

revista de ANÁLISIS TURÍSTICO



Primer semestre de 2012

Núm. 13

SUMARIO

ARTÍCULOS

“Los hoteles de la región de Murcia ante las redes sociales y la reputación online”

Soledad María Martínez María-Dolores, Juan Jesús Bernal García y Juan Pedro Mellinas

“Tecnologías de la información en el sector hotelero y sus implicaciones en las relaciones empresa-cliente”

M^a Eugenia Ruiz Molina, Irene Gil Saura y Beatriz Moliner Velázquez

*“Actitud de la comunidad residente en Acapulco hacia los *spring breakers* y su comportamiento”*

Martha Marivel Mendoza Ontiveros y Juan Carlos Monterrubio Cordero

*“Quality, tourism and standardisation: Italy towards a *Plan Integral de Calidad del Turismo*? A brief look at the breach of the tourist contract”*

María Cimmino

“Las asociaciones como eje vertebrador del desarrollo del turismo industrial: la red XATIC y el turismo industrial en Cataluña”

Gemma Cànoves Valiente y José M^a Prat Forga

“Sobre rutas históricas e itinerarios culturales en el turismo”

Nuria Morère Molinero



REVISTA DE ANÁLISIS TURÍSTICO, nº 13, 1º semestre 2012, pp. 39-48

Quality, tourism and standardisation: Italy towards a Plan Integral de Calidad del Turismo? A brief look at the breach of the tourist contract

Maria Cimmino
Università degli studi di Napoli "Parthenope"

Revista de Análisis Turístico

ISSN impresión: 1885-2564; ISSN electrónico: 2254-0644

Depósito Legal: B-39009

©2012 Asociación Española de Expertos Científicos en Turismo (AECIT)

www.aecit.org email: analisisturistico@aecit.org

Quality, tourism and standardisation: Italy towards a *Plan Integral de Calidad del Turismo*? A brief look at the breach of the tourist contract

Maria Cimmino

maria.cimmino@uniparthenope.it

Università degli studi di Napoli "Parthenope"

resumen

En este artículo se exponen los resultados de un estudio sobre la calidad del producto turístico a la luz de la globalización y de la atención de la Unión europea a la política de la calidad en el mercado turístico. Objetivo del mismo es analizar las técnicas que están disponibles para las empresas turísticas para dar y vender a los consumidores un servicio de calidad. El artículo analiza las diferencias entre el sistema de calidad del turismo español, muy evolucionado, y las iniciativas promovidas en Italia, respecto a la actividad de los organismos de normalización y respecto a la legislación del contrato de viaje. El autor concluye que es necesario dar valor jurídico a la norma estándar en el contrato de viaje.

Palabras clave: *globalización, derecho del turismo, normas de calidad, incumplimiento del contrato de viaje, ejecución deficiente.*

abstract

The tourism market has been changed by globalisation. It has changed from playing a microeconomic role to a macroeconomic one, the tourism demand has become "global" and has diversified, according to the tourist's variety of interests and motivations, such as rest, health, culture, entertainment, sport, adventure and leisure time. A transformation has taken place, from an élite type of tourism to one of mass tourism. This work aims to analyse the importance of quality in the tourism sector, to ascertain which instruments are available for allowing the tourist to protect all those interests that encourage him/her to stipulate a travel and tourism contract. The concept of quality no longer belongs exclusively to the economic field, but also to the legal realm. It will become apparent that this can occur on the condition that individual tourist contracts include a reference to the quality of service by indicating the standard.

Key words: *globalisation, tourism law, quality standard, breach of tourist contract, incorrect fulfilment.*

1. introduction: *Outlining the field of survey*

This work aims to analyse the importance of quality in the tourism sector, (Parte Esteban L., et al (2011): 35) to ascertain which instruments are available for allowing the tourist to protect all those interests that encourage him/her to stipulate a travel and tourism contract.

The study will offer an opportunity for comparing the legal-legislative concept of quality with the economic-corporate concept, to check whether a link can be created between the two notions and whether any mechanisms exist that allow corporate quality to become legally binding quality in the travel contract, in the tourist's interest.

It is a known fact that there has been debate about quality in the tourism sector for some time now, both referring to tourism services and to destinations and geographical areas (Cardenas Garcia, 2011: 11).

However, there is some considerable difficulty in achieving quality in tourism, as it is a sector that offers services, and quality intended as customer satisfaction is linked to factors that are hard to control and are sometimes unpredictable.

The concept of quality no longer belongs exclusively to the economic field, but also to the legal realm. Pursuant to article 195 of the TFEU, the European Union can promote the competitiveness of companies in this sector and encourage the creation of an environment that is favourable for their development; favouring cooperation between Member States, in particular through the exchange of good practices, developing an integrated approach to tourism, guaranteeing that this sector is taken into consideration in its other policies.

These choices appear to be fully consistent with the dimension that tourism has taken on in the global market and with the needs that it is aimed to satisfy, linked to cultural growth of populations, trade, economy and the personal dimension of individuals.

