

THE DIFFICULTIES ON PROTECTION OF TOURIST'S RIGHTS OF CONSUMERISM IN TURKEY¹

TÜRKİYE'DE TURİSTLERİN TÜKETİCİ HAKLARININ KORUNMASI İLE İLGİLİ SORUNLAR

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ÖZ

Turistlerin faaliyetleri sırasında olası sorunlarla karşılaştıklarında, kendi hak ve sorumluluklarının farkında olup, özellikle talepleri yasal bir temele dayanıyorsa adalet aramaları ve haklarını savunmaları daha kolaydır. Tüketicilerin, satın alma sonrası hakları ile ilgili yeterli bilgiye sahip olmadıklarını göz önüne aldığımızda, örneğin information office gibi danışma merkezlerinden destek almaları şarttır. Turistler seyahat ederken aynı zamanda tüketicidirler. Turizm sektörünün ürünü ya tatil ya da seyahattir. Turistik ürünlerin benzersiz özellikleri, turistlerin korunmasını zorunlu kılmaktadır.

Bu çalışmanın amacı, turistlerin tüketici haklarını korumaya yönelik, mevcut düzenlemeleri araştırmak, uygulamalardaki süreçlerini değerlendirmek, Tüketicilerin Korunması Kanunu çerçevesinde Avrupa Birliği'nde kullanılan uygulamalar ile karşılaştırmak ve bazı önerilerde bulunmaktır. Ayrıca, bu makalede yönetmelikte belirtilen terimlerin uygulama seviyeleri incelenmekte ve bu uygulamalarda sıkça karşılaşılan sorunlar araştırılmaktadır.

Anahtar Kelimeler: Turist Tüketici Hakları, Tüketim, Tüketici Kanunu

ABSTRACT

When tourists encounter potential problems during their activities, they are aware of their rights and responsibilities, and it is easier for them to seek justice and defend their rights, especially if their demands are legal. Considering that consumers do not have enough information about their post-purchase rights, they should get support from counseling centers, for example, information office. Tourists are also consumers when traveling. The product of the tourism industry is either holiday or travel. The unique characteristics of touristic products necessitate the protection of tourists.

The aim of this study is to investigate the current regulations of tourists, to evaluate the processes in applications, to compare with the practices used in the European Union and to make some recommendations. In addition, in this article, the application levels of the terms mentioned in the regulation are examined and the problems encountered in these applications are investigated.

Keywords: Tourist's Consumer Rights, Consumerism, Consumer Law

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Introduction

The aim of this study is to examine the regulations in the legislation on protection of tourists who are a consumer of consumer services within the scope of the Law Concerning the Protection of Consumers (Law no. 6502 published 27/11/2013 and enacted on 27/11/2013), to evaluate the implementation of the legislation and to protect the tourist effectively to raise awareness and to make suggestions.

Recognizing the rights and responsibilities of the parties in the face of potential problems encountered or encountered during tourism activities, and seeking the right based on the legal basis of the search for rights facilitated. They need to have sufficient information about purchasing, to convey misinformation to them with advertisements and publications, and to protect consumers when it is considered that they are not organized (Knights, 2000; Makela, Peters, 2004). The protection of the tourist cannot be distinguished from the protection of the consumer. At the same time when the tourist holiday, goods and services are bought and consumed. The main product of the tourism sector is vacation or travel. Touristic service and its unique features make it necessary to protect the tourist more seriously than other consumer types. In addition to the above, the level of application of the provisions in the legislation has been examined and the problems encountered in practice have been examined.

A tourist refers to a person who travels to discover new places, to know about new cultures, to rest and to learn. A tourist is also a consumer of property and service as any individual is. Therefore, they naturally have the same rights in terms of fault property and service provided for tourist consumers.

The important parts of marketing operations in tourism are the service quality and consumer satisfaction other than selling a product. Here, it is important to give detailed information to the consumers about the available products, to provide the services committed earlier and to protect them against any risk also in tourism sector as a part of service sector. If a tourist believes that he or she is deceived, then he or she will prefer another country to go on a holiday besides sharing it with close friends and affecting other potential tourists in the future. It is certain that making new customers is much harder and high-cost than reaching available customers (Ünlüönen, 1999).

