

**Dual Responsibility of Travel Agencies and the Consequences
Arising from their Failure to Fulfill Obligations in Algerian
Legislation**

المسؤولية المزدوجة للوكالات السياحية والآثار المترتبة عن الإخلال بالتزاماتها
في التشريع الجزائري

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Abstract:

This research addresses a significant topic worthy of discussion and study. Responsibility in the scope of tourism contracts is not limited to the agency's fault alone but extends to the actions of those it employs to fulfill its obligations, making it a dual responsibility. When the agency fails to fulfill its obligations towards the tourist,

whether legal or contractual, it is liable for any harm caused to the tourist due to this breach.

Keywords: Travel Agency; Protection; Damage; Responsibility; Compensation.

Introduction:

Algeria has shown interest in tourism due to its rich natural landscapes, facilitated by the establishment of specialized agencies tasked with organizing tourist trips both domestically and abroad. The Algerian legislature has enacted legal texts to keep pace with political and economic developments in the country.

The first law in this regard was Law No. 90/05 dated February 19, 1990, concerning travel agencies and tourism. Recognizing tourism as a pillar of the national economy, outlining the general rules governing the activities of travel agencies and tourism establishments. It provided a detailed description of the legal relationship between travel agencies, tourists, and the responsibilities involved, specifically in the third chapter titled "Tourism and Travel Contracts," considering every agreement

concluded between the travel agent and the tourist as a contractual agreement.

The breach of contractual obligations by the travel agency results in liability towards the tourist. When the tourist suffers bodily harm due to the agency's failure to guarantee their safety or financial damage such as loss or damage to their belongings, the agency is liable.

Based on the foregoing, the problem posed in this study is: What is the dual responsibility of travel agencies, and what are the consequences thereof?

First: Dual Responsibility

Article 21 of Law No. 99/06, which governs the activities of tourist agencies and travel agencies, stipulates that these entities are responsible for any damage suffered by the client resulting from the total or partial non-performance of their obligations. This includes any other damage caused by service providers enlisted to carry out agreed-upon services.

This clearly indicates that the responsibility of tourist agencies and travel agencies arises when they fail to fulfill any of the contractual obligations stemming from the tourism contract. Consequently, if this breach results in harm to the tourist, whether physical or financial, or arises from the non-execution of the trip or stay in whole or in part, whether this breach is attributable to the agency itself or to those entrusted with executing some or all of its obligations, then:

1- Personal Liability:

Tourist agencies and travel agencies are responsible for their own errors when failing to fulfill contractual obligations or executing them in a defective manner. Therefore, the error leads to contractual liability for their failure to fulfill contractual obligations resulting from the contract binding them with the tourist. Examples include booking a hotel below the required standard, wasting time in tourist cities beyond the necessary duration, resulting in harm to the tourist, who is the soul and foundation of civil liability in general.

Although there are various damages that may affect the tourist client, they are primarily physical damages.

¹Physical harm refers to any action that compromises a person's physical well-being by causing injury or damage to an organ that affects their ability to earn or their life, constituting the most severe form of harm Tourists are more likely to suffer physical harm during comprehensive trips organized by tourist agencies over a certain period, where accidents may occur during transportation provided by the agency or rented by it, as it has the right to supervise and control. Therefore, it is responsible for compensating the tourist or their heirs. ²

The tourist may also suffer financial damage, such as loss, damage, or theft of belongings entrusted to the tourist

¹ Zoulikha Himer, "The Tourism Contract - A Comparative Study - Doctoral Thesis, Specialization in Private Law," University of Guelma, 2021-2022, p. 386.

² Karakouri Mbarka Hanan, Himeissi Reda, "Dual Civil Liability of Tourist Agencies," Policy and Law Notebooks, Issue 17, June 2017, p. 3.

agency, as the tourist becomes a depositor and the tourist agency becomes a trustee for them, and the contract between them is a deposit agreement. Consequently, the agency is obligated to safeguard and maintain the tourist's belongings entrusted to it.³

2- Liability for the Acts of Others:

Often, in fulfilling the travel contract, tourist service providers, such as transportation, accommodation, tours, visits to archaeological sites, and others, intervene due to the agency's inability to perform these services alone.

They act on behalf of the agency in providing all or part of the tourist services, which may imply the possibility of the agency's liability for the acts of others.⁴ It is worth noting that the contractual liability of tourist companies for the acts of others only arises in

³ Rabeh Belazzouz, "The Legal System of the Tourism and Travel Contract in Algerian Legislation," Master's Thesis in Law, Contracts and Liability Specialization, University of Bejaia, 2005, pp. 118, 123.

