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The privacy of the duty to inform in adventure tourism contracts: A guarantee for protecting the tourist from risks

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Abstract:

Adventure tourism is a prominent form of modern tourism, involving activities fraught with risks. Considering the tourist as a consumer, their need for protection becomes even more imperative given their weak position vis-à-vis the travel agency. Therefore, the duty to inform emerges as a mechanism to protect them in adventure tourism contracts, enabling them to be aware of the risks associated with the adventure so they can make an informed decision before participating. This study addressed the concept and content of the duty to inform in such contracts, as well as the forms and consequences of its breach. It concluded that the absence of specific legislative regulation for adventure tourism in Algeria limits the effectiveness of protection, necessitating the enactment of an independent legal framework that enshrines the duty to inform as a mechanism to balance investment requirements and ensure the tourist's safety from risks.

Keywords: Adventure tourism contract; travel agency; tourist; duty to inform; tourism risks.

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1. INTRODUCTION

Tourism is considered one of the most important and dynamic sectors in the world, as it contributes to enhancing economic growth and to absorbing unemployment, and supporting foreign currency reserves. The types of tourism vary according to their purposes, and one of the most prominent forms of modern tourism is "adventure tourism," which involves activities with a special nature characterized by risk and excitement. This type of tourism has witnessed rapid growth in recent decades, attracting a large number of tourists seeking unique experiences in natural environments beyond traditional tourism, such as mountain climbing, diving, exploring deep caves, rafting in fast rivers, skydiving, mountain biking, safari trips, sand skiing, surfing, and others.

The hazardous nature of adventure tourism directly affects the tourist, making them more vulnerable to potential harms that may affect their physical safety or threaten their life. This adds a sensitive and complex dimension to their relationship with the travel agency, necessitating the establishment of a clear legal and regulatory framework that defines the agency's obligations in this field, foremost among which is the "duty to inform." This duty serves as a fundamental guarantee to protect the tourist as a vulnerable party in the adventure tourism contract and as a tool enabling them to make cautious and informed decisions before participation.

To achieve this, some countries have adopted regulatory texts that define the conditions and controls for practicing adventure tourism and establish the obligation of information disclosure as a fundamental duty imposed on the tourist agency in the contracts it concludes with tourists. This approach has been followed by Jordan and the Sultanate of Oman. In contrast, other countries, such as Algeria, have not dedicated specific regulations for adventure tourism contracts; rather, these contracts remain subject to the general provisions related to tourism and travel contracts, represented by Law 99-06, which defines the rules governing the activity of tourism and travel agencies, the provisions of the Civil Code, and also the consumer protection laws. This is despite Algeria's abundant natural resources in this field, which qualify it to be a preferred destination for adventure tourism once the appropriate legislative and regulatory environment is established.

The importance of establishing the obligation of information disclosure in adventure tourism contracts lies in its role as a means to build trust in the tourism market and stimulate investment in this type of activity. It is a commitment with a special nature related to the specificity of this type of tourism. The tourist in this field does not suffice with general information about the trip but needs precise data about the activity. Neglecting this obligation may expose the tourist to danger and negatively affect the attractiveness of adventure tourism. Thus, the obligation of information disclosure not only protects the tourist but also encourages them to undertake the adventure experience with confidence and reassurance, achieving a balance between enjoying tourism activities and ensuring safety from risks. This highlights the necessity of studying it as a mechanism to achieve this balance.

Based on the above, we can pose the following problem:

To what extent does the obligation of information disclosure in adventure tourism contracts guarantee the protection of the tourist from the inherent risks of these activities? And are the general provisions in Algerian legislation sufficient to achieve this goal?

To address this topic, we will rely on the descriptive approach to present the concept of the adventure tourism contract and its special nature, as well as the concept of the duty to inform and its legal dimensions in this type of tourism. We will also use the analytical approach to analyze and discuss Algerian legal texts and reveal the extent of their adequacy in establishing the specificity of the duty to inform in this contract, in addition to drawing on comparative experiences where necessary.

To answer the raised issue, we will divide our study into two main sections. The first will address "The duty to Inform in the Adventure Tourism Contract: Concept and Content," and the second will discuss "Breach of the duty to Inform in the Adventure Tourism Contract".

2-The duty to inform in the adventure tourism contract: Concept and content:

The duty to inform is a fundamental pillar in the adventure tourism contract due to the exceptional risks involved. Therefore, the tourist needs to have comprehensive knowledge of accurate information related to the adventure activity in order to assess the risks and make a decision with informed awareness and free will. This highlights the importance of the duty to inform in protecting the contracting party. To fully understand this obligation, we will first address its concept and then its content.

2.1- The concept of the duty to inform in the adventure tourism contract:

To clarify the concept of the duty to inform in the adventure tourism contract, it is necessary to first address the concept of this contract, then, move on to defining the concept of the duty to inform and clarifying its role in protecting the contracting tourist.

2.1.1- The concept of the adventure tourism contract:

Adventure tourism has become more common worldwide today, especially among tourists seeking experience rather than sitting and relaxing. To achieve this purpose, a contract is concluded between the tourism agency and the tourist. To define this contract, we will first address its definition and then its characteristics.