The topicality of the subject of analysis can also be found from a legislative point of view. In fact, the Directive 90/314/EC on tourist trips is currently being revised by the European Union, with the aim of regulating and promoting the quality of tourist destinations.

Starting with the analysis of data provided by the World Tourism Organisation, it will be seen how Europe is destined to become one of the leading tourist destinations, and this requires particular sensitivity and commitment of all the sector operators to the quality of tourist services.

On the other hand, tourist consumers are now especially sensitive to topics related to quality.

With special attention paid to the legal profile, in order to suggest possible solutions, this work will take into consideration, for example, the recent legislative developments, in particular the new laws introduced into Italy by the Tourism Code, in particular analysing the quality regulations contained therein.

The analysis will be carried out in light of regulatory references in the European Union, comparing Italian experience with the Spanish one, which started up quality incentive policies some time ago. This survey will also allow a comparison between Italian law and Spanish law on breaches of tourism contracts.

By anticipating some choices, the Italian law-making body has fully positioned itself within the EU policy on tourism, intended to reconcile economic growth and sustainable development.

The tourism code is, in fact, one of the concrete initiatives that the Commission has hoped for in order to relaunch tourism and allow the various operators to work within a consolidated policy framework that includes interventions aimed at the promotion of the culture of quality. It will become apparent that this can occur on the condition that individual tourist contracts include a reference to the quality of service by indicating the standard.

2. globalisation of the tourist market and quality requirements for tourist products

The tourism market has been changed by globalisation. It has changed from playing a microeconomic role to a macroeconomic one, the tourism demand has become "global" and has diversified, according to the tourist's variety of interests and motivations, such as rest, health, culture, entertainment, sport, adventure and leisure time.

A transformation has taken place, from an élite type of tourism to one of mass tourism. At the same time, the consumer-tourist (Rossi Carleo, 1997: 811) has become more critical, making precise requests about the quality of performance, goods and services purchased. There has therefore been a transformation of the demand, that has become more complex, with new requirements of quality and guarantees, and therefore protection.

What, therefore are the relations between quality and tourism and which initiatives have the EU and the individual member states enacted to promote diffusion of the culture of quality in the tourist sector? What is the connection between quality and the tourist contract? Are there private laws that explicitly decree the tourist operator's obligation to offer quality services and that consequently provide for the contractual responsibility of the professional in breach of such obligations? In order to answer these questions, it is above all necessary to ponder the tourist product and the concept of quality.

The tourist product must be considered as a whole, not as the single services that it comprises, it is an intangible quid, the result of the combination of several services and thus has a greater value than the sum total of the value of each performance or utility that is included in it (Cimmino, 2008: 50).

It is a consumer product, which does not produce tourist satisfaction through an instant performance.

Satisfaction comes thanks to the provision of a series of services provided over a period of time, made available by a number of professionals (Casarin, 1996).

The tourist-consumer does not receive immediate satisfaction on stipulating the contract, but instead at a later stage when he is a player, as he contributes to the realisation of the holiday or utility for which he purchased the package by actually using it.

Obviously, the complex nature of the product and the intangible nature of the holiday or utilities purchased by the tourist, which will become tangible during execution of the contract, make it difficult to standardise the quality of the product beforehand, and impose ex ante objective assessment criteria that can inform the customer and allow him to make an informed choice that meets his expectations, which are also suitable, if necessary, for aiding payment of damages in the event of a breach.

The same applies when events that prevent the package from being used (dirty sea, the hotel of a lower category than advertised in the catalogue,) make an estimation of the contractual damage difficult. In fact, between one extreme of a total breach and the other of a precise breach, there is a range of breaches that vary in importance.

The quality is "elusive". It is a multi-disciplinary concept that includes economy and law, and has public and private law consequences in a judicial context (Thione, 2004). In corporate science, quality refers to processes, services and not in the final analysis, to things or products. It is identified by using the term "standard", which indicates a set of requisites for a product, whether the latter is an item or a service, established by specific standardisation bodies (UNI in Italy, UNE in Spain, CEN in Europe, ISO at international level) that have the task of dictating the technical specifications to which companies must adapt their organisation and production processes - in some cases voluntarily, in others mandatorily - using specific regulations.

The strength of these standards lies in their consensual and democratic nature, as they are the result of work carried out by bodies that represent the interests of the same companies that must apply such standards. This is where their extraordinary standardisation ability comes from. The jurist, on his part, has had to review traditional precepts and reconsider the meaning of the concept of quality, which, in the Italian Civil Code at least, was and still is conceived in a more general manner, mostly referring only to material items (C.M. Bianca, (1993): 888).

If a theoretician or practitioner of law is asked what quality is, given the lack of an explicit definition in civil law, he will answer that it is the absence of defects in an object, a merit of the item that makes it suitable for use, normal use, according to the reference law set out in article 1479 of the Italian Civil Code, (Trimarchi, (1967):17).

