minimum duration determination ensures that the package tour has a minimum organizational scale (Şahin, 2022, p. 70), and short- or half--day trips are excluded from the scope of the package tours (Aslan, 2021, p. 248).

### **Form of the of the Contract**

According to the article 51/5 of the Law on the Protection of the Consumer, package tour organizers or intermediaries are obliged to give a copy of the package tour contracts, which are established as written or distance contracts, to the consumer on paper or through a permanent data storage.

According to the article 8 of the Package Tour Contracts Regulation, it is obligatory that written or distant package tour contracts should be arranged in a clear, simple, and readable manner with a minimum of twelve font size, in an understandable language, and a copy of these should be given to the participant on paper or with a permanent data storage.

According to some authors (Aslan, 2021, p. 254), it is not necessary to make the contract in writing. In this context, the legislator has brought the form requirement with the aim of assigning responsibility to the package tour organizer, and the form is not a validity condition. According to some authors (Şahin, 2022, p. 72) the form in the package tour contract is the validity condition and since the formal requirement is put forward for the protection of the consumer, the consumer should be able to claim the formal deficiency.

In our opinion, the acceptance of the written form as a condition of validity and the invalidity of the contracts not made in writing will be against the rights of the consumer. Since the condition of being written is brought for the purpose of protecting the consumer, it will not be appropriate to accept the condition of being written as a condition of validity. Failure to prepare the package tour contract in the form as stipulated in the law will result liability of the package tour organizer. An administrative fine is stipulated in accordance with Article 27/2 of the Travel Agencies and Travel Agencies Association Law referring to article 10/c. According to the article 10 of this law, travel agencies must comply with the following term: “c) To give the consumer a copy of the contract showing the detailed program and information on all the services offered and which insurance company the package tour program is insured by.”

### **Mandatory Content of the Contract**

In accordance with the Package Tour Contract Regulation article 5, the total price of the package tour including taxes, the prepayment amount, and the date the remaining price will be paid should be written in the “brochure” to be given to the consumer in advance. In addition to these, if it is within the scope of the services the package tour, all details below mentioned regarding the package tour must be included in the brochure.

- a) The start and end date and place of the journey,
- b) The type of transportation vehicles used and the class of the journey, departure and return dates, times and places,
- c) The type, location, qualifications, class of the accommodation and the type of accommodation applied in Turkey, including the dates of accommodation. If different, warning regarding this difference,
- d) Meal plan,
- e) The route to be followed during the trip,
- f) Information on passport, visa, age and health conditions in accordance with the characteristics of the package tour,
- g) If a minimum number of participants is foreseen for the arrangement of the package tour, this number and if this number is not reached, the deadline to notify the participant of the cancellation of the package tour,
- h) Information on compulsory insurance and other insurances, if any, according to the Travel Agencies and Travel Agencies Association Law No. 1618 dated 14/9/1972, ğ) Information on tourist guidance services.

According to the article 6 of the Regulation, in the package tour contracts, in addition to the information in article 5 of the regulation, if it is within the scope of the services that constitute the package tour, it is obligatory to include the following in the contract:

- a) The package tour organizer or its agent and representative, if any, and the participant's name or title, full address, telephone and other contact information,

- b) The destinations of the package tour and the dates of stay in case of staying for a certain period,
- c) The total price including taxes of the package tour in Turkish Lira,
- d) terms of price change and taxes, duties, fees, and similar legal obligations not included in the package tour price,
- e) payment plan and method,
- f) Special requests notified by the participant to the package tour organizer or agent before the contract is concluded and accepted by the parties,
- g) Force majeure situations and the rights and obligations of the parties in such cases,
- h) Terms of withdrawal and termination from the contract.

The information that should be included in the brochure and package tour contract is regulated in detail in the Regulation to prevent disputes that may arise regarding the contract and to protect the consumer as package tour contracts are very complex and are of a nature that can cause conflict (Aslan, 2021, p. 255).

According to the article 5 of the Law on the Protection of the Consumer unfair terms in the contracts concluded with the consumer are strictly null and void. The provisions of the contract other than unfair terms remain valid. Therefore, if there are unfair terms in the package contract, those terms would be invalid, and the other parts of the contract will be performed. For example, the terms stating that the TÜRSAB Arbitration Board is authorized in disputes arising from the contract are considered as unfair terms in this context (Ceylan, 2015 s.83).

According to the article 12/a of the Travel Agencies and Travel Agencies Association Law “within the scope of the package tour they organize, Travel agencies, in package tours sold in Turkey are obliged to insure the responsibilities that may arise from not providing the services they have committed to the customer for any reason, including the bankruptcy of the agency, or not being given as promised. In this case, the liability of the insurer should be at least as much as the package tour cost. The customer can claim the loss covered by the insurance directly from the insurance company.”