2.1.1.1- Definition of the adventure tourism contract:

The Algerian legislator, through Law 99-06 which specifies the rules governing the activity of tourism and travel agencies (Law No. 99-06, 1999), did not address the definition of the adventure tourism contract. However, it defined the "tourism and travel contract" under Article 14 as the agreement concluded between the agent and the tourist, which includes a description of the nature of the services provided and the rights and obligations of the contracting parties, especially concerning the price, payment procedures, possible price revisions, the timetable, and the conditions for annulment and termination of the contract. From this definition, it is noticeable that the legislator did not provide precise legal controls for the tourism contract, limiting itself to stating its parties and some execution obligations, which reveals a deficiency in its classification as a consumer contract with particularities that require more comprehensive regulation.

From a jurisprudential perspective, a tourism contract is defined as an agreement whereby the travel agent commits to enabling the tourist to benefit from the tourism services provided in exchange for a specified fee (Ali, 2003, p. 50) . It is also defined as a contract concluded between two parties: one professional, represented by the travel agency, and the other non-professional, represented by the tourist. Under this contract, the first party undertakes to provide tourism services in return for a payment made by the second party, whether this is based on prior organization by the travel agency or on a proposal from the tourist. (Sayed, 2001, p. 47)

As for the definition of "adventure tourism," it has been subject to dispute for two reasons. The first relates to its overlap with ecotourism, as both are practiced in natural settings. However, what distinguishes adventure tourism is its association with risk and excitement, and it may also be practiced in an urban environment, unlike ecotourism. The second reason concerns its overlap with adventure recreation. Although both share the element of risk, they differ in terms of legal treatment: adventure tourism is conducted within the framework of services provided by licensed travel agencies, whereas adventure recreation is either a self-directed activity carried out by the tourist using their own equipment or an informal activity. (McKay, 2014, p. 1474)

Some countries have moved towards establishing regulatory provisions regarding adventure tourism trips, similar to the instructions issued in Jordan in 2019, where Article 3 stipulated that the organization and sale of adventure tourism trips be limited to tourism and travel companies licensed under the provisions of the Tourism Offices and Companies System (Trips, 2019). Likewise, Ministerial Decision No. 124/2021 issued in the Sultanate of Oman added the activity of organizing adventure tourism trips to the activities of travel and tourism offices (dated August 15, 2021). This decision included conditions and controls for practicing the activity of organizing adventure tourism trips, and Article 2 imposed the necessity of obtaining a license before engaging in this activity.

So far, there has been no definition of adventure tourism in the literature of the World Tourism Organization (UNWTO), now called UN Tourism. However, its report on adventure tourism adopted the definition of the Adventure Travel Trade Association (ATTA), which states that it is a trip involving at least two of the following elements: physical activity, natural environment, and cultural immersion. Nevertheless, trips that combine all three elements can provide tourists with a comprehensive adventure travel experience. An example is a trip to Peru that includes hiking (physical activity) along the Inca Trail (natural environment) and genuine interaction with local residents (cultural immersion). Adventure tourism can be domestic or international and, like other trips, must include at least one overnight stay and not exceed one year. (Global report of adventure tourism, 2014, p. 10)

Similarly, Article 2 of the Jordanian Adventure Tourism Instructions defines this type of tourism as: "A style of tourism that includes at least two of the following three elements: physical activity, enjoyment of the environment, and experiencing local cultural activities such as (hiking, hiking with overnight stays, wadis, caves, cycling, mountain climbing, rock climbing, and others)." As for the Algerian legislator, no definition of adventure tourism was provided in Law 99-06 related to tourism and travel agencies.

According to jurisprudence, adventure tourism is defined as: "Travel for a specific purpose, which is to engage in recreational activities related to adventure." (Sung, Morrison, & O'Leary, 1996, p. 53) Some view it as: "A variety of tourism activities that involve interaction with the natural environment away from the participants' home, and include an element of risk, where the outcome is influenced by the participants and the surrounding conditions." (Hall, 1992, p. 143) Others consider adventure tourism as: "A type of tourism that involves exploration or travel that entails perceived (and possibly real) risks, and may require specialized skills and physical effort." (Louis The Lawyer, 2025)

Accordingly, adventure tourism is based on logic completely different from traditional tourism. In the latter, risks constitute an obstacle that limits attracting tourists, whereas in adventure tourism, the risk itself becomes a key attraction factor for the tourist consumer seeking challenge and excitement. The agency finds itself facing a delicate balance equation between "real risks," which actually exist in reality and are measured by an objective standard; "perceived risks," related to what the tourist imagines about the risks regardless of their conformity to reality and measured by a personal standard; and "desired risks," which are the risks that the tourist seeks or prefers when choosing the adventure experience. This latter type of risk also requires the tourism agency to balance providing a sense of danger to satisfy the consumer's desire for enjoyment with ensuring safety. (Dickson & Dolnica, 2004, pp. 1-2)

Adventure activities within this type of tourism are divided into:

- **Hard adventure activities:** These are activities that involve a high level of risk and require greater skill and training. Tourists engaging in them need high experience, physical and mental fitness, and guidance from an expert, such as high-altitude mountain climbing, river rafting, diving, paragliding, and skydiving. (National Strategy for Adventure Tourism, 2022, p. 6)

- **Soft adventure activities:** These activities involve moderate levels of risk and do not require the participating tourist to have special skills or experience. Most tourists prefer these activities due to the relative safety they provide, including hiking and camping.