3. the complex nature of the national and supra-national legislative framework, the EU tourism policy action and the role of the regulatory bodies in Spain and in Italy

The regulatory framework that governs the tourist sector, in particular the protection of tourists, is now more complex than ever, (La Torre, 2002: 53), as it originates in a multitude of multi-level sources, both autonomous and heteronomous, national (R. Santagata, 2011: 25) and supra-national (Fernandez Rodríguez, 2006: 79), which interact with each other, sometimes establishing the content of the tourist contract at extern (Rossi Carleo-Dona, 2010: 37).

As one knows, the EU Consumer Policy Action Programme, adopted for the period 2007-2013 by the European Parliament and Council, via the resolution number 1926 dated 18 December 2006 (published in the EU Official Gazette on 20.12.2006) provides for and strengthens the objective of increased protection for consumers, to be achieved by increased responsibilities for travel organisers but also by stimulating and promoting quality policies.

The EU proposal for revising the directive 90/314 on all-inclusive tourist packages is currently being discussed; in fact, in a specific paper adopted in November 2009, the EU Commission summarised the guidelines for the afore-stated revision, identifying the main points as information obligations, liability and solutions for any breaches, also focusing attention on the quality of the services provided for tourists, and foreseeing the possibility of setting up a "Protected trip" label, a trademark of quality to distinguish tourist products and guarantee compliance with the EU regulations a priori (Vaccà, (2010): 639).

The European Union law-making body's clear desire to revise the directive's area of application also emerged, extending it to other possibilities that are not all-inclusive packages, not necessarily combined by the tourist (so-called dynamic packages) and that do not have the exclusive purpose of a holiday (instead a cultural, sports, food and win, religious or work purpose).

Initiatives concerning the promotion and stimulation of quality can also be found in EU tourism policies. In this sense, the European Parliament resolution proposal (2010/2206) (INI) on Europe, the world's no. 1 tourist destination - a new policy framework for tourism in Europe (the text of the project containing the resolution proposal is available at the address www.europarl.europa.eu.) must be pointed out, formulated as implementation of article 195 of the Treaty of Lisbon, which acknowledges specific competences on this subject to the Union.

The following graphs show the data of the WTO about the international tourism. They denote a growth of European tourism in the years 2011 and 2012.

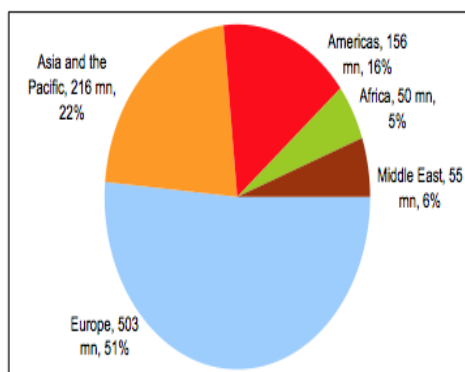
Table 1. International tourism projection Year 2012

YEAR	2011	2012
EUROPE	+6%	+2% +4%
ASIA	+5.6%	+6% +4%
AMERICA	+4.2%	6% +4%
AFRICA	+0%	2% +4%

Source dates Internationals tourism results by WTO 2011

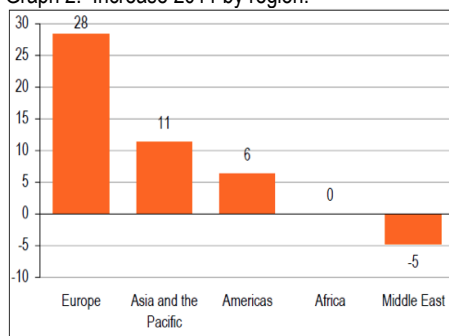
It also foresees that Europe can become the world's top tourist destination and recognises a prominent role in the policies for quality of services and offers for this very purpose.

Graph 1. World Inbound tourism. International arrivals 2011



Source grafico WTO 2012

Graph 2. Increase 2011 by region.



Source grafico WTO 2012

Indeed, in point 15 of the considerations, the proposal invites the Commission to evaluate the opportunity of setting up a European trademark of quality tourism, also requesting the promotion of initiatives aimed at standardising the hotel classification system.

Moreover, the work of standardisation bodies that are drawing up, and have already drawn up standardisation rules for the range of tourist services, is already rather active in the tourist sector. This work will be a useful tool for the standardisation of service quality, also allowing a parameter to be created for evaluating the

preciseness of contractual fulfilment by the tourist operator.

