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RUINED HOLIDAY DAMAGE: WHEN HOLIDAYS TURN INTO HELL

The law protects the right to enjoy a period of physical and mental regeneration. The "Tourism Code" comes to the aid of the tourist consumer. But how?

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The right to enjoy a period of rest and leisure is an essential asset **to protect**. However, we know that a holiday is not always a holiday and can turn into hell.

"Ruined holiday damage" consists of **physical and mental discomfort** suffered by the tourist consumer as a result of non-fulfillment, in whole or in part, of the planned holiday. Indeed, if the holiday does not occur as expected in opposition to contract provisions, it is possible to demand **a compensation for damages for the discomfort one was made to suffer**.

Think about particular cases like cancelled flight departures or extreme flight delays; lost, delayed or damaged baggage; lack of essential services in accommodation (water, electricity and so on) and other services foreseen by the contract; characteristics of places and hotels different from the ones presented to the customer; in general, disservices due to the travel organiser's negligence.

The **Tourism Code (legislative decree no. 79/2011, which came into force on 21st June 2011)** protects the consumer/tourist by explicitly foreseeing the so-called **"ruined holiday damage"**. In particular, art. 47 establishes that, if the non-fulfillment or improper performance of the tourist package services is important, the tourist can "ask for compensation for damages related to uselessly spent holiday time and unrepeatable chance, besides and regardless of the dissolution of the contract".

The services foreseen by the contract must be consistent with the contract proposal viewed by the consumer (prospectus) and based on which they made their choice (artt. 36-38 of the Tourism Code). If the tourist considers the organiser's improper performance as significant and intends to ask for compensation also for ruined holiday damage, they must take civil action in case the organiser refutes liability. The organiser, if necessary, can involve the insurance company in the same action in order to be held harmless for a potential compensation, which is judicially determined, by virtue of the civil liability insurance coverage.

In the cause for action (sometimes independently), there is a "concurrent and parallel" claim involving the company and the insured party. In this case, the insured would be the tour operator. This happens regardless of the potential compensation recognised for the tourist consumer depending on the accident insurance, which is still considered if it has already been approved and settled out of court.

Conversely, **the tourist can act for all the damages they think they suffered as a result of the travel organiser's improper performance**, suing both the tour operator and the

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insurance company as far as the accident insurance coverage is concerned. In that case, if the organiser refutes the improper performance about which the customer complained, they have the right of action and defense against the tourist consumer. In addition, they can ask the company to be held harmless by virtue of the civil liability insurance for both pecuniary and non-pecuniary damages and for being held harmless when sentenced to compensate for ruined holiday damage. Standing as defendant of a possible actio, the tour operator is responsible for every problem concerning service quality and the improper performances caused by the service providers chosen (airline holding companies, hotel managers, tourist guides), with the right to be compensated from them.

In any case, indeed, **the tour operator is responsible for the third party service providers included in the travel plan** (art. 43 of the Tourism Code). The same principle applies if personal injury occurs after improper performance, e.g. the common case of car accident while moving in loco as foreseen by the travel plan (art. 44 of the Tourism Code). Consequently, it is easier for the tourist consumer to have **only one contact person**.

However, note that only if the improper performance is important is the travel organiser responsible for the so-called **emotional distress** suffered by the traveller; substantially, it is such a discomfort that the holiday causes stress and tiredness rather than a moment of physical and mental regeneration. Moreover, **the injured party needs to prove** the causal nexus between the case and the detrimental event, that is to say, causation.

The tourist must make a complaint promptly, even during the holiday, so that the organiser or their representative on the spot or the tourist guide can solve the problem (art.49 of the Tourism Code); alternatively, the complaint can be presented by registered letter or any other means suitable for proving that it has been received within ten days after coming back from the holiday.

The Italian Supreme Court (cf. Italian Cassation 297/2011) expressed their opinion on the time limit for complaining: by virtue of an interpretation oriented towards the weakest contracting party, i.e. the consumer, it does not represent a limitation period for the right to compensation. Consequently, the complaint can be made at a later stage on condition that it takes place within **the period of prescription of one year from re-entry from the holiday** (for damages different from personal injury) and of three years for personal injury.

Finally, **let us quantify the damages**: as for an improper performance of little importance (disservice), a lack of service in whole or in part is taken into account, thus considering the consumer's expenses paid to benefit from the services included in the travel contract,

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as well as a potential substitute service offered by the organiser; as for **pecuniary damages**, which have proved to be the consequence of the improper performance, the tourist is entitled to a **full refund** of all the expenses incurred for which they can provide the relevant receipts (e.g. purchases made due to lost baggage needed to continue the journey; unbudgeted accommodation and board expenses; airline tickets or tickets of any other means of public transport to move in loco; unbudgeted loss of services which should have been provided by the organiser or their third party and are included in the contract, etc.); depending on the accident insurance, physical damages can also be compensated out of court and regardless of the tour operator's involvement; as for settlement, the single national matrix table is considered to determine the compensation for biological damage.

Generally speaking, this happens in the event of **minor accidental injuries** (the so-called microlesions), which are unrelated to the tour operator's improper performance; in order to determine ruined holiday damage, a non-pecuniary damage that is difficult to quantify, the prejudice "related to uselessly spent holiday time and unrepeatable chance" is taken into account.

For example, if the improper performance prevented the departure and/or it took place at the beginning of the journey, thus compromising its execution, the judge can state that it is fair to compare ruined holiday damage to the expenses paid to purchase the tourist package, that is to say, the potential value of the lacking service.

Furthermore, **the reason for travelling is considered**, because it sometimes occurs on a special and unrepeatable occasion (e.g. honeymoon trip; rare natural events one wants to attend and on which the choice of a certain journey depends).

However, if the improper performance causes personal injury, it cannot be separated from mental or physical pains suffered by the consumer. In that case, the single national matrix table is used to determine the compensation for biological damage, which reincludes each damage caused by injury to the interests concerning the person with no economic relevance, after the Italian Supreme Court Cassation's decision (section 3 civil no. 531/2014 which recalls the principle expressed by the joint sittings of all divisions in sentence no. 26972/2008).