By defining both the tourist contract and adventure tourism, we can define the adventure tourism contract as: "A legal agreement whereby the travel agent commits to enabling the tourist to participate in physically risky activities within an unfamiliar environment, with the duty to inform them of potential risks and provide safety conditions. In return, the tourist commits to paying the financial compensation and adhering to the instructions to ensure safe execution."

2.1.1.2 - Characteristics of the adventure tourism contract:

From the previous definitions, it is clear that the adventure tourism contract is characterized by a number of general features, the most important of which are: it is an unnamed contract, a consensual contract (Article 16/1 of Law 99-06 concerning tourism agencies), a reciprocal contract, a bilateral binding contract, a commercial contract. (Article 3 of the Commercial Code, and Articles 24, 26, and 39 of Law 99-06 concerning tourism agencies.) In addition to these general characteristics, this contract has special features, some of which overlap with the

traditional tourism and travel contract, while others distinguish it as an innovative tourism contract, including that it is:

- **A service contract:** as it does not involve the delivery of physical goods, but rather enables the tourist to experience a tourism activity based on adventure activities, which gives it a special nature considering the unusual risks involved in these activities.

- **Compound contract:** It involves overlapping elements of transportation, contracting, agency, and other contracts; however, despite the diversity of these obligations, they form a single legal unit whose primary purpose is to organize a legally framed adventure trip and provide the highest possible level of security despite the exceptional risks involved. (Abadi, 2012, p. 38)

- **Adhesion contract**: Since the travel agency usually has the exclusive right to set pre-prepared terms, enjoying a stronger position in the contractual relationship, the tourist only has the option to accept or reject them. (Belaazouz, 2005, p. 23) However, it can become a negotiated contract if the trip is arranged at the tourist's request (Al-Khalti, 2011, p. 43), such as an agreement among a group of tourists on a special adventure program where they negotiate its route and duration, or when preparing luxury trips tailored to order, like private diving trips or individual explorations.

- **Consumption contract:** The tourist is the consumer party of the adventurous tourism service, facing the travel agency, which is considered a professional and experienced party conducting commercial activity. This places the tourist in a weak position requiring special protection and necessitates the intervention of consumer protection rules, especially regarding prior information about potential risks, prevention of unfair terms, and ensuring the safety of the tourist during the adventure activity. (Deneau & Courtin, 1996, p. 295)

2.1.2 - The concept of the duty to inform:

The duty to inform has been associated with contractual relationships concluded between parties that are unbalanced in terms of legal or economic positions. Since the tourist represents the weaker party in adventure tourism contracts, the role of the duty to inform emerges in enlightening their will and restoring contractual balance. Therefore, this obligation must be defined generally, followed by an explanation of its importance in protecting the contracting party in adventure tourism contracts.

2.1.2.1- Definition of the duty to inform:

The duty to inform is considered one of the legal guarantees established by most modern legislations to address the disparity in bargaining power between consumers and professionals. It is a tool for educating the consumer by providing important information before their consent to purchase the product or receive the service (Waddington, 2022, p. 308). It is defined as: "The commitment of one party to provide all necessary data and information to assist the other party in concluding or executing the contract, and even to warn and draw their attention if necessary" (Abu Omar, 2010, p. 33). According to this definition, the duty to inform in an adventure tourism contract may precede the contract itself, finding its basis in the condition of the validity and soundness of consent free from defects. This obligation may also extend to the post-execution phase, ensuring that the tourist benefits effectively from the subject of the contract (Kasmi & Cheroun, 2021, p. 345).

The Algerian legislator has enshrined the duty to inform in Article 17 of Law 09-03 related to consumer protection and fraud suppression (Law 09-03 , 2009), as amended and supplemented, without providing a definition for it. However, this was addressed through Executive Decree No. 13-378, which specifies the conditions and modalities related to consumer information (Official Gazette , 2013), where it is defined in Article 3 as: "Any information related to the product directed to the consumer on a label or any other accompanying document or by any other means, including modern technological methods or through oral communication."

As for Law 99-06 concerning tourism and travel agencies, the Algerian legislator did not explicitly address the duty to inform, but Article 14 requires that the contract include a description of the nature of the tourism services provided and the rights and obligations of both parties. This contrasts with the French legislator, who addressed this obligation in Article L211-8 of the Tourism Law (Ordinance No. 2004-1391, 2004) , where the organizer or seller is required to inform the traveler before concluding the contract of the main characteristics of the proposed services related to transport and accommodation, their contact details, price and payment methods, terms of cancellation and termination of the contract, insurance information, as well as border crossing conditions. They are also required to present this information in a clear, understandable, and legible manner if provided in writing.