The law defines quality as a set of activities of processes and services that can be measured and assessed, aimed at customer satisfaction, and at the same time providing for the establishment of minimum national standards, of a regulatory nature. It also sets up a rating system, to be associated with the stars, specifying that adherence to this system is voluntary and referring to a decree for setting the relative parameters and criteria, drawn up together with trade associations, in order for it to be implemented. Protecting one's rights to product quality means also guaranteeing knowledge and verifiability of the products' origin and composition. The quality of single services must therefore be distinguished from the quality of the overall final product, just as the matter of the quality of accommodation must be distinguished from that of the tour operators that assemble the product (this is why the quality trademark is a suitable instrument to use). When providing tourist products, several subjects are involved, at least when speaking of pre-set packages; this fragmentation of the offer goes against the tourist's perception of a single offer that he has when purchasing the holiday product. This contrast is a point that must be taken into consideration when setting up a systematic classification system of tourism structures.

Another problematic feature to take into account is the type of services to be classified, (Gosalbez Pequeno, 32) where the range of the concept is not so clear as it might appear to be at first sight. This reference is made in particular to services that are not immediately traceable to the organiser's and direct provider's activities (e.g. the hotel owner or the carrier), but are instead "extrinsic requisites of the holiday", destined to make the same services offered by the tour operator important and useful. For example, we can mention the usability of a clean sea, as advertised and described in catalogues and brochures, or accessibility to places of historical, artistic and environmental interest, for which the tourist has chosen that very package.

In the tourism sector the voluntary standards are founded on the basis of ISO 9000 system, valid for all member countries.

Table 2. Voluntary International standard Quality management systems

ISO 9000	ISO 9001	ISO 9002
PRINCIPLES	REQUIREMENTS	GUIDELINE

There is a specific committee CEN/TC 329, which comprises two workgroups, the WG1 "Hotels and other types of tourism accommodation" and WG2 "Travel agencies and tour operators". Two voluntary standards have been drawn up, one is the UNI EN 13809 2003 with a defining value, specifying the meaning of some basic concepts, and the other is UNI EN ISO 18513: 2004, that defines the types of services that the tourist enterprises

must provide This work has addressed an important issue in the sector, that of standardising language, because as discovered in jurisprudence, identification, description and information in tourist services tend to overlap. The latest initiative by the voluntary standardisation bodies is the setting up of the ISO/TC Committee 228 "Tourism and related services" within the ISO. This is chaired by Spain and has set itself a large, highly ambitious goal, i.e. to standardise the tourist service, with special attention paid to the issues of hygiene, safety and accessibility, establishing technical regulations to offer tourist services transparently and be able to make informed decisions.

In Italy, UNITER (Organismo di Normazione e Certificazione di Sistemi di Gestione Aziendali Commercio, Turismo e Servizi – The Standardisation and Certification Body for Company Management Systems in Commerce, Tourism and Services – UNI Associated Body) has drawn up the standard, UNI 16070 "Services – Hotels - Requisites", that provides indications on the requisites for the organisation and offer of the service, with reference to recruiting staff and monitoring customer satisfaction; and the standard UNI 10866, which involves companies that are halfway between services and tourism, which deal with organising bonus trips.

In the year 1986 was established in Spain AENOR standardization body. In the year 2000 was established the Institute for Spanish Tourism Quality wich has developed a macro-SYSTEM OF QUALITY SPANISH TOURIST (SCTE) created in order to grant the mark of quality tourism certification "Q" (Casadeus, Marimon, Alonso, 2010: 2457).

From the point of view of government actions intended to support and promote the culture of quality, Italy has been a step behind in recent years compared to other countries such as Spain, which has drawn up a specific Plan Integral de Calidad del Turismo together with the sector's enterprises, and recently has also adopted a new strategic document, the Plan Horizonte 2020 that has scheduled a series of measures and interventions to support the tourist market over a longer period (Gutierrez Broncano, Rubio Andres, 2009:130). The Plan Integral (Foronda Robles and Garcia Lopez, 89) aims at creating a real assessment system for quality in tourism and provides for quality assessment by referring to various aspects, in particular calidad de los destinos turisticos, de los productos turisticos, de los sectores empresariales.

Spain has been sensitive to tourism quality policies for some time now. In particular, it has promoted a series of initiatives founded on collaboration between public and private bodies, in order to reconcile public administration activity with the interests of enterprises. The country has realised that quality is a factor of competitiveness and growth that improves consumer satisfaction in the tourist market.

Table 3. Tourism Standard: Spain and Italy

SPAIN Source:ICTE	ITALY Source: ISNART
Normas de Calidad touroperadores y agencia de viaje UNE 13809:2003	Standard tour operator UNI 13809:2004 UNI 18513:2004
Normas de Calidad Hoteles y Apartamentos Turisticos UNE182001:2008	Standard hotel UNI 10670:1997
Normas de Calidad de servicios turisticos de intermediation UNE 189001:2011	Standard travel agenc UNI 10866/2000
Normas de Calidad de Restaurantes UNE167000:2006	Standard accomodatit UNI 10670:1997

Table 3 shows the standards developed by UNI-UNITER in Italy and by AENOR_ UNE in Spain. You can see that the standardisation work in the tourism sector is more advanced in Spanish. In the spanish system of tourism quality there are other specific standards: the UNE 188003:2009 "turismo activo", the UNE 185001:2009 tiempo Compartido, the UNE 188004:2009 for Instalaciones Náutico-Deportivas, the UNE 187005:2009 "Convention Bureaux", the UNE 183001:2009 Alojamientos Rurales and the UNE 186001:2009 Balnearios, for example.