Consumer Rights Term

Consumer: This is the person who purchases a property and/or a service for specific purposes and uses it as an end user or consumes it. Protection of consumers refers to solving the problems faced during the consumption of property and/or services purchased by the consumers.

Consumer rights are the ones resulting from a purchase of customers. They show up in such cases if the product quality does not meet the expectations of consumers and the products do not last until the end of period committed (Akipek,1996; Kanibir, Saydan, 2006; Ali at al., 2014). If a consumer finds a product with a fault or a damage, he or she can go back to the vendor, and

- Ask for the money by returning back the items purchased
- Ask for a replace with the new one
- Ask for an elimination to remove the faults
- Ask for a discount for the items in an amount of fault.

Consumers also have the right to ask for a compensation in accordance with the conditions provided besides the options stated above (Aslan, 1996, Odabaşı, 1996).

Universal Declaration Of Consumer Rights

The rights accepted by United Nations in 1985 and declared in Universal Declaration of Consumer Rights, requiring all member countries to enact accordingly, are summarized under these main titles (Babaoğlu, Sürgit, 2010; Bayhan, 2011; Deryal, Korkmaz, 2015):

1. Rights to provide basic requirements of consumers: The basic requirements of consumers are accommodation, heating, illumination, finding fresh water to drink and to use, transportation and communication. Every consumer has the right to demand, to reach and to use these in an effective way.
2. Rights to protect health and security: All types of items and services provided for consumers must not have dangerous effects on the life and health of consumers.
3. Rights to protect economic interests: These involve the rights related to the provision of various high-quality items and services for the consumers at affordable prices, enough service network after purchases and protection against unfair provisions, high pressure sales methods and compelling credit terms stated in contracts and other unilateral contracts indicating that the vendor abuses the consumers.
4. Information Rights: These rights involve the acquisition of information to help consumers make a right decision when purchasing an item or a service against any misleading, wrong, missing advertisement, labeling and packaging.
5. Education Rights: These involve the education rights in education institutions for consumers in order to protect, develop, and familiarize their rights and benefits and to be the decision maker instead of being directed by others.
6. Rights to Compensate any Damage: These involve the rights to return back the defective items purchased, to replace them, to re-use after dealing with the defects and to pay a compensation if needed in such cases where the items purchased are spoiled, missing or defective.
7. Representation Rights: These involve the right to take economic policies of governments into consideration, to have representations in public bodies and to receive opinions especially at product development stage in the companies.
8. Right to Live in a Healthy Environment: These involve the rights to protect the nature for today's and future generations against any environmental dangers and to live in such physical environments in accordance with the health conditions.

Consumer Rights in Turkey

The Law on Consumer Rights is put into effect in 23/02/1995, prepared to take precautions in order to protect consumers on a higher level, to make it easier for consumers to seek their rights, to focus on informing consumers on this issue, to lower down the bureaucracy and to organize a fair punishment system.

However, Law No. 4077 has not fully met the complaints from consumers as long as it remains in force. For this reason, the new "Law on the Protection of Consumers" numbered 6502 was adopted on 7.11.2013 and published in the Official Gazette dated 28.11.2013 and entered into force on 28 May 2014. This law, which is still in force, provides consumers with many rights in the contemporary sense.

Tourist Rights Within the Skeleton of Consumer Rights

A-Circuit breaks and long vacation service contracts

ARTICLE 50 -

(1) **A-circuit vacation contract** is a contract established for a long period of one year and allowing the consumer to have one or more overnight accommodation for more than one period during that period.