According to the article 12/ b of the same law, “when issuing a package tour contract, travel agencies are obliged to inform that the cost of returning the customer to the exit point in case of accident or illness and, damages and treatment costs arising from all kinds of accidents can be insured within the policy limit.

## **5. Amendments to the Contract**

The transfer of the contract, the change of content and the change of price appear as amendments in the package tour contract.



The consumer has the right to transfer the package tour contract without giving any reason (Aslan, 2021, p. 261). According to the article 15/1 of the Regulation, the transfer must be notified in writing or with the permanent data provider to the tour organizer seven days before the package tour starts. Contract provisions that prevent the consumer's right to transfer are invalid (Aslan, 2021, p. 261).

According to the article 15/2 of the Regulation, the transferor and the transferee of the package tour contract are jointly responsible for the payment of the remaining amount and all additional expenses arising from the said transfer to the package tour organizer or the intermediary. However, these costs must be reasonable and, in any case, must not exceed the actual cost incurred by the package tour organizer or intermediary.

Pursuant to Article 5/4 of the Regulation, the program in the brochure can be changed, if it is clearly stated in the brochure that there may be amendments and notified to the participant before the contract is concluded. After the contract is established, it can be amended with the express agreement of both of the parties.

The consumer is not obliged to accept the program changes regarding the essential elements that have taken place after the contract is made (Aslan, 2021, p. 262). In this case, the consumer's alternative rights will emerge. The consumer may demand the exact performance of the contract (Article 10/3-c of the Regulation). However, if specific performance is not possible, the consumer may withdraw from the contract. In this case, it is obligatory to return the entire amount paid within fourteen days at the latest, without any deductions (Article 10/4 of the Regulation). Other optional rights of the consumer are to participate in another package tour of equal or higher value offered by the package tour organizer or agent without paying any additional cost (Article 10/3-a of the Regulation), or to participate in a package tour of lower value, provided that the price difference is returned to him/her (Article 10/3-b of the Regulation).

The Regulation provides for a separate provision regarding price changes. Pursuant to Article 9, price changes cannot exceed 5% and are possible in the following cases: An extraordinary change in the exchange rate, an extraordinary change in fuel expenses, and the price change arising from changes in taxes, duties, fees, and similar legal obligations. Price changes within this scope should be notified to the consumer at least 20 days before the tour date stipulated in the contract. The provisions of the regulation lead to the conclusion that it is not possible for the tour organizer to change the price for any other reasons. However, it is possible for the tour organizer to request an adjustment if the price stipulated in the contract would be economically disastrous for the tour organizer, if implemented (Aslan, 2021, p. 263).

## **6. Termination of the Contract**

The package tour contract will end with the execution of the contract. It is accepted that the package tour contract will also end in the event of the death or

the loss of legal capacity of the consumer, benefiting from the tour. In addition, it is foreseen that the contract will expire in case of bankruptcy of the tour organizer (Sert, p. 2015, 235).

According to the law and regulation, it is possible to specify the other reasons for the termination of the package tour contract as violation of the contract, cancellation of the contract by the tour organizer, termination of the contract by the consumer, and withdrawal from the contract due to changes in the essential elements of the contract (Şahin, 2022, p. 72).

In case the package tour organizer or intermediary cancels the tour before the start of the package tour for a reason not caused by the participant, the participant can use the rights granted to him in the third paragraph of Article 10 of the Regulation which are “a) Participating in another package tour of equal or higher value offered by the package tour organizer or its intermediary, without paying any additional cost, b) Participating in a package tour with a lower value, provided that the price difference is returned to him, c) Withdrawing from the contract without paying any compensation.”

If the minimum number of participants stipulated for the arrangement of the package tour is not reached, the tour organizer or the intermediary may terminate the contract without paying any compensation, if it is notified in advance that the tour will be cancelled in that case.

Also, in case of force majeure, the tour organizer or intermediary may terminate the contract without paying any compensation. In both cases, the payment should be refunded, and documents related to the debt should be returned to the consumer.

According to the article 13/1 of the Regulation, “Without prejudice to the provisions of the Travel Agencies and Travel Agencies Association Law regarding compulsory insurance, the package tour organizer or the intermediary is responsible for any damages incurred by the participant due to the failure to perform the contract at all or as required. The participant may also claim appropriate compensation for wasted vacation time.”

It is also stated in article 13/2 that “In case the breach of contract arises from the behaviour of independent service providers, the provision of the first paragraph shall apply.”

The nature of the compensation that the consumer can claim for the wasted vacation time is mostly accepted as a non-pecuniary compensation (Aslan, 2021, p. 258; Ceylan, 2015, p. 92). Şahin (2022, p. 74), on the other hand, is of the opinion that there is no appearance of moral compensation here. He states, in the presence of the necessary conditions, it is possible to compensate the non-

pecuniary damage according to the general provisions, even if there is no such special provision.