4. spanish tourism quality. Legislative references on the "contrato de viaje o del apartado"

From a legislative point of view, the matter of travel contracts is contained in the Ley General para la Defensa de los Consumidores y Usuarios from 2007, which also comprises the ley número 21/95 dated 06/07/1995, reguladora de los Viajes Combinado (Gonzalez Cabrera, 181; Gonzalez de Los Santos, 14).

Unlike the legislative framework currently in force in Italy, the tourist is protected in Spain solely as a consumer, while in Italy the tourism code is destined to be applied for any type of tourism contract organised, regardless of the subjective quality of the contracting parties.

For the purpose of this survey, however, we will take into consideration the aspects of breaches of tourism contracts regulated by the Spanish LGDCU (Gonzalez Cabrera, 2012: 195). In particular, as we know, the contracting parties, according to Spanish law are on the one hand the organiser or the retailer, in the role of impresario, and on the other hand the tourist consumer who may be either the principal contractor, the beneficiary or the assignee.

Table 4. Spanish law

General law safeguarding consumers and users Travel contract: breach Art. 162.
<i>Liability of organizers and retailers</i>
<i>Tour organisers and retailers will be jointly liable to the consumer and user, according to the obligations which they are subject to in the respective context of joint management of the trip, of correct fulfilment of their contractual obligations, whether or not such obligations shall be performed by them or by other service providers, and without prejudice to the operators' and retailers' right to take legal action against such service providers. Liability towards the consumer will be shared by all those players, whether operators or retailers, who jointly take part in the contract, whatever their category may be or whatever relations may exist among them, without prejudice to the right of recourse by those who are liable towards the consumer and user, against those who may be accused of the breach or incorrect fulfilment of the contract according to the respective context of joint management of the trip.</i>
<i>In addition, tour organisers and retailers will be jointly liable, for damage incurred by the consumer and user as a consequence of the breach of or incorrect fulfilment of the contract. This liability will cease when any of the following circumstances occur:</i>
<i>a) The faults observed in the execution of the contract are the fault of the consumer or user.</i>
<i>b) Said faults are due to the actions of a third party, not involved in execution of the contract and are of an unpredictable or insoluble nature.</i>
<i>c) Such faults are due to reasons of force majeure, thereby meaning that such circumstances are beyond the power of those who invoke them, are abnormal and unpredictable, and for which the consequences are inevitable, even though all due diligence has been used.</i>
<i>d) The faults are caused by an event that the retailer or the organizer, despite having used all due diligence, was unable to predict or overcome.</i>
<i>In the cases of exclusion of liability due to any one of the circumstances set out in paragraphs b), c) and d), the organizer and the retailer, who are parties to the contract, will remain obliged to provide the consumer and user in difficulty with all necessary support.</i>
<i>3. Reimbursement of damages stemming from breach or incorrect fulfilment of the items included in the contract for the joint trip shall be limited by agreement to what is provided for international conventions governing such performance.</i>
<i>4. No exceptions may be made by means of contractual clauses to what is set out in articles 1 and 2 of this article</i>

The organiser and the retailer must be classified as travel agency. As far as the failure in the execution of the package, the law foresees responsibility of both the organiser and the retailer; and there is no agreement on the nature of liability; in fact, there is some doubt as to whether it is considered to be joint liability. Finally, the law contained in article 162.1 foresees joint liability between the organiser and the retailer when they both take part in executing the contract.

Equally, there are some difficulties in distinguishing the case of partial fulfilment from that of serious breach, as this is the only case wherein the tourist can withdraw from the contract, while in the former case, he/she may only demand compensation. The legal nature of the travel agency's liability is considered to be contractual and compensatory liability. Verbatim, article 162.1 of the reformed text foresees that the organiser is responsible for the "proper performance of the obligations under the contract". Whereas article 162.2 (shown on the table 4) provides for some causes of exclusion of the professional's liability, mainly identifying such causes in the consumer's fault, force majeure, i.e. circumstances beyond the control of the organiser and the retailer in spite of the fact that the necessary diligence has been awarded.

Table 5. Italian law

Tourism Code Tourism contract: incorrect fulfilment, Article 43 Incorrect fulfilment
<i>Notwithstanding the obligations set out in article 42 in the event of lack of or incorrect fulfilment of the obligations taken by means of the sale of the tourist package, the organiser and the intermediary must compensate damage, according to their respective responsibilities. Incorrect fulfilment is considered to be a difference in the quality standards of the promised or advertised service.</i>
<i>2. The organiser or intermediary that uses other service providers is however obliged to compensate any damage suffered by the tourist, except for the right of recoupment from the other providers.</i>

By examining and comparing the above law (shown on the table 4 and the table 5) it can be seen that the Spanish matter of travel contracts, in compliance with that of other countries, does not yet contemplate a regulation that attributes legal relevance to company quality. However, we note that projects for increasing awareness of quality policies among the tourism market players were set up some time ago. The time has now come to involve legal professionals in the projects too, and it is also necessary to transform the entrepreneurs' commitments in the field of quality into a legal obligation. This can only be managed if the law forces the entrepreneur and the travel organiser/salesperson to explicitly state the level of quality of the services promised in the travel contract.