Some countries have gone further and addressed the duty to inform within the regulations governing adventure tourism, such as the Sultanate of Oman. Article 4 of Ministerial Decision No. 124/2021 mentioned above imposes a clear obligation on the licensee to inform the tourist, which includes the necessity of providing detailed information about the trip, its potential risks, the instructions applied by the relevant authorities, security and safety instructions, first aid guidelines, and approved trip maps. Similarly, the Jordanian Adventure Tourism Instructions, in clauses 12 and 14 of Article 6, require the tourism company, when organizing and conducting adventure tourism, to conclude a contract with each participant in the trip that includes the trip program, covering the nature and activity of the trip, its difficulty level, the specific skills and equipment needed according to the difficulty level, the type and severity of the trip’s risks, and specifying the start and end points of the trip. Additionally, the tourist must be provided with general safety instructions, first aid guidelines, and a map of the trip route, which are attached to the trip program upon contracting.

2.1.2.2 - The importance of the duty to inform in protecting the contracted tourist within adventure tourism:

The importance of the duty to inform in the adventure tourism contract is manifested through three main aspects:

- Protecting the tourist’s Satisfaction and the integrity of their consent:

The element of satisfaction in an adventure tourism contract differs from that in traditional tourism contracts because the adventure tourist does not simply purchase an entertainment service but rather consents to engage in an activity that may be fraught with risks. Therefore, they do not undertake skydiving, climbing a towering mountain, or hot air ballooning unless they are fully

informed in advance about everything related to the adventure. The absence of such information may render their consent defective due to error or deception.

- Protecting the physical and psychological safety of the tourist:

The adventure tourism contract is characterized by its specificity due to the unusual risks involved that may directly affect the tourist's physical and psychological safety. Adventure can turn into a deadly activity if the tourist does not receive sufficient information. This imposes on the agency the duty to inform the tourist about the risks, the equipment used, and the required skills, which gives the duty to inform in this contract a humanitarian and ethical dimension that goes beyond merely being a contractual obligation.

- Ensuring the stability of the contractual relationship:

The duty to inform in the adventure tourism contract contributes to precisely defining the obligations of both parties, which reduces the extent of legal disputes that may arise. For example, if the agency informs the tourist that the itinerary includes 10 hours of walking daily under harsh weather conditions, the tourist cannot later claim deception if they encounter those difficulties.

2.2 - Content of the duty to inform in the adventure tourism contract:

This refers to the type of information that the professional must provide to the consumer tourist. This information will only achieve its purpose of protecting the tourist if the tourist is able to understand and comprehend it and if it is provided at the appropriate time, which we will address below:

2.2.1- Nature of the information that must be communicated to the tourist:

The information provided by the travel agent to the tourist is what the tourist bases their decision to accept or reject on, as it enables them to assess the risks of the adventure and the resulting costs and obligations. This information can be divided into two main categories:

2.2.1.1 - Personal scope of the duty to inform:

This scope focuses on identifying the travel agency as the organizer of adventure tourism activities and legally responsible towards the tourist. To achieve this, the agency is obligated to disclose its identity by informing the tourist of its name, address, commercial registration number, license number, and date, as confirmed by the Algerian legislator in Article 55 of Executive Decree No. 13-378, which defines the conditions and procedures related to consumer information. The purpose of this is to ensure that the tourist verifies the agency's credibility, feels reassured about its good reputation and the legitimacy of its activities, and is able to take legal action if the agency breaches its obligations. (Haymar, The Tourism Contract: A Comparative Study, 2021-2022, p. 279). Additionally, the agency must provide the tourist with its contact information to ensure that their needs are met and any issues arising during the adventure activities are addressed. This enhances the agency's transparency and affirms its commitment to legal and ethical responsibilities towards the tourist.

2.2.1.2 - Subject scope of the duty to inform:

Disclosure includes basic information related to the content of the contract and the services provided within its framework, such as: the price, payment methods, trip duration, means of transportation used, accommodation details including type of lodging, location, tourist classification, comfort level categories, available meal plans, as well as the scheduled places to visit, itinerary, required administrative and health documents, and others. (Dalal, 2014 , p. 136) This information must be communicated to the tourist in tourism contracts in general, including adventure tourism contracts. However, in the latter, disclosure also includes adventure-specific data by specifying the nature of the challenge, its level of risk, the physical and technical skills required to practice it, the nature of the equipment used, the preventive measures to be followed, insurance conditions to cover any potential accidents, reflecting the particularity of the duty to inform in this contract.

2.2.2 - How to provide the information that must be disclosed:

The fulfillment of the duty to inform in an adventure tourism contract is not limited to defining the scope of the information that must be disclosed; rather, the agency must provide this information to the tourist in a timely manner and in a way that ensures their understanding of the risks they may face. This will be addressed as follows:

2.2.2.1- Timing of providing the information that must be disclosed:

The tourism agency is obligated to provide the tourist with information related to the adventure tourism activity at an appropriate time. It must provide essential information concerning the terms of the contract and the content of the adventure before concluding the contract. Article 53/1 of Executive Decree 13-378 states: "The service provider must inform the consumer of the essential characteristics of the service offered before concluding the contract." This is referred to in jurisprudence as the "pre-contractual duty to inform," (Haymar, The Obligation to Inform in the Field of Tourism and Travel Services: An Analytical Study, 2020, p. 282) which is an obligation arising during the contract negotiation phase to enlighten the tourist’s will so that they enter into the contract with genuine and informed consent, enabling them to make a well-informed decision to accept or reject.