⁴ Dalal Yazid, "Legal Protection for Tourists in Light of the Tourism Contract," Policy and Law Notebooks, Issue 11, June 2014, p. 141.

comprehensive trips organized by tourist agencies outside the state borders.

The service provider (carrier, hotelier, restaurant owner, or guide) in the foreign country commits an act that harms the client, as the travel contract often resembles a contract for services. The agency plans and organizes the trip, then contracts others to execute it. In individual trips where the agency only acts as an intermediary between the tourist and the service providers, the agency executes the contract itself and does not need to subcontract to others.⁵

Therefore, this article serves as the legal basis for the contractual liability of tourist agencies for the acts of others, especially in comprehensive trips. Conditions for establishing liability for the acts of others (service providers) include:

- The act of the provider's failure to fulfill the obligation.

⁵ Ben Koureich Khaled, "Contractual Liability of Tourist Agencies for the Acts of Service Providers," p. 80.

- The error committed by the provider entrusted with executing the obligation.
- The tourist or their heirs proving the damage caused to them by the service provider entrusted with executing the trip in the event of death.

Second: Effects of Tourist Agency Liability and Cases of Exemption:

It is undeniable that the breach of obligations by tourist agencies opens the door for tourists or their heirs to file a lawsuit against them to hold them liable for compensating the damage suffered by their bodies, such as injuries or death, or their property, such as loss of belongings, or paying high prices for poor tourist services, or as a result of canceling, staying, or modifying their itinerary by the tourist agency.⁶

On the one hand, contractual liability provisions do not fall within the public order, and therefore they are not

⁶ Ahmed Al-Saeed Al-Zaqard, p. 193.

entirely mandatory, allowing individuals to agree to violate or modify them.

1- Compensation Lawsuit:

This is the legal means through which the injured party can obtain compensation for the damage suffered, if not voluntarily provided, it is called a civil lawsuit. ⁷The lawsuit is filed by the injured party who suffered harm due to the tourist agency's breach of its contractual obligations arising from the tourism contract.

To accept a compensation lawsuit, the person must have status or have a current or potential interest recognized by law, according to Article 13 of the Civil and Administrative Procedures Law.

⁷ Suleiman Markas, "Al-Wafi fi Sharh Al-Qanoon Al-Madani," Part Two, Obligations, Volume Three, Harmful Acts, Fifth Edition, Dar Al-Kotob Al-Qanuniyah, Egypt, 1988, p. 569.

2- Means of Exemption from Tourist Agency Liability:

- **Contractual Exemption:** According to the general rules of contractual liability, a tourist agency and a tourist may agree to exempt from liability provided it does not reach the limit of exemption from fraud or gross negligence.
- **Legal Exemptions:** The new system for the liability of tourist agencies did not have specific means to deny their liability, therefore resorting to the general rules, then to the general rules stipulated in Article 127 of the Civil Code, which include:
 - ✓ **Force majeure or unforeseen events:** Force majeure must have occurred during the specified period for the execution of the obligations under the travel contract.
 - ✓ **Inherent error of the injured party:** If the damage occurs as a result of the

inherent error of the injured party itself, then the agency's liability for this error made by the injured party is eliminated.

- ✓ **Error of others:** The error of others does not constitute a reason for exemption from civil liability unless it involves professional error and was sufficient in itself to cause harm to the tourist or client, and the victim's error does not waive the liability of the hotel owner as long as it did not result in the absence of a component of civil liability.

Conclusion:

This study has led to the following results and recommendations:

Results:

- ✓ The Algerian legislator regulates the profession of tourist agencies and travel agencies in Law No. 99-06.
- ✓ The legal relationship between the agency and the tourist and its consequences are governed by general rules.
- ✓ Breach of obligations arising from the tourism contract leads to liability.
- ✓ Tourist agencies are responsible for bodily injuries suffered by tourists during the execution of tourist trips, as well as for the acts of others they resort to for executing their obligations in comprehensive tourist trips.
- ✓ In case of bodily, financial, or even moral harm, the right to resort to the judiciary to file a compensation lawsuit and determine the competent court exists.
- ✓ The specificity of contractual liability of travel agencies for breach of obligations, either as personal liability when they are directly

responsible for executing the tourism contract, or as vicarious liability when they assign the execution of their obligations to others.

- ✓ The Algerian legislator pays attention to regulating the work of tourist agencies and travel agencies, issuing specific laws for this purpose. Although these rules regulate the tourist's position and enhance their protection, they do not regulate the relationship between the agency and the tourist with sufficient detail and precision.

Recommendations:

- The Algerian legislator should add a specific section in Law No. 99-06 regulating the contractual relationship between the tourist agency and the tourist.
- Tourist agencies should be held legally responsible as the stronger party in this relationship for all damages incurred by the

tourist during the execution of agreed-upon services.

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