5. breach of the tourism contract and the legal importance of quality standards. The new regulations introduced by the Italian Code of Tourism. A new quality system

For this purpose, the laws on travel contracts must expressly provide for the fact that differences in services provided from the ones promised, especially regarding the differences in service quality standards, will be assessed as breaches of contract.

One example, provided by the Tourism Code approved in Italy on 23 May 2011 may be useful to illustrate this matter.

In the Italian legislative system, until the issue of the National Code on the Tourism market and system, approved by the legislative decree n. 79 dated 23 May 2011 (published in the Official Gazette n. 129 dated 6th June 2011) which abrogated the previous framework law on tourism, nr. 135 dated 19 March 2001 (in the Official Gazette), there were a number of initiatives in public law, in particular in reference to activation of local tourism systems and the promotion of service charters, alongside an initiative for companies to join a company quality system on a voluntary basis.

The Italian law-making body has been somewhat disattentive to the application of quality, apart from the provision contained in the tourism framework law, which contemplated a law regarding the classification system that was never implemented. This explains why businesses have only adhered to the culture of quality in a spontaneous manner in many cases.

The issue of the Code of Tourism in Italy is an extremely important new factor, which has also brought about the removal of the entire clause on service and tourist packages from the previous consumer code.

The law-making body's choice to attribute importance to new purposes of tourism, in addition to holidays and classify the various types of tourist accommodation in the same manner, is an especially significant factor. Chapter II contains a detailed list, to be connected to article 34, which considered the combination of travel elements by anyone and in any way, thus implementing a broad extension of the legislation beyond the traditional boundaries as set out in the primitive system contained in Directive 90/314/CE, (Silingardi e Morandi, 1996). Which only presumed the work of the organiser and the vendor.

The Code is in fact an important opportunity for operators in the sector and for tourists, as it lays the foundations for a stable creation of a modern quality system for tourism. The law-making body's brave choice of giving legal significance to quality standards is central to this system, which, according to article 43 of the code, acts as the tool for the precise provision of the service promised in the tourist contract.

For the purpose of this survey, the regulation contained in article 43 (showed on the table 5) of the

Code of Tourism, which replaces the previous article 93 of the Consumer Code, is particularly important. It concerns the lack of or incorrect fulfilment of obligations, stating:

Notwithstanding the obligations set out in article 42, in the event of lack of or incorrect fulfilment of the obligations assumed by means of the sale of the tourist package, the organiser and the intermediary must compensate damages, according to their respective responsibilities. Incorrect fulfilment is considered to be a difference in the quality standards of the promised or advertised service.

2. The organiser or intermediary that uses other service providers is however obliged to compensate any damage suffered by the tourist, except for the right of recoupment from the other providers.

This is not a mere reproduction of the text, the law is in fact the result of a laborious legislative procedure, due to a contrast that arose between the legislative commission appointed to draw up the Code of Tourism and the State Council, which, in its opinion expressed by the parenthesis introduced in article 43 "Incorrect fulfilment is considered to be a difference in the quality standards of the promised or advertised service" stated that the provision in its new version could be the forerunner of banal crimes.

In fact, in addition to the cases of serious breach as set out in article 47 of this Code, and therefore outside the cases in which it is acknowledged, it now expressly permits compensation for the damage of a ruined holiday (Carrassi, 2009: 187).

It is necessary to reflect on this courageous, but necessary choice made by the law-making body to provide legal relevance to the standards of quality, and therefore to the new concept of quality, at least in legal terms. It appears clear from the outset that the new feature is destined to have important effects on the organisation of the tourist market.

Whereas paragraph one of article 93 of the Consumer Code (Quagliato, 2005: 615), specified the responsibility of the organiser or the vendor, also burdening them, in a totally pleonastic mode according to some, with the exonerating circumstance of impossibility that is not attributable pursuant to article 1218 Civil Code, the new article provides for the meaning of lack of or incorrect fulfilment, referring in particular, as stated to the difference in the quality standards of the advertised or promised service.

In this sense, the law-making body, having finally considered the specific nature of the tourist contract in relation to the "actual content of each act of consumption" (this is the opinion of the State Council), has proposed to define the boundaries of responsibility more clearly and certainly, which has given rise to a number of disputes between tourism professionals and consumers in recent years, mostly concluded with the fair liquidation of the damage for a ruined holiday (Lazzara, 2005: 233).