(2) The fact that the right provided by the vacation contracts is a right or a right does not prevent the application of this article. Pre-paid vacation contract cannot be made with the consumers before the construction permit is issued

(3) A long-term holiday service contract is a contract established for a long period of one year and is entitled to the benefit of discounts or other benefits in connection with accommodation, accommodation or travel together with accommodation or other services within a specified period of time

(4) At least one day before the establishment of the following contracts to the consumer, it is obligatory to provide a preliminary information form which includes the particulars determined by the Ministry:

a) Circuit vacation contracts

b) Long-term vacation service contracts

c) Change contracts

d) resale contracts that the seller or supplier has assisted the buyer in the purchase and sale of the holiday or extended vacation service.

(5) Except for contracts established by means of a distance sale method, the seller or provider is obliged by the consumer to write the contract date in his handwriting and to sign the contract. It is mandatory that a copy of these contracts established in writing or on a distance be given on paper or with a permanent data recorder and a consumer. The provisions of the law foreseeing heavier forms are reserved.

(6) The consumer has the right to withdraw from the contract within fourteen days without any justification and without penal terms. The seller or the provider may not ask the consumer to pay under any name or to issue any document that puts the consumer in debt before the expiration of the period of withdrawal, except for contracts granting time-lapse rights. The circuit breaks, the long-term holiday service contracts and the resale, exchange and other related contracts arranged together with these contracts automatically end with the use of the right to withdraw.

(7) If the price paid by the consumer is covered partly or wholly by a lender on the basis of an agreement between the seller or the provider and the lender of the loan, if the consumer withdraws from the contract and the notification concerned is also directed to the lender within the period of cancellation, the penal term ends without an obligation to pay.

(8) For the projects on the scale to be determined according to the number of circuits in the project or the size of the project to be determined according to the total cost criterion, the scope, conditions and implementation principles of the seller or the supplier before the sale of the property subject to prepayment of the vacation period shall be subject to building completion insurance determined by the Under secretariat of Treasury, conditions are obligatory. Compensation, guarantees and similar guarantees provided under the building completion insurance cannot be included in the bankruptcy or liquidation desk, cannot be seized, precautionary measures and precautionary seizure cannot be placed on them.

(9) In the case of pre-paid sale of the property subject to the commission, the consumer has the right to return without a valid reason until the transfer or delivery date. If returned without a contract, the seller may claim compensation for up to two percent of the contract price. If the seller does not fulfill its obligations at all or as required, the consumer cannot claim any price. In the case of returning from the contract, the amount to be returned to the consumer and any documents which put the consumer into debt shall be returned to the consumer within 90 days at the latest from the date of return of the return notification to the seller. From the date on which the seller receives the receivable and the consumer annuls any documents that put him in debt, the consumer shall return the receipt within ten days.

(10) The transfer and delivery period of the pre-paid sale of the immovable property for the circuit shall not exceed thirty-six months from the contract date.

(11) The contents of the circuit break, long vacation service, resale, exchange contracts and preliminary information, rights and obligations of the consumer and the seller and the supplier, right to withdraw, prepaid sales and other application procedures and principles are determined by regulation.

B- Package tour contracts

What is the package tour? What should consumers pay attention to package tour contracts? A package tour contract is a contract that includes at least two of the transportation, accommodation and other tourist services that are not included in these services, sold at a price inclusive of all-inclusive or for which the service is for a period of 24 hours or more and is for overnight accommodation. It is imperative that a copy of this contract be given to the consumer. Package tour contracts that are not written in writing are invalid. Consumers must thoroughly investigate the holiday company or travel agent before going on vacation. Whether the company or the travel agent is in TURSAB should be questioned. Services that are included and not included in the travel fee should be considered. Check that the stars and locations of the places to stay are checked. The brochures on places to visit should be read carefully. It should be checked whether the compulsory package tours insurance is made or not. A copy of all documents related to the tours should be kept. Airport tax, visa fee, guidance services should be paid in sight. The consumer must notify the service provider and the travel agency within 30 days of the date on which the service is to be performed or when the service has not been performed at all or as required

ARTICLE 51 -

(1) A package tour contract is a package tour arranger or a contract that includes at least two of the following services, which are sold or promised to be sold at a price inclusive of everything, covered by the service for more than twenty-four hours, or overnight accommodation:

a) Transportation

b) Accommodation

c) Other tourism services not dependent on transportation and accommodation services.