In our opinion, there is a non-pecuniary compensation and the hesitations that may arise about compensation claims regarding wasted vacation time have been eliminated with the express provision of the Regulation.

According to the article 16 of the Regulation about the termination of the contract;

“(1) The participant may terminate the contract unilaterally, provided that the termination request is notified to the package tour organizer or agent in writing or with a permanent data store.

(2) In the termination notifications made at least thirty days before the package tour begins, the participant's fee is refunded to the participant without any deduction, excluding the expenses arising from obligatory taxes, fees, and similar legal obligations.

(3) For the termination notifications made less than thirty days before the start of the package tour, a deduction may be made at a certain amount or rate if it is specified in the package tour contract.

(4) In the event that the participant makes a termination notice less than thirty days before the start of the package tour due to a situation or force majeure that he could not foresee and prevent despite all due diligence, the price paid by the participant will be returned to him, except for the costs arising from compulsory taxes, fees and similar legal obligations and the non-refundable costs that are paid and documented to third parties.

(5) Refunds to be made within the scope of this article must be made to the participant within fourteen days after the termination notification is received by the package tour organizer or intermediary.”

According to the regulation on “Amending Package Tour Contracts Regulation (Official Government Gazette, May 15, 2020, 31128)”, a transitional article has been added to the Package Tour Contracts Regulation.

“Termination of the contract due to the Covid-19 outbreak:

TRANSITIONAL ARTICLE 1 –

(1) It is essential that the refunds made within the scope of Article 16 of this Regulation are made within fourteen days after the notification of termination reaches the package tour organizer or intermediary. However, due to the COVID-19 outbreak, in the refund of package tour contracts that are foreseen to be executed as of 5/2/2020 and include air transportation, the flight fee paid and documented by the package tour organizer or intermediary to air transport operators is returned to the participant within fourteen days.

(2) Provided that the participant is informed and expressly approved, the fee paid by the participant, excluding the expenses arising from obligatory taxes, fees, and similar legal obligations, is refunded within fourteen days following the sixtieth day after the flight ban is lifted.

(3) The burden of proof shall be borne by the package tour organizer or its intermediary to inform the participant of his preference for the first or second paragraph and to obtain his approval, in writing or with a permanent data store.”

The transitional article was criticized (Girgin, Löw, 2020, p. 575) for the fact that the refund to be paid to the participants was postponed to an indefinite date, as it stipulated “fourteen days following the sixtieth day after the flight ban was lifted”. It is stated that, while within the framework of the relevant EU Directive, the traveller can receive a refund of the price paid within 14 days of cancellation, this is not possible in Turkish Law due to the transitional article.

## **7. Conclusions**

In Turkish law, package tour contracts are regulated by the Law on Consumer Protection, Travel Agencies and Travel Agencies Association Law and Package Tour Contracts Regulation. When the relevant Laws are examined, it is seen that the person who benefits from the tour as a party to the package tour agreements is defined as the consumer. However, the Regulation uses the term participant. It will be useful to eliminate the terminology difference between these legislations (Sayın, 2020, p. 985).

Although the Law on Consumer Protection and Package Tour Contracts Regulation mention the package tour organizer and the intermediary, the activity of organizing or mediating a package tour should only be carried out by authorized travel agencies (According to the Travel Agencies and Travel Agencies Association Law). However, the consumer will also be protected if package tours are arranged or mediated by unauthorized persons who are not travel agencies. In addition, there will be legal sanctions against those who engage in unauthorized package tour activities.

Travels marketed under the name of "package tour", although they do not carry the necessary elements of a package tour, are not included in the scope of package tour protection in our legislation (Sayın, 2020, p. 982). In Article 2 of the Regulation titled "Scope", it is stated that "This Regulation covers contracts under the names of package tour, package holiday, package travel or similar." Since it is not clearly stated that travels marketed under the name of "package tour" although they do not carry the necessary elements, will be included in the package tour protection within the scope of this Regulation, travels marketed with such misleading statements are not deemed to be package tours according to our legislation. It would have been beneficiary to take those misleading travels within the scope of the package tours, parallel to the regulations of the EU Directive (2015/2302).

Also, dynamic packaging travel model is not included in the scope of our legislation. A regulation in this regard parallel to the regulations of the relevant EU Directive would be beneficial (Sayın, 2020, p. 986).

Finally, the transitional article about the Covid-19 outbreak which has been added to the Package Tour Contracts Regulation is justifiably criticised for postponing the refund to be paid to the participants to an indefinite date (Girgin, Löw, 2020, p. 575). If a situation like Covid-19 reoccurs, it would be appropriate to resolve the issue within the framework of the existing laws and regulations in terms of consumer protection and not to apply this transitional provision or similar provisions.

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