The agency is also committed to providing the tourist with practical information during the implementation of the adventure tourism contract, known as the "contractual obligation to inform." During the trip, it must provide real-time guidance to participants, including: instructions related to the use of equipment such as how to use diving breathing apparatus or how to secure ropes and safety harnesses in climbing activities; environmental instructions related to the location, such as avoiding touching certain poisonous plants or approaching dangerous animals during forest safari activities; and information related to the progression of the activity, such as informing participants of the remaining distance and rest periods during mountain camping activities. Additionally, some adventure activities require immediate and urgent disclosure of emergency hazards related to climate changes, such as rising river water levels or strong winds, to ensure the safety of the tourist is not compromised.

2.2.2.2 - Means used to provide the information that must be disclosed:

The duty to inform in the adventure tourism contract is not limited to merely conveying information but extends to selecting the appropriate means that ensure its effectiveness, in line with the "ordinary tourist" standard. This standard refers to a person with moderate experience in the tourism activity, capable of understanding the information provided about risks and preventive measures, without expecting professional expertise or advanced technical knowledge of the adventure activity.

In order for the commitment to information to achieve its goal, the agency must provide the tourist with the information in a form and language that ensure its delivery and understanding, with the necessity of using the appropriate means for this purpose. The information may be written in the contract or attached in brochures, leaflets, or instructional posters. This method allows tourists to keep the information and refer to it when needed. Given the practical nature of adventure tourism contracts, it is also necessary to provide information orally through guidance and awareness lectures, (Zqawi & Benamior, 2022, p. 374) as well as field explanations by the tour guide before starting the adventure. The agency can also use interactive videos or simplified illustrative graphics to ensure the information is conveyed accurately and clearly. Whatever the method used, it must take into account the tourist's cultural and linguistic level.

3- Breach of the duty to inform in the adventure tourism contract:

The breach of the duty to inform in the adventure tourism contract takes distinct forms that vary according to the type of activity and the nature of the inherent risks. Regardless of its form, this breach results in the civil liability of the tourism agency and its obligation to compensate the tourist for any subsequent damages. Accordingly, we will first address the specific forms of breach of the duty to inform in this contract, and then explain the legal consequences arising from it.

3.1 -Specific forms of breach of the duty to inform in the adventure tourism contract:

Excluding the usual forms of breach of the duty to inform found in traditional tourism contracts, this section focuses on studying the specific forms of breach in the adventure tourism contract, primarily represented by the agency’s failure to provide the tourist with information about the risks of the adventure activity, or its failure to inform them of the necessary preventive measures and guidance to ensure their safety during execution.

3.1.1 - Breach of risk disclosure in the adventure tourism contract:

The tourist engages in the adventure tourism experience only based on a clear understanding of the potential risks, given that this contract is based on risk-taking. However, some organizers breach this obligation either by not disclosing the essential risks inherent to the adventure activity itself or by omitting the circumstantial risks associated with it.

3.1.1.1 - Failure to inform the tourist of the inherent risks associated with adventure tourism activities:

Inherent risks refer to those linked to the nature of the activity itself, which cannot be separated from it or entirely avoided regardless of the precautions or safety measures taken by the agency. These risks in adventure tourism include possibilities such as drowning or injuries caused

by collisions with rocks during rafting, falling while mountain climbing, spinal injuries in bungee jumping activities, or parachute failure leading to uncontrolled falls in skydiving. These risks are an integral part of the experience, and tourism agencies must inform participants clearly and transparently before commencing the activity.

Several judicial rulings have reflected this principle, including a case that occurred in 2016 in the state of Colorado, USA. The details involved Ms. Sue Ann Apolinar participating in a river rafting trip organized by the adventure tourism company Arkansas Valley Adventures, LLC. Apolinar was aware of the inherent risks associated with the activity and signed a waiver form releasing the company from liability for any damages that might occur to her. During the activity, the boat capsized in a highly dangerous area, resulting in her death. Her son filed a lawsuit to establish the company's liability for the accident. The court focused on the clarity of the information provided and the comprehensiveness of the waiver form, concluding that the company had supplied sufficient information about the inherent risks of the activity and that Apolinar was aware of them, thus dismissing the company's liability. (Espinoza v. Arkansas Valley Adventures, 2016)

3.1.1.2 - Failure to inform the tourist of situational risks associated with adventure tourism activities:

Situational risks refer to those that do not arise from the nature of the adventure activity itself, but rather from external or unexpected surrounding conditions, such as sudden climate changes, rockfalls, or technical malfunctions in equipment. The failure of an adventure tourism company to fulfill its duty to inform tourists of these risks constitutes negligence that entails legal liability, as it prevents the tourist from making an informed decision about participating in the activity.

