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TERMS OF THE CONTRACT FOR RENDERING HEALTH TOURISM SERVICES

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The article examines the essential terms of a civil contract for rendering health tourism services. It is proposed to feature services forming the subject of this contract variety. Other conditions which will be essential for the contract for rendering tourism services are considered: those given in the tourism legislation or proposed by the parties.

Nowadays tourism services are in high demand in the civil circulation. Among the types of tourism health tourism stands out, making one of the most important and dynamically developing of its kinds. According to the prognosis of the World Health Organization (WHO), by 2022 tourism together with the recovery sphere, will have become one of the key global industries [1].

The program of socio-economic development of Belarus for 2016-2020 years, in Section 6.11. "Development of transit attraction and hospitality industry", classifies health tourism as one of the most promising types of tourism [2].

As E. Pisarevsky notes, relations in the sphere of tourism are complex social relations in which the four sides take part: a tourist company, a tourist, the state, and the organization of the tourism industry (transport, accommodation facilities, catering). Due to the fact that the realization of tourist activity in the absence of one of the mentioned parties is impossible, the coordination policy meant to create a balance between the subjects of relations in the sphere of tourism becomes particularly important. The main instrument for creating balance policy is the current civil-legal regulation of the activity of the tourism industry subjects [3].

The contract of paid rendering of tourism services should be considered as a significant legal fact in relations of a tourism organization, since to conclude such a contract with customers tour operators have come into various contractual relationships with other parties: transporters, owners of hotels and restaurants and other objects of tourist infrastructure.

Despite the fact that the contract of paid rendering of tourist services takes one of the central places in tourism, as well as in other areas, it has actively been investigated only in recent times. This is due, primarily, to the specifics of the legal regulation of the paid rendering of services in general. Neither pre-revolutionary Russian legislation nor the Civil Code of the BSSR of 1923, nor the Civil Code of the BSSR of 1964 considered the contract of paid rendering of services as an independent type of contract. In the Civil Code of the Republic of Belarus Chapter 39 is devoted to the mentioned contract. V. Bogonenko notes that as an integral and structurally completed legal phenomenon Institute of the paid services was formalized and entrenched only in the current Civil Code [4, p. 304].

According to Art. 402 of the Civil Code of Belarus (hereinafter – the Civil Code of the Republic of Belarus) significant terms of the contract are the terms of the subject matter of the contract, the terms considered in the legislation as essential, necessary or required for contracts of this type, as well as all the conditions for which at the request of one of the parties agreement should be reached [5]. A similar list of essential terms is contained in Art. 432 of the Civil Code of the Russian Federation [6]. V. Vitryansky notes that in comparison to the previous legislation one of the sources of definition of essential terms of the contract is lost, that is, the character of the contract itself. In addition to the essential terms of the contract, which have been recognized as such by law, there have traditionally and specifically been mentioned the essential terms of the contract, which, although not recognized as such by law, are necessary for contracts of this type [7]. Currently, this gap in the legal regulation is eliminated.

V. Godunov draws attention to the existence of the issue unresolved at the level of the Civil Code, namely, how to determine the essential terms of the contract, if the list of them is not contained in the legislation [8, p.121].

The resolution of the Plenum of the Supreme Economic Court of the Republic of Belarus of December 16, 1999 № 16 "On the application of the norms of the Civil Code of the Republic of Belarus regulating the conclusion, modification and termination of contracts" determined that essential terms should be classified as those following from the nature of the contracts of this type [9].

E. Sukhanov indicates that in some cases the law itself names certain terms of the contract as essential [10, p. 96]. A list of essential terms of the contract of rendering tourist services is contained in Art. 17 of the Law "On tourism". They are:

- the cost of tourism services, the timing and the order of payment;
- information about the performer, his location (place of residence of the individual entrepreneur) and bank account details;
- information about the customer to the extent required for rendering of tourism services;
- the tourist travel program;
- rights, duties and responsibilities of the parties;
- the conditions of change and termination of the contract of rendering tourist services, the procedure for the settlement of any disputes and compensation of losses caused (harm);
- other terms with respect to which at the request of one of the parties the agreement must be reached [11].

