

# **COMPARATIVE REVIEW OF CONTRACT FOR ALOTMAN IN REPUBLIC OF MACEDONIA AND REPUBLIC OF SERBIA**

**Prof.d-r Risto Rechkoski**

**University "Sv. Kliment Ohridski" - Bitola, Faculty of Tourism  
and Hospitality – Ohrid, Kej."Marshall Tito" br.95, 6000 Ohrid,**  
e-mail: [reckoice@t-home.mk](mailto:reckoice@t-home.mk)

**Katerina Vasilevska, MSc.candidate**

**University "Sv. Kliment Ohridski" - Bitola, Law Faculty–  
Kichevo, Dispersed Unit-Bitola, "Partizanska"bb., 7000, Bitola,**  
e-mail: [kate\\_vasilevska@hotmail.com](mailto:kate_vasilevska@hotmail.com)

## **Анстракт Abstract**

The subject of the paper is processing and comparative analysis of contracts for alotman. The best way to work out these contracts is through analysis of the legal framework which regulates its placement. Try for comparative analysis of legislation in macedonian and serbian legislation is made through perceived positive and also negative sides of these contracts, and on the basis of this, conclusions are made, which law deeper regulates this issue and where it has overlap of contractual clauses of both legislation for contracts. Certainly the paper provides appropriate recommendations for improving the situation.

Accetned is the role of the State market inspectorate of the Republic of Macedonia for preventing violation of the provisions of contracts, through control mechanism that has in its competence, regarding of operation and performance of travel agencies in the Republic of Macedonia.

*Key words:* contract for alotman, travel agency, tourist.

## **INTRODUCTION**

One of the most frequent contracts which are concluded in the field of tourism and tourist law is the contract for alotman. Not only in Republic of Macedonia, but also in the Republic of Serbia there is a great representation and frequention of this contract. By its nature, this contract is a complex

contract and covers a range of services provided by hoteliers and travel agencies. According to the survey during one calendar year, one of the most frequent contract by conclusion which do travel agencies is a contract for allotment. The frequency of the conclusion of touristic contracts, subject of contracts and scope of services provided, make these agreements to be subject of discussion in this paper.

#### CONTRACT FOR ALLOTMENT IN REPUBLIC OF MACEDONIA

Contract for allotment or contract for engagement of hospitality capacities is such kind of a contract which contains a range of services, usually - transportation to accommodation capacities, accommodation, food, travel guides and additional travel and tourist services, which are given or can be given by hotelier. This contract is concluded on one side by a travel agency, and from another by hotelier.

According to the Law for obligations of Macedonia-ZOO<sup>1</sup> with contract for allotment, hotelier is committed during certain times to make available to the travel agency defined number of beds in the defined object, to give hospitality services for people which will be transferred by travel agency and to pay certain commission-provision, and travel agency is committed to seek to fill or to notify in prescribed terms that it can't do that, and to pay the cost of provided services if it use engaged hotel facilities. If with the contract is not prescribed otherwise, it can be deemed that accommodating facilities are made available for the period of one year.

Introductory element in a contract of allotment is filling of accommodating capacities. If the travel agency is not able to fill all engaged accommodation capacities, it is obliged in agreed terms to notify and to submit to the hotelier the list of guests. Those hospitality capacities which are in the list of guests, and aren't marked as completed, are considered free from the day of receiving of this list by the hotelier during the period covered by the list.

This contract is double side contract that produces rights and obligations for contract parties, as for the travel agency and hotelier as well. Before travel agency conclude this contract agency concludes other individual contracts with clients-tourists, in order to fulfill hospitality facilities prescribed by contract of allotment. And because of that this contract is usually concluded for a period of one season, and in this period hospitality facilities are made fully available to the travel agency in order to avoid situations of cancellation of accommodation or traveling.

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<sup>1</sup> Law for obligations of Macedonia-ZOO, Art.941

Contracts for rental of whole facilities and contract for reservation are closely related with contract for allotment. With contract for rental of whole facilities, hotelier undertakes all or separated part of object to lease to the travel agency for a specified period of time. Whether with the object, hotelier will lease other tourist services provided by contract for allotment or not, that is left to be freely determined depending on the will of the contracting parties. Contract on the basis of reservation is that kind of a contract where the travel agency is committed to provide reservation for each client in the accommodation for precisely specified days.

In contract for allotment occurs a specific element. After finishing the service, the cost for services can be paid by agency to the hotelier, or directly tourist to the hotelier. In that case there are three-side contractual element, or two two-sided contracts, where the first conclusion is condition for concluding the second contract, because the agency concludes a contract with tourist and represented his interests in his name and his account in front hotelier.

As for any other contract, also in the contract for allotment exists appropriate related rights and obligations for hotelier and travel agency, which are produced and must be in accordance with the Law for obligations of Macedonia, Law for Tourist activity and General Conditions of travel agencies for concluding of contracts for allotment.