The seriousness of this failure is evident in several cases. The Swiss Federal Court convicted the officials of the Adventure World Tourism Company of involuntary manslaughter for failing to notify participants in a canyoning activity organized in the Saxetbach Valley in Interlaken, Switzerland, in 1999, of expected climatic risks and weather warnings. A thunderstorm caused a sudden flood in the valley, resulting in the deaths of 18 tourists and three guides. The court affirmed that the trip organizer is legally obligated to verify climatic and environmental conditions and inform participants before and during the activity. (Swissinfo, 2001)

Similarly, the case of Whakaari Island in New Zealand is notable. On December 9, 2019, the tourism company White Island Tours Ltd, which operates adventure trips, organized a walking tour on the island to the active volcano crater for close observation. During the tour, the volcano erupted, resulting in the death of 22 people and serious injuries to others. In 2024, the Auckland District Court ruled to convict the company with a financial fine and significant compensation, due to proven negligence in providing adequate information about the real risks of the trip, as well as failing to consult qualified experts to assess volcanic risks. (WorkSafe New Zealand v. White Island Tours Ltd and Others, 2024)

The above illustrates that circumstantial risks in adventure tourism are no less serious than inherent risks; in fact, they may have a greater impact due to their connection to unforeseen factors. Therefore, it is essential for organizers to inform tourists about these risks to ensure their awareness of the nature of the experience and to maintain their safety. Any neglect in this regard can turn a well-planned adventure into a gamble with unpredictable consequences.

3.1.2 - Failure to inform about preventive measures and necessary guidelines to ensure safety during implementation:

The information in adventure tourism activities does not stop at stating the inherent or circumstantial risks; it extends to the obligation to provide the tourist with preventive instructions and guidelines that ensure their safety during the activity. There are guidelines given before the activity and others provided continuously during its practice. Any breach of this duty may deprive the tourist of the practical knowledge necessary to act correctly in the face of danger.

3.1.2.1 - Failure to provide preventive instructions prior to the activity:

The travel agency may breach its obligation to provide the tourist with preventive instructions that ensure their safety before starting the activity, such as failing to inform them how to use the equipment, the correct positions to avoid danger, or the procedures to follow in the event of a potential accident. Informing about risks at this stage is not limited to theoretical warnings but requires practical preventive guidance that enables the tourist to undertake the experience with the least possible risk.

An example of this is the case of Mrs. Grotheer vs. the adventure tourism company Escape Adventures in 2015, where the plaintiff was injured during a hot air balloon ride due to not receiving sufficient instructions about the proper posture during landing. Although the California Court of Appeal acknowledged the inherent dangers of the activity, it affirmed that this does not exempt the company from its obligation to provide passengers with simple precautionary guidelines to reduce risks, such as: the necessity to stand upright, hold onto the ropes, and bend the knees, considering these reasonable measures that do not alter the nature of the adventure. (Grotheer v. Escape Adventures, 2017)

3.1.2.2- Failure to accompany the tourist with continuous guidance during the activity:

Adhering to providing instructions during the execution of an adventure tourism activity is a natural extension of the duty of prior information. General guidelines given before the start are insufficient if not supported by timely instructions and accompaniment throughout the activity. Risks may change depending on weather conditions, the nature of the location, or participants' behavior, which requires the activity organizer to be present in offering continuous clarifications and preventive intervention when necessary. Neglecting this task may leave the tourist facing a danger they could neither anticipate nor handle alone.

An example illustrating this failure is the case of the Australian tourist Stephanie Bernoth's death after her scarf became entangled in the fan of a hot air balloon in 2013. The Supreme Court of the Northern Territory in Australia held that the adventure tourism company Outback Ballooning Pty Ltd, although it provided some general instructions before the activity began, failed to provide immediate guidance during the ascent into the basket. This included warnings

about securing loose clothing, scarves, and long hair, staying clear of the fan area, and monitoring passengers' compliance with instructions. In 2021, the court ruled the company liable for negligence in providing practical, real-time instructions to passengers, as these constitute the last line of defense to avoid hazards. (Work Health Authority v Outback Ballooning Pty Ltd & Anor, 2019)

3.2- Effects of breaching the duty to inform in adventure tourism contracts:

If the travel agency organizing adventure tourism activities breaches its duty to inform as previously mentioned, causing harm to the tourist, it bears civil liability towards them. Consequently, it is required to compensate for the damages due to the tourist lacking necessary information to ensure their safety.

3.2.1 - Civil liability of the travel agency:

Article 21 of Law 99-06 concerning travel and tourism agencies states that the agency is responsible for the damage caused to the tourist resulting from the failure to fulfill its obligations. It is also liable for damages caused by any service provider it resorts to in carrying out the agreed services. Thus, it is clear that the civil liability of the agency when breaching the duty to inform in an adventure tourism contract is dual, encompassing both its personal fault and the fault of others.

3.2.1.1 - Civil liability of the travel agency for personal fault:

If the travel agency organizing adventure activities breaches its duty to inform either by failing to perform it, such as not informing the tourist about the risks of these activities, or by performing it defectively or incompletely, such as providing superficial, unclear, or incomplete information, it incurs contractual liability for its personal fault. This is particularly applicable in comprehensive adventure tourism trips, where the agency prepares and executes the trip program.