The condition of the subject is essential for any civil law contract. In this connection it can be assumed that the condition of the subject is the only one essential for the existence (presence) of any civil law contract as a legal fact [12, 159].

The contract of paid rendering of services may be isolated due to the presence of a special subject of the contract – the service. At the same time, the allocation of services as an independent object of civil rights (Article 128 of the Civil Code of Belarus) is associated with a number of problems in their legal qualification: the definition of the term "service" is not contained in the Civil Code of the Republic of Belarus. The definition of this concept is given in Sec. 2, Art. 30 of the General Part of the Tax Code of the Republic of Belarus: "The service is recognized as an activity, the results of which do not have material expression, are implemented and consumed in the process of this activity" [13].

Based on this definition, it is possible to distinguish three classifying characteristics of a service: firstly, it is an activity; secondly, the final result of such an activity often does not have a financially-materialized form; thirdly, the result of the activity is consumed in the process of its implementation.

To use the above concept of "service" in relation to the subject of a civil contract there is a certain perspective: in the Tax Code the definition is established for tax purposes. The service in this context is an activity that generates income and is subject to applicable taxes. Legislator in this case is not interested in the result obtained by the customer, nor, in fact, in the existence of the result at all.

It is no accident that the question of the characterization of the category of "service" in the legislation remains controversial until now.

A. Sherstobitov separates the subject of a contract and the subject of the execution of a contract of paid rendering services. In the first case it is the action or activity, in the second – the beneficial effect received by the customer on the fulfillment by the performer of certain actions or his implementation of certain activities. At the same time beneficial effect obtained by the customer under the contract is intangible by nature and in contrast to the labour contract is never expressed in the emergence of a new thing or change (improvement) of consumer properties of an existing one [14, p. 40].

According to Art. 1 of the Law "On Tourism" the tourist services include:

- transportation services;
- accommodation services;
- other services (catering, tourism travel organization, sightseeing tours and other services), non-concomitant with transportation or accommodation, provision of which in a complex of services included in the tour lets to fulfill a tourist trip in accordance with its objectives and the needs of the tourist, tripper [11].

In Sec. 4 of Standards of the Republic of Belarus 1352-2005 "Tourist Services. General Provisions" among the tourist services there are health tours (health tours with the rest and (or) treatment at the resort), and "other tours" [15].

The use of the phrase "other tours" means that the list of services provided by the tourism executors can be expanded through the provision of additional services related to the various types of tourism. Considering the specificity of health tourism, some kinds of tourist services should not be included in the contract for rendering of tourist services to improve health, as contrary to the basic purposes of the contract. In particular this refers to the services that are related to active or extreme rest.

As the subject of the contract of rendering services for health tourism it is natural to allocate health services, i.e., a spa treatment, recreation, prevention of diseases, rehabilitation.

Namely, rehabilitation and concomitant treatment procedures presuppose the use of special methods that are generally used in complex. For example, the service "Vichy shower" offered in many health institutions represents using water from the thermal springs, often combined with treatments for aesthetic care and massages, to provide the necessary effect on the body. The list of wellness treatments is very diverse and includes such

techniques as acupuncture, aromatherapy, various types of saunas and bath services, showers, massages, yoga and many more [16].

Decree of the Council of Ministers on November 12, 2014 № 1064 approved the Rules of rendering tourist services and the standard form of a contract of rendering tourist services. Annex 1 to the contract of rendering tourist services contains a list of tourist services as a required term [17]. In our opinion, it should specify the full list of all the health and medical services to be provided as part of the tour at the conclusion of the corresponding contract for rendering services for health tourism. This will be considered that the object of this type of civil contract at its conclusion is defined.

Sec. 24 of the Rules of rendering tourist services determines that a contract of rendering tourist services does not allow the exclusion provisions in the standard form of a contract of rendering tourist services. The contract of rendering tourist services may be supplemented by the terms which do not contradict legislation as well as in the form of annexes. In Annex 1 to the standard contract on rendering of tourist services, which is called "The tourism travel program" as a requirement it is defined: "Features of objects of tourist accommodation (their location, classification according to legislation of the country (place) of temporary stay, other information)" [17].