The reference to the difference in the promised quality standards is, therefore, a precious opportunity that

allows a new, more certain definition of the realm of correct fulfilment, an important aspect in a market where there is no trading of a material object with a price, but that of a product and a payment (Cimmino, 2008: 50; cfr. Cass. 4 marzo 2010, n. 5189)

According to the new formulation of article 43 in the Code of Tourism, the quality of service will be the subject of a contractual commitment, in which the promised services will be intended as the description provided in the regulations between the parties. The consumer has the right to receive an exact service pursuant to article 1218 Civil Code and compliant with the contract (De Matteis, 2001: 46).

It will take on legal significance in the contract, due to the regulations that impose obligations of information. Article 38 of this Code foresees that, even if the businesses do not adhere to the rating system, they must provide an indication of the quality standards of the services offered in an information brochure: Standards that must be legally acknowledged.

In this way, there will be more certainty about what is intended as correct execution of the service, thanks to the objective description of the service provided. The contractual description therefore indicates the qualitative characteristics of the product or service that will then be a full part of the binding content of the contractual regulations, and the services will be intended as the ones that the professional party undertakes to provide (Napolitano, 2010: 727).

Whenever the business issues a standardised quality product on the market, it promises a type of service and undertakes to carry it out with the consequence of breach of contract in the event that said service differs from the promise made, which will be assessed on the basis of the contractually established standard.

Article 129 of the Consumer Code also states that the compliance with the contract is defined as compliance of the item or service with the description made by the vendor and as the presence of the qualities that the consumer may expect, also considering the declarations made in advertising.

6. conclusion

The business has free choice in choosing the level of quality that it intends to guarantee (on the condition that it is above the minimum level that will be established by law) and can choose to adhere to the quality of service rating system.

The importance of the standard is to be evaluated together with a clearer distinction of contractual responsibility for breach of tourist contracts, as set out in the law stated, from the connected but different damage of ruined holiday as set out in article 47 of this code. Therefore, it is evident that the clearer and easier to interpret the contract, regarding the. Description of

quality, the easier it will be to judge the verification of incorrectness.

It is also obvious that, with a view to homogeneous compensation rulings, that the more standardised levels will lead to a more objective and pre-determined measurement of quality (of the service) and therefore to more homogeneous compensation rulings.

The quality assessment system outlined in the Code of Tourism, in addition to redefining and optimising new forms of tourism, is also destined to provide greater protection, through article 43, for tourists that have purchased a "roulette formula package", which only provides information about the tourist area and the hotel category, as it is the unsold portion of the package. In reference to this type of package, it is clear that the consumer accepts a higher risk (at the limit of validity), although an attempt to avoid this risk is often made by identifying the level of hotel structures.

The Italian law-making body has taken reference from the EU one, which, as seen in the revision of the directive on all-inclusive packages, intends to dedicate special attention to dynamic packages and to roulette formula packages.

The special attention paid to the aspect of quality makes the codification work significant, as it is the part that has been neglected so far, also due to the non-implementation of the previous law, the framework law on tourism.

One critical factor may be the non-involvement of the voluntary training body in this code, where the task of implementing the rating system is entrusted to the government.

The new features should start up a function of general prevention, as it is believed that it will bring all operators in the sector to organise themselves to offer services that comply with promised standards, and also to adapt its own services to the quality levels that must be drawn up in a regulatory manner.

Finally, it can be stated that the sector codes such as the Code of Tourism, in addition to the Consumer Code, are placed in such a way in connection with the Civil Code that they cannot be interpreted according to the traditional system of general and special contents, but must be reconstructed within a complex framework of regulations and rules that group together around new principles that are no longer (solely) traditional ones. (Rossi Carleo, 2008: 11).

The tourist sector perhaps more than others proves how the civil code and individual contracts are part of a series of laws, some of which are produced by private autonomy (Marini, 2010: 80).

The European tourism sector is destined to play a key role in relaunching the continent's economy. It is, however, necessary to increase the promotion and optimisation of territories and encourage quality policies. A lot has been done, but there is much more to do.

If it is true that the quality of service has been studied from a corporate point of view, it is necessary to create a connection between the economy and the law

and make sure that the entrepreneur respects the commitments he takes, obliging himself to offer quality of services in a transparent manner.

This can only happen if there is also a reference to quality levels of the services provided, i.e. to the standard in travel contracts.

This goal still requires the standardisation of service quality standards nationally at first and then on a European scale. It is no coincidence that the same European Commission is studying the creation of a European mark of quality for tourist destinations.

In order to fully exploit Europe's tourism potential, it is necessary to resolve or follow structural matters carefully. One of the main challenges will be to expand the tourism industry enterprises. Tourists nowadays pay more attention to quality. Tourism enterprises should try to satisfy this need with suitable commercial strategies, but also be managing their contractual commitments transparently and diligently.

Tourism has always been a business based on people. The perception of quality by the tourist much depends on the correctness of the tourist companies' conduct. On the other hand, Internet has already brought about a huge change in the sales methods for tourist products. The repercussions of new technologies will become even more important, as it will become possible for companies to communicate and connect as a network.