There has been disagreement regarding the nature of the duty to inform in tourism contracts in general. Some believe it is an obligation of due diligence, as the agency is required to exert all possible means to ensure the tourist is informed of what guarantees their safety. However, it does not necessarily guarantee that the tourist will follow the instructions or understand the information provided, which places the tourist as a cooperating partner after being properly informed. On the other hand, another viewpoint holds that it is an obligation to achieve a result, as it is fundamentally based on the commitment to safety, which is considered an obligation to achieve a specific outcome. The aim is to ease the burden of proof on the tourist as the weaker party in the contract, so liability arises as soon as a breach of the duty to inform results in harm, except in cases of force majeure. (Zqawi & Benamior, 2022, p. 375)

In our opinion, the duty to inform in adventure tourism contracts is an obligation of due diligence, as the agency is required to take all measures to provide the tourist with accurate information about the nature of the activity, potential risks, and preventive measures. However, this obligation does not guarantee the complete prevention of harm. Thus, it differs from an obligation to achieve a result, which requires reaching a specific outcome, something difficult to apply in adventure tourism due to the hazardous and unpredictable nature of these activities.

Therefore, the agency's responsibility relates to the quality of the information and measures taken, without extending to guaranteeing the prevention of accidents or achieving a result free of harm.

3.2.1.2 -Civil liability of the travel agency for the fault of others:

Due to the numerous services involved in an adventure tourism contract, it is difficult for the travel agency to fulfill all the resulting obligations by itself. Therefore, it resorts to others to ensure the execution of the trip program, whether it be a transportation company, accommodation center, tour guide, or translator... If these parties breach their duty to inform and cause harm to the tourist, the agency bears contractual civil liability for the actions of others. This liability is based on the general rules set forth in Article 178/2 of the Civil and Commercial Code, and its legislative application is found in Article 21 of Law 99-06, (Article 178/2 of the Civil Code) which defines the general rules governing the activity of travel and tourism agencies mentioned above.

Accordingly, the tour guide is considered the most directly associated with risks in adventure tourism due to accompanying the adventure tourist in the field. Therefore, they are obligated to inform the tourist about the nature of the activity and its risks. Any deficiency in this regard, resulting from the guide's lack of experience or inadequate training, places contractual liability for the actions of others on the tourism agency. To enable the guide to properly fulfill this obligation, they must be qualified in this field. This is confirmed by Jordanian regulations related to adventure tourism, which refer to the tour guide in this type of tourism as a "specialized tour guide" and require them to undergo a training course. The same applies to the translator; (Article 7 of the Instructions on the Principles and Conditions for Organizing Adventure Tourism Trips , 2019) if the adventure activity takes place in a foreign environment or involves the use of technical terms related to safety, the translator may fail to fulfill the obligation of informing, not due to absence of information but because of poor transmission or distortion. This may cause the tourist to be unaware of the real risks or to misunderstand the instructions, potentially exposing them to harm and leading to the tourism agency's liability for the actions of others.

Establishing the tourism agency's contractual liability for the actions of others serves to enhance the protection of the tourist consumer and spares them the hardship of pursuing each involved party individually through tort claims or indirect claims filed in the name of the tourism agency. (Karkouri & Hamissi, 2017, p. 9) It also reinforces the agency's responsibility to carefully select competent professional partners and to impose upon them a strict obligation to provide accurate information.

3.2.2- Compensation as a primary means of redressing the adventurous tourist's damages:

Compensation for damages suffered by the adventurous tourist represents the main means of redressing the harm incurred. We will address the types of damages that can be claimed due to breach of the duty to inform in the adventure tourism contract, then clarify the criteria and considerations the judge relies on to assess compensation.

3.2.2.1- Types of damages eligible for compensation in adventure tourism:

The travel agency is obligated to compensate the adventurous tourist for damages resulting from its breach of the obligation to inform, whether these are physical, financial, or moral damages. Physical damages arising from this breach occur due to accidents during adventure activities, such as the tourist falling while climbing, slipping on mountain hiking trails, or experiencing complications while diving. These damages may range from minor injuries, fractures, deep wounds, and sometimes may lead to permanent disabilities or death. Additionally, risks related to pressure, drowning, or severe physical exertion can cause respiratory and cardiac complications.

As for financial damages, they extend to include any economic loss suffered by the tourist, such as damage to personal equipment like the loss of a camera or diving gear during an activity for which they were not informed of the real risks, or additional medical treatment costs if injured, as well as losses resulting from the postponement or cancellation of the activity, such as having to rebook or pay extra costs for accommodation and transportation in the event of a rafting trip delay due to a sudden storm.

Meanwhile, moral damages include the psychological harm that may affect the tourist as a result of exposure to dangerous situations they were unaware of, such as panic during a volcanic eruption or facing sudden hazards. These damages may manifest as psychological trauma or fear of engaging in any future adventure activities.