(2) Provisions of this article shall also apply if the details of the tour are specified by the package tour organizer, intermediary or consumer or are invoiced separately for services within the same package tour.

(3) In cases where package tours in Turkey would be responsible for regulating the presence of representatives' tool such as package tour package tour organizer.

(4) Before the package tour contract is established, it is obligatory to give a brochure to the consumer for preliminary information.

(5) Package tour organizers or intermediaries must provide a copy of package tour arrangements established on written or automatic basis, either on paper or through a permanent data store.

(6) The consumer may accept an alternative tour offered by this amendment or package tour organizer in the event that one of the essential elements of the package tour contract is changed or canceled before the tour starts, as well as the right to return without a contract. In the event of a refusal from the contract, the package tour organizer or agent must immediately return it from the date on which the return notification has been received to him, without any deduction of the full amount to which the consumer has paid.

(7) The consumer has the right to demand that the contract be reduced in price due to any deficiency arising in the performance of the contract. When it is determined that the package tour organizer is unable or unwilling to fulfill a substantial obligation after the tour starts, the consumer may return without a contract. In these cases, the package tour organizer or agent has the right to charge. It is imperative that the payments made are returned immediately to the consumer from the date on which the payment is made. However, the package tour organizer may request an appropriate provision from the service to the consumer for the actions he has performed so far.

(8) The package tour organizer is responsible for all kinds of damage to the consumer due to the fact that the package tour organizer is not performed at all or as required, with the provisions of

compulsory insurance of the Travel Agents and Travel Agents Association Law No. 1618 dated 14/9/1972. The consumer may also claim compensation for the wasted vacation time.

(9) Persons who take advantage of package tour services within their commercial or professional activities are also considered as consumers.

(10) Preliminary information, the content of the contract, the conditions of the package change, the conditions of the consumer, the consequences of the cancellation of the package, the responsibilities of the package tour organizer and the intermediary, the consumer's ability to claim compensation, procedures and principles are determined by regulation (Hayta, 2009; DPT, 1994; DPT,1995).

The number of travelers around the world is increasing each year. This increase also brings such problems as delays in the flight times, cancellations of tours, hotel changes, nonequivalent services and environments with the information stated in the advertisement or in the catalogue. Most of the tourists purchase their product, holiday, travel, tour or real estate property from their own countries, which is far away from that of purchase. Therefore, consumers purchase their products in accordance with the information stated during the purchase (Ünsever 2000).

In general tourism relations, a tourist deals with the travel agency (the legal contract) and pays the amount of service in cash or by installments as agreed both quantitatively and qualitatively, then waits for the agency to fulfill its obligations. There are two cases for the consumers in this waiting period (Ünsever 2000).

Inability of agent to provide travel terms

Inability to provide the conditions as stated in the contract (missing terms or defective fulfillment)

The defective ones are in this responsibility of the agent if these risks occur. The agent will get back all amounts from the responsible persons with an interest.

These responsible persons are hotels and transportation companies in general. And the agent is obliged to pay back the amounts paid by the consumer, its interest and the pecuniary loss and intangible damages as required by law in such cases stated above.

There are also other risks when a tourism consumer in on holiday such as deaths due to an accident, bodily injuries due to an accident, theft and luggage loss other than defective fulfillment of tourism activities. The agencies are not responsible for these risks. However, marketing techniques require that the travel products should offer consumers an assurance against such type of events. It is possible to provide consumers and tour operators these assurances against these risks by the help of extensive travel insurance policies (Ünsever, 2000). A travel insurance policy should include the features stated below. These features may change from one insurance company to another and basically involve the items given below:

