

COVID-19: Evaluation of the Consumer Rights within the scope of Travel Cancellations

Introduction

The deadly Covid-19 Coronavirus (**Covid-19**) outbreak, which has been first seen in Wuhan, China, and rapidly spreading to the whole world, alongside affecting daily life in many countries, has led people to cancel their travel plans abroad within the scope of social and individual measures. Therefore, the question whether the consumers could cancel the hotel, flight and package tour reservations that was made before, due to force majeure, has become one of the issues on the agenda.

Aydın Ağaoğlu, Honorary President of the Consumer Application Center, made statements that the cancellations due to Covid-19 will be considered within the scope of “force majeure” and that the paid prices should be refunded to the consumers. In line with the statements made by both the Minister of Foreign Affairs and the Minister of Health in the previous period, rather than suspending the flights to all countries where Covid-19 cases have been reported, travel restrictions have only been imposed on countries in which the outbreak has been experienced intensely, such as China, Iran, Iraq, Italy and South Korea as well as visits to Umrah and the flights to those countries have been cancelled by airline companies. Eventually, as a result of the cancellation of all international flights to/from our country, the holiday plans had to be canceled. It is clear that in such a sensitive period, the costs of services that are impossible to perform due to already cancelled flights and prohibited services must be returned to the consumer without any deduction.

However, the paths to be followed for the package tours, flights and reservations for the dates and locations that are not canceled by the authorities should be evaluated under the legislation. Because even though there is no prohibition imposed by the authorities, travelling during this period may seem risky to individuals. In this context, there are various regulations in the legislation.

Cancellation of Package Tour Agreements by Companies and Consumers

According to the relevant article of the Regulation on Package Tour Agreements published in the Official Gazette dated 14.01.2015; in case there is a force majeure, an event that the package tour organizer, agent or independent service provider cannot foresee and prevent, despite all due care; the package tour organizer or agent cannot be held responsible for damages arising from the failure to perform or to duly perform of the agreement. As is seen, primarily the party that organizes the tour has the right to cancel the agreement. In this case, it can easily be claimed that the companies canceling the tours due to force majeure are not responsible for compensation.

However, Article 16 of the Regulation on Package Tour Agreements sets forth the rights of the consumer. In the termination notices made by the consumer at least thirty days before the start of the package tour, the above-mentioned article explicitly states that the amount charged by the consumer must be refunded without any deduction except for the costs arising from the compulsory taxes, duties and similar legal obligations. As a result, in any case, each consumer who wishes to take measures against the outbreak can request the return of the main service fee by following the thirty-day rule. On the other hand, if the consumer sends termination notice in less than thirty days before the start of the package tour due to force majeure or a situation which the consumer cannot foresee and prevent despite all due care, the paid price shall be returned to consumer without any deduction, except for the costs arising from compulsory taxes, duties and similar legal obligations and the costs paid to third parties, which can be documented and cannot be refunded.

It is obvious that, in the situation of the current Covid-19 outbreak, the consumer may cancel his/her already planned travel with a refund even if he/she does not comply with the thirty-day rule.

In fact, according to the Article 51 of the Consumer Protection Law numbered 6502, the consumer shall have the right to renege on the agreement as well as accepting a change or an alternative offered by package tour organizer if one of the essential components of the package tour changes or the tour is cancelled prior to its starting, due to reasons not arising from the consumer. In case of reneging on the agreement the package tour organizer or his agent is obliged to reimburse immediately the whole price paid by the consumer without any deduction, as of the date he/she receives such reneging notification. It can be inferred from that in case of cancellation of the tour, the consumer must be refunded without any deduction. It is worth noting that person/entity that benefit from the package tour service within the framework of their commercial or professional activities will also be considered as consumers. In summary; it can be said that consumers have the right to renege on the agreement by renouncing to participate in the package tour they bought, due to force majeure or any other reason.

As a matter of fact, according to the statements made by the Attorney Sevda Şensoy, the President of the Istanbul Bar Association Consumer Rights and Competition Law Center, cancelling or delaying all the international tours because of the risk of a travel ban or flight cancellations that may be imposed rapidly, will be more accurate and prudent preference for the package tour organizers in order to prevent the consumers to be the victim in scope of their duty of care.

Cancellation or Postponement of Hotels Reservations by Hotel or Consumers

In scope of the measures against Covid-19 outbreak, an additional circular (**Circular**) dated 15.03.2020 regarding Covid-19 has been sent to the governorship of 81 provinces of the country by the Ministry of Internal Affairs. According to the Circular, in 81 provinces; all the activities of any type of theater, cinema, show center, concert hall, engagement/wedding hall, restaurant/café with music, casino, pub, tavern, coffee shop, café, cafeteria, garden, hookah lounge, hookah cafe, internet lounge, internet cafe, all kinds of game halls, all kinds of indoor playgrounds (including the playgrounds of shopping malls and restaurants), tea garden, association lounges, amusement park, swimming pool, Turkish bath, sauna, spa, massage parlor, SPA and GYM have been temporarily suspended. In this context, the consumers have begun to cancel their hotel reservations. As it is known, the fact that the more people being present together in close proximity increases the risk of spread of the Covid-19 disease. Although it is controversial, considering the risk, it can be said that the cancellation of hotel reservations will be evaluated within the scope of “force majeure” and the reimbursement should be made to consumers.

Cancellation of Flight Tickets in terms of Consumers and Airline Companies

As with package tour agreements and hotel reservations, similar discussions are also experienced with regards to cancellation of flight tickets. Many airline companies carry out the transactions of the passengers who have a ticket to the locations where flying is forbidden, without a problem. It can be said that within the scope of airline transportation agreements, such epidemic disease risk can be accepted as a “force majeure”. When evaluated in this context, during the epidemic disease period we are in, the airline companies are required to refund the prices of cancelled flights without any deduction. Likewise, for the flights cancelled by the airline companies themselves as a precaution, they shouldn't be held responsible to pay any compensation.

The Regulation Amending the Regulation on the Rights of Airline Passengers, published in the Official Gazette dated 25.03.2020, sets forth new regulations regarding the outbreak period. Herewith; the passengers whose flight has been canceled as of 05.02.2020 will be able to reschedule their flight to a desired date, depending on the air operator's seat availability or preserve his/her ticket to use it later. For the unused ticket, the passengers will be able to receive the refund, in case the unused ticket hasn't been used within 2 months after the flight bans are lifted. In this case, the two month period after the flight bans are lifted for the unused tickets, is considered a provision to protect both the consumer and the economy of the companies.

On 27.03.2020, President Recep Tayyip Erdogan announced that due to the rapidly spreading Covid-19 outbreak all over the world, Turkish airspace is completely closed to the international flights as of the night of 27.03.2020; therefore all the international flights were cancelled. Likewise the domestic flights are restricted in line with the measures taken and bound to the permission of the governorship. Therefore, it is observed that as a result of the increasing measures throughout the world and the country, consumers' rights of transportation and accommodation are required to be restricted. Given the principle of consumer protection, it is inevitable to take the necessary measures in this regard. In such a sensitive and critical period, we believe that the companies providing the service should also show their sensitivity and provide all kinds of convenience to the consumers in cancellations and postponements.

Despite all these legal regulations and measures taken, the aggrieved consumers may also proceed to file complaints before the Consumer Arbitration Committees and initiate lawsuits before the Consumer Courts.

Kind regards,

Gökçe Attorney Partnership

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