7. bibliography

- C.M. Bianca, (1993): "La vendita e la permuta", in *Tratt. dir. civ., fondato da Vassalli*, VII, Utet, Torino.
- CARDENAS GARCIA, (2011): "La compedividad turística en los países del Mediterraneo. Analisis de los factores determinantes", *Revista de Analisis turístico*, 11.
- Carrassi, (2009): "Il risarcimento del danno da vacanza rovinata non sarà più sinusoidale né irrisorio", *Danno e resp.* 2: 85.
- Casadeus- Marimon-Alonso, (2010): "The future of standardised quality management in tourism: evidence from the Spanish tourist sector", *The Service Industries Journal*, 14: 2457 ss.
- Casarin, (1996): *Il marketing dei prodotti turistici*, Giappichelli, Torino.
- Cimmino, (2008): *Qualità della vacanza e inesatto adempimento*, Liguori, Napoli.
- De Matteis, (2001): Il difetto di conformità e l'equilibrio contrattuale dello scambio, *Contr. impr. eur.*, 46.
- Fernandez Rodriguez, (2006): La protección del turista en la Unión Europea, *Revista de derecho de la Unión Europea*, 79 ss.
- Gentili, (1999): La rilevanza giuridica della certificazione volontaria, *Eur. dir. priv.*, 59.
- Gonzalez Cabrera, (2012): La regulación del contrato de viaje combinado, una manera acertada de proteger al turista, *Revista de derecho privado*, 181 ss.
- Gonzalez de Los Santos, (2010): "La regulación del contrato de viaje combinado en el texto refundido de la Ley General para la defensa de consumidores y usuarios", *Revista jurídica galega*, 14 ss.
- Gosalbez Pequeno, (2011): "La concepción y la clasificación de los servicios y los establecimientos de restauración turística", *Revista andaluza de derecho del turismo*, 5, 32 ss.
- Gutiérrez Broncano-Rubio Andrés, (2009): "El factor humano en los sistemas de gestión de la calidad del servicio: un cambio de cultura en las empresas turísticas", in *Cuadernos de turismo*, 129 ss.
- Foronda Robles- Garcia Lopez, (2009): "La apuesta por la calidad como elemento diferenciador en los destinos turísticos planes renovados", *Cuadernos de turismo*, 89 ss.
- La Torre, (2002): "Sistema di qualità e turismo", Aa.Vv., *Marchi ed etichette in un sistema di qualità*, a cura di Alagna, Giuffrè, Milano, 53.
- Lazzara, (2005): "Danno da vacanza rovinata e quantificazione del risarcimento", *Dir. tur.*, 233
- Luminoso, (1999): "Certificazione di qualità dei prodotti e tutela del consumatore acquirente", *Eur. dir. priv.*, 27.
- Marini, (2010): "Distribuzione ed identità nel diritto dei contratti", *Riv. crit. dir. priv.*, 3: 80.
- Napolitano, (2010): "Il morso della scimmia e la responsabilità del tour operator", *Danno e resp.*, 7: 727.
- Parte Esteban L., Alberca Oliver P., Such Devesa MJ., (2011): "La calidad del resultado en las empresas hoteleras de la comunidad de Madrid: la incidencia de los flujos turísticos de la región", *Revista de Analisis turístico*, 35.
- Quagliato, (2005): "Mancato o inesatto adempimento", in Aa.Vv., *Codice del Consumo commentario* a cura di Alpa e Rossi Carleo, Esi, Napoli, 2005: 613
- Rossi Carleo, (1997): "Il turista come consumatore speciale", in Aa. Vv., *Le clausole vessatorie nei contratti con i consumatori*, a cura di Alpa e Patti, Giuffrè, Milano, 1997, 811
- Rossi Carleo (2008): "Il mercato tra scelte volontarie e comportamenti obbligatori", *Eur. dir. priv.*, 2008, 155.
- Rossi Carleo- Dona, (2010): "Il contratto di viaggio turistico", *Tratt. dir. civ., Cons. Naz. Notariato*, Esi, Napoli.
- Silingardi- Morandi, (1998): *La vendita dei pacchetti turistici*, Giappichelli, Torino, 1998, 206.
- Santagata, (2009): *Diritto del turismo*, Utet Giuridica, Torino.
- Thione, (2004): *Il sistema italiano per la qualità*, in Aa. Vv., *Qualità, certificazione, competitività*, Collana Sincert, Milano, 2004.
- Trimarchi, (1967): "La qualità nel campo del diritto", *Atti del convegno sulla qualità*, Messina, in *Annali della*

Maria Cimmino

*Facoltà di economia e commercio dell' Università
degli Studi di Messina.*

Vaccà (2010): "La revisione della disciplina europea dei
contratti turistici", *Contratti*, 6, 639 ss.

Fecha de recepción del original: octubre 2011

Fecha versión final: mayo 2012