- Medical emergency assistance and returning back to the country
- Inpatient treatment in medical institutions
- Death and permanent disability
- Loss of personal luggage and belongings or their damage
- Delayed luggage (Emergent purchase of clothes and cleaning materials if more than 12 hours)
- Loss of documents (providing the amounts to renew missing documents and registries such as passport, driving license, etc.)
- Delay in transportation (Delays in flights, ferries or public transportation vehicles as stated in scheduled tariff in which the reservations are made at least 48 hours earlier)
- Loss of money (Loss of money during travelling other than personal negligence)

There are some operations that tourists unsatisfied due to the reasons stated above should accomplish. These operations are given as follows

(TSI Consumer Bulletin, 1999):

- Determination of problems causing dissatisfaction
- Demanding the removal of the defects determined
- Reporting the defects to the travel agency within the shortest time
- Not leaving the establishment before contacting to travel agency
- Documentation of disturbance causing dissatisfaction

A tourist may apply to “Arbitration Board” of TURSAB (Association of Turkish Travel Agencies) if no effort is spent to resolve the dissatisfaction. The decisions made by the board are as effective as any other court and have a legal basis and sanction.

Tour operators and travel agencies pay reclamation each year due to the problems faced by the guests in the hotels. Reclamation refers to the application occurring because of unsatisfactory quality of an item or service purchased. A complaint on an individual basis may result in paying the amounts at the end of the legal procedures by the company or institution. Tour operators follow this way to minimize the cost of reclamation. The customer delivers his or her complaint to the hotel representative of tour operator and then hotel representative delivers the failure back to the hotel manager. The case is solved in situ without spending so much time. A form is filled by the customer to prevent any further complaint after returning home and this complaint is taken with a signature, indicating that it is resolved or met if there is any damage occurred. This application does not require any further correspondence and avoids hotels of paying reclamation in international courts besides losing its prestige (Mazlan et al., 2014; Ersoy, Nazik, 2006; Ünal, Babaoğlu, 2014).

Customer satisfaction is sometimes provided by offering an additional service for free or making cash refund.

The biggest risk of tourist dissatisfaction is the generalization of that dissatisfaction in terms of companies. Dissatisfaction of a tourist is never limited to any specific tour operator. He or she can create negative opinions for the whole country. Other than everything, a reliable atmosphere is the key of tourism (Ünlüönen, 1999).

Results, Conclusions and Recommendations

It is only possible for Turkey to be successful in its process to be a member of European Union by responding the needs of tourist coming both from member countries and others and following a meticulous application on protecting tourist rights. Therefore, it is required to make legal regulations on international platform and to apply them effectively. The current Consumer Protection Law is just a beginning and its scope of service must be extended with specific features in accordance with that sector and the shortcomings must be provided with the changing conditions. The issues in Consumer Policy of EU in tourism area must be investigated urgently and adopted into Turkey. Therefore, healthy decisions must be by with the cooperation of both legal and sector representative. Besides all these legal regulations, a tourist as a consumer is required to be conscious and informed about its legal and economic rights and to seek for his or her rights by applying to related authorities in cases of unjust treatment. Necessary information activities must be provided by public and consumer organizations in this framework. It is an inevitable fact that new developments will be experienced in terms of consumer rights and their protection in parallel to the development of service sector in the twenty first century. Basic determiners in property and service trade and consumer rights prove themselves as such new terms as information society, electronic trade via the Internet and distant sale in our

century. Therefore, a legal framework is required to prepare and apply in consistence with the member countries in EU and other countries to protect consumers/tourists. It will be advantageous for Turkey as a candidate to follow these decisions and rules closely and putting these legal regulations into effect in terms of creating a positive image and its development on tourist rights and tourism sector.

To achieve this,

- Legal rights must be defined for tourists
- Tourists must be familiarized with the tourism via media and printed materials
- Different pricing for domestic and foreign tourists must be ceased
- Illegal agency operations must be audited effectively and deterrent sanction must be provided and such operations must be prevented.

The important issue is the information and familiarization of consumers and managements about their legal rights and responsibilities as a result of these legal regulations and applications as a whole. Therefore, the governmental institutions, sectorial managements and consumer organizations have an important role.

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