Hotelier undertakes obligation during the specified time to put in use agreed number of beds and to give to tourists transferred by travel agency services listed in separate written document. Hotelier can't arrange with another travel agency engagement of capacities which are already reserved under the contract for allotment.<sup>2</sup>

In terms of rates for services, hotelier can not change it if doesn't notify travel agency for at least 6 months in advance. New rates can be applied one month after delivering to the travel agency. New rates can't be applied to already confirm reservations.<sup>3</sup>

Hotelier is obliged to pay to travel agency a commission-provision of turnover based on contract for allotment. Commission is determined in the percentage of the cost of performed hospitality services. If the percentage of

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<sup>2</sup>Law for obligations of Macedonia-ZOO,art.947

<sup>3</sup>Law for obligations of Serbia also provides that hotelier can't change rates if it fails to notify the travel agency at least six months in advance, except in cases when it comes to changing the course of currency which affects the final price. Laws of Macedonia and Serbia are identical in part that there is no change in rates of the arrangement when the list is delivered to guest. According to serbian legislation, travel agency has an obligation to pay service that offers hotelier after finishing the providing of service.

commission isn't determined by the contract, to the travel agency belongs commission determined by General Conditions for operating of the travel agency, and if there is not that kind of conditions, it is determined by business customs.<sup>4</sup>

Important matter in contract for allotment is possibility of cancellation of accommodation facilities because of certain reasons can be happened. The ZOO-law provides possibility for a temporary cancellation of use of engaged accommodation facilities, without terminating the contract and without obligation for compensation of damage to the hotelier, only if cancellation is sent within the stipulated term. Omission of notice of cancellation within the stipulated term for itself carry responsibility for compensation of damage.<sup>5</sup> If it is prescribed obligation of fulfillment of contractual capacities, and that isn't met, the travel agency is obliged to pay to the hotelier compensation for unused bed per day.

In relation with judicial protection of contract for allotment, it is accomplished through the ability of solving in front of a real and locally competent court which contractual parties will determine by themselves in the contract.

#### CONTRACT FOR ALLOTMENT IN REPUBLIC OF SERBIA

Law for obligations of Serbia<sup>6</sup>, define contract for allotment as a contract with which hotelier obliged in prescribed period to make available to the travel agency a certain number of beds or determined object, to provide hospitality services to tourists which are transferred by travel agency and to pay certain commission. Obligation of the travel agency is to fill or to notify within the deadlines if it is unable to fulfill capacities and to pay the price of provided services, if it used engaged hospitality facilities. It is about a two-sided contract which is concluded on one side between travel agency and the other side by hotelier, and produces rights and obligations for contracting parties.

Characteristic is that according to the Law for obligations of Serbia it is prescribed making available of hospitality facilities for a period of one year unless it is not otherwise specified by contract for allotment. In this part it is left space for contracting parties to regulate their mutual relations otherwise in order to satisfy needs of both parties, but all that should be in accordance

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<sup>4</sup>Law for obligations of Macedonia-ZOO,art.950

<sup>5</sup>Legislations of Macedonia and Serbia are overlapped in the part for fulfilling of contracted capacities.

<sup>6</sup>Law of Obligations for Serbia, "Official Gazette of SFRJ", no. 29/78, 39/85, 45/89, Decision USJ 57/89, "Official Gazette of Republic of Serbia and Montenegro", no. 31/93, no1/03-Constitutional charter

with Law or business customs. Law for obligations of Serbia also provides that hotelier can't change rates if it fails to notify the travel agency at least 6 months in advance, except in cases when it comes of changing the course of currency which affects the price. Anticipated is payment of service to hotelier after finishing service.

For this part, macedonian legislation is different, because in practice, travel agencies require services to be paid before performing of the service.

In this type of contract particularly important is written document. This document may be nominated on the name and also to a particular group, it is non-transferable and it obliged hotelier to provide those services which are listed in it.<sup>7</sup> The separate written document serves as evidence that the person is a client of the travel agency, which signed contract for allotment with hotelier. Based on the special written document, there are performed obligations between the travel agency and hotelier. All services agreed by contracting parties are listed in the written document.

Already reserved capacities, hotelier shouldn't re-booked or put them becoming available to another travel agency. That the hotelier can do after expires term which is provided by the contract and when clients will leave the facility. Opposite proceeding of this is considered as an essential injury, or break of contract for allotment. With unethical proceeding the reputation and professionalism of the hotelier is damaging and ruining. Highlighted in the Law for obligations of Serbia is equality of parties, whether in the case when individuals require a travel service by hotelier, or by a travel agency as a legal entity. Hotelier is obliged to provide services under the same conditions and rates regardless whether it is about travel agency or individual tourist.