3.2.2.2- Judge's assessment of compensation in adventure tourism:

The judge's assessment of compensation resulting from a breach of the duty to inform in an adventure tourism contract is subject to several considerations, the most important of which is the extent of the actual damage suffered by the tourist, taking into account the nature of the activity and the degree of its expected risks. It is worth noting that natural and foreseeable risks do not lead to compensation unless accompanied by concealment or misleading by the agency. Accordingly, the assessment of compensation is a precise process that takes into account fairness and proportionality between the extent of the damage and its actual consequences.

For example, during a rafting trip on the Youghiogheny River in Pennsylvania with the adventure tourism company Laurel Highlands River Tours, the tourist Sanders fell and was injured while engaging in the activity. When he filed a lawsuit against the company claiming it had failed to warn him of the inherent risks of the route, the U.S. Fourth Circuit Court of Appeals rejected his claims, considering that the company had fulfilled its duty to inform by distributing warning brochures and requiring participants to sign forms indicating the possibility of falling or capsizing in the rapids, the risk of injury, and a waiver of the company's liability. The risks arising from white-water rafting are among the "obvious and foreseeable" risks for anyone about to embark on such a trip and do not require additional warning. (Sanders v. Laurel Highlands River Tours, Inc., 1992)

Finally, it should be noted that the travel agency is obligated to obtain insurance covering its civil and professional liability, as stipulated in Article 19 of Law 99-06 concerning tourism and

travel agencies, ensuring that the tourist receives compensation even in the event of the agency's insolvency.

4. CONCLUSION

From the foregoing, it is evident that the duty to inform constitutes a fundamental safeguard ensuring the protection of tourists from the risks inherent in adventure tourism contracts. This obligation derives its importance from the requirements of transparency and clarity in communicating essential information regarding the level of risk, conditions of practice, necessary precautions, and potential outcomes. Accordingly, any breach of this obligation cannot be regarded as a mere contractual default; rather, it amounts to a serious fault that may directly compromise the tourist's safety.

Several key conclusions emerge from this study:

- The specific nature of the adventure tourism contract calls for a reconsideration of certain traditional concepts of contractual obligations, particularly the duty to inform. In this context, the obligation goes beyond its classical scope in traditional tourism contracts and extends to include detailed information relating to health requirements, natural and climatic conditions, and the technical constraints of the activity. This broader scope is justified by the high-risk environment inherent in adventure tourism.
- The study reveals a legislative gap in Algerian law, as the legislator has not established a specific legal framework governing adventure tourism. Instead, reliance is placed on general provisions contained in Law No. 99-06 on travel and tourism agencies, the Civil Code, and the Consumer Protection Law. However, these provisions remain insufficient to address the specific risks and complexities of this emerging type of tourism.
- The duty to inform in adventure tourism is characterized by its dynamic and continuous nature, extending over two complementary stages. It operates at the pre-contractual stage by ensuring that the tourist is fully aware of the nature and risks of the activity, and continues during the execution stage through real-time guidance, updated information, and ongoing on-site supervision. This temporal extension reinforces the preventive function of the obligation.
- The forms of breach of the duty to inform in adventure tourism differ significantly from those observed in traditional tourism contracts. They primarily relate to the failure to provide accurate and sufficient information regarding the nature and degree of risks, the spatial and temporal limits of the activity, safety conditions, and the means employed to mitigate potential dangers, which may undermine informed consent and increase exposure to harm.
- The contractual civil liability of the travel agency is twofold. It arises from its personal fault in cases of direct breach of the duty to inform, particularly in comprehensive adventure tourism packages, and extends to liability for the acts of third parties entrusted with the execution of certain services. This dual basis of liability enhances the protection afforded to tourists and limits opportunities for evading responsibility.

- The study opens important prospects for future research, particularly in conducting empirical and field-based studies to evaluate the practical application of the duty to inform in adventure tourism and to analyze judicial trends in resolving related disputes. At the same time, it highlights several challenges, notably the absence of a specialized legal framework, the limited availability of case law, and the constraints in accessing comprehensive field data, which may hinder the effective implementation of legal protections in this field.

Based on these findings, the following recommendations are formulated, directly addressing the challenges identified:

- Calling on the Algerian legislator to establish a specific regulatory framework for adventure tourism, including clear rules governing licensing conditions, safety requirements, participant criteria (such as number and age), prohibited areas, a dedicated insurance system, and the legal obligations arising from the contract, particularly the duty to inform.
- Strengthening oversight of adventure tourism agencies to ensure the provision of safe and high-quality services, with strict compliance with the duty to inform, thereby achieving a balance between offering an engaging experience and ensuring tourist safety.
- Granting particular importance to the training of guides and translators, as they represent the primary interface for communicating information to tourists during adventure activities, ensuring accurate and effective transmission of risk-related information.
- Encouraging the judiciary to adopt a flexible interpretation of the "ordinary tourist" standard, taking into account the specific nature of adventure activities, their level of risk, and the experience of participants, in order to ensure a realistic assessment of the required level of information.
- Enhancing tourists' awareness of their right to receive clear, accurate, and comprehensive information prior to participation, enabling them to make informed decisions and better protect themselves from unforeseen risks.

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