In Belarus the list of health tourism facilities is determined by regulations. Sanatorium organizations include sanatoria, student sanatoria, children's rehabilitation and health centers. The list of health organizations is set public and includes dispensaries, health centers (complexes), health camps, rest homes (bases), boarding houses as well as other organizations, one of the species of which is the health improvement of the population [18].

Since the list of health organizations is set open, there is a legitimate question: what other organizations may be attributed to wellness?

In particular, the Directive of the President of Belarus on August 31, 2015 № 5 "On the development of bilateral relations between Belarus and the Republic of China" defines a problem, among the Council of Ministers's ones, in the humanitarian field "until January 1, 2016, together with Chinese partners, to develop a program for the creation of centers of traditional Chinese medicine and traditional Chinese gymnastics centers in every regional center of the Republic of Belarus, up to 2018" [19]. These centers, in our opinion, will make a form of health institutions.

In connection with the above, to prevent the contradictions that arise in the performance of the contract it is justified to consider the name and description of the health institution proposed to the tourist as an essential term of a contract for health tourism services. As indicated, the object characteristic includes the name and classification characterization of the object and its location. In relation to "other information" it should be clarified: it may be the information prescribed by the legislation as mandatory for this type of sanatorium and health institution, or included into the contract by the customer. In both cases, this information relates to the essential term of the considered type of contract.

The party of the future contract can declare their wish to include in its content a term that is not a necessary or required for the contract. Therefore, despite the existence of Standard Contract, a consumer has the right to insist on the inclusion into a contract on rendering tourist services of the terms, which, in his opinion, are essential. Only in this case the contract is concluded (para. 2, Art. 402 of the Civil Code of Belarus). In the absence of agreement on it the match of the parties' will not appear, and the contract must be considered as not concluded. This implies that the existence of disagreements between the parties of a contract on any of its terms shall entail its transformation into substantial, and the same contract is not concluded until disagreements exist.

As a rule such terms detail the relationship between the parties, which corresponds to the right of the consumer to receive information about the services, as well as their performers (Art. 4 of the Law "On Protection of Consumer Rights") [20]. For example, the tourist is entitled to request to provide him with the information about the transportation services, the character of the flight, the rules of the international transport of passengers and baggage, etc. The refusal to include the terms on which the customer insists into a contract suggests that the performer is not confident in the proper performance of its obligations or does not intend to execute them properly.

The other party of the contract, which is the tourist organization, has corresponding rights. However, the inclusion of certain terms, which the performer considers as necessary, happens with the consent of the customer (consumer) and must not violate his rights.

Various species of the contract for rendering tourist services are assigned and, therefore, there is the possibility to adjust the terms of the contract within the typical form depending on the type of services provided. Since within rendering health services tourists are offered medical services Sec. 16 of the contract of rendering health tourism may be stated as follows: "Parties are responsible for non-performance or improper performance of obligations under this contract in accordance with the civil legislation and the public health legislation of the Republic of Belarus".

Based on the above, it is possible to draw some conclusions with regard to the essential terms of the contract for rendering services for health tourism.

1. Terms on the subject of the contract are contained in Art. 1 and 17 of the Law "On tourism" and should be specified in the program for travel. Parties should agree on a detailed list of specifications of services in health improvement and sanatorium treatment.

2. The Art. 17 of the Law "On Tourism" contains a list of conditions that have to be defined in the contract as essential, but considering characteristics specific to the provision of health (sanatorium) services to the consumer.

3. The list of services included in the contract can be expanded to include additional services as part of a health tour, or other conditions at the customer's or performer's request.

Using the proposed characteristics of the essential terms at the conclusion of the indicated varieties of a civil contract can have positive consequences in law activity. The subjects of tourism activities and tourist services customers will be able to avoid or minimize the possibility of disputable situations in connection with the improper coordination of contract terms.

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