There is an option that is provided by the law-the travel agency not to fulfill accommodation capacities within a certain period, but not to terminate the contract for allotment. The agency shall not terminate the contract or to pay damages for the non-fulfillment of accommodation only if in the specified period, it regularly informs the hotelier.

#### ROLE OF THE STATE MARKET INSPECTORATE IN PREVENTING VIOLATIONS OF TOURIST CONTRACTS IN MACEDONIA

Besides the role of the competent court in resolving of eventually dispute, also an active role in protecting the rights of tourist contracts has the State Market Inspectorate. All complaints regarding of non-fulfillment of

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<sup>7</sup>Law of Obligations for Serbia, "Official Gazette of SFRJ", no. 29/78, 39/85, 45/89, Decision USJ 57/89, "Official Gazette of Republic of Serbia and Montenegro", no. 31/93, no1/03-Constitutional charter

contractual clauses of tourist contracts or certain irregularities during the traveling are applied to the State Market Inspectorate in the form of a complaint.

Besides tourist and hospitality activity, the State Market Inspectorate supervises the implementation of laws, other regulations and other acts, by trade companies, other legal entities and individuals, as well as citizens which perform activity in the territory of the Republic of Macedonia, which are usually related to activities in the field of trade, crafts, protection of industrial property rights and other things prescribed by law.

In the jurisdiction of the State Market Inspectorate is monitoring of the work and operation of travel agencies through regular and emergency controls, so if certain irregularities are noted, it requests the initiation of infringement proceeding.

In accordance with provisions of the Law for tourist activity, on the territory of Republic of Macedonia, during 2012, there have been 485 regular, 53 control and 1 emergency inspection supervision. For noted irregularities to the competent courts submitted are 18 requests for initiation of infringement proceedings and 8 requests to Misdemeanor Commission. Adopted are 20 decisions in administrative proceedings.

In the procedure of settlement 14 orders of payment are issued in the amount of 1,315,320 mkd-denars<sup>8</sup>. Collected are 2 payment orders in the amount of 227,550 denars. Issued are 13 invitations for collection of fines in the amount of 690,065 denars. Collected are 6 invitations for recovery of fines in the amount of 125,785 denars.

In 2012 is acted on 67 applications or complaints. 11 travel agencies are forced closed.<sup>9</sup>

On the above it is about statistical data obtained from the control of the State Market Inspectorate in the period of 2012. Considering the data obtained from the completed control and supervision it can be concluded that there are no large violations.

The activity of the State Market Inspectorate is control and supervision over the work and operation of travel agencies, which is provided by the Program of working of the Ministry of Economy. Actively is working on the implementation of the Program from 2013 in accordance with the Law of tourist activity. According to this program during 2013 realization of the 300 inspections was prescribed, which should be implemented with enhanced

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<sup>8</sup> 1 euro€ = 61,5 mkd denars

<sup>9</sup> Извештај за работата на државниот пазарен спекторат во 2012 година/Република Македонија. Министерство за економија/Државен пазарен инспекторат, Скопје, јануари 2013 година

intensity during the summer holidays, winter holidays and vacations , as well as in the good part is realized.

## CONCLUSION

Based on all what was previously stated, it can be concluded that:

1. The analysis of legislation for contracts shows that their use is apparent in every period of the year, especially during the summer or winter season as well as during various holidays. The implementation of the contracts is followed by meeting the anticipated contractual clauses. Canceling of the traveling is determined by cancellation terms whose consequences are very small depending which time period is given before departure cancellation.
2. Law for obligations of the Republic of Macedonia in contrast to the Law for obligations of the Republic of Serbia is sturdier, but is more clear, and more precise regulates rights and obligations derived from the conclusion of such contracts. It better defines the given institutes and certain situations which might occur, so that and party who hasn't adequate knowledge of the law can understand positive and negative sides for the conclusion of such contracts. But it should be noted that almost 80 % laws of both states for this issue are similar. However this doesn't mean that legislations are perfect and that shouldn't be adapted and changed in according with requirements of all the factors involved.
3. In a survey as a very important data that is obtained, is that the situation with cancellation of tourist contracts in Macedonia is much better than before, thanks to the well formulated Law for obligations beacuse parties are familiar with consequences which are expected from cancellation.
4. Competence of the State Market Inspectorate is acting on complaints which are result of nonfulfilling provided obligations predicted by touristcontracts. That competence is quite diligently conducted by this Inspectorate, but in the next period still have to be done and greater efforts should be done for increasing efficiency and effectiveness of its work, for which it should have bigger support from all involved stakeholders.
5. The development of tourist activity in Republic of Macedonia is a top priority of government institutions also for local institutions, and it must be used in order to find better mechanisms for achieving that goal. Normally, there of legal aspest should be thought about adapting of legislation to new times and daily growing needs of tourists, in this global age when extremely rapidly change many things and relations associated with that. It is obvious that the Republic of Macedonia is on a well road towards a larger tourism development.

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