

Holiday Clubs - cases

Case 1 – married couple A:

The contract with ABC Club was signed at a presentation organized by the Czech travel agency SD – a negotiator in the Czech Republic. The consumers took part in the presentation at which they were offered a membership in ABC Club.

The contract itself is, unfortunately, only a graphically arranged form which appears to be credible and which basically only states that „*the applicant is applying for 35 months membership in ABC Club.*“ Then it states the length of membership, the code of the apartment, the number of weeks that the applicant can spend at the vacation spot, a list of vacation spots and the price of membership.

In case the place in an apartment is already occupied and the consumer doesn't have the option to claim his/her right to the apartment, the contract doesn't allow for any penalties for the club. It even doesn't include any liability for the club to fulfil its obligations, this means to allow the consumer to spend the weeks he/she has a right to at the sea. In case the reservation system is overloaded and the consumer is not able to claim their right to spend several weeks of holiday at the coast, he/she is not entitled to have his/her membership fee returned, and is still obliged to pay a maintenance fee which is often up to 10,000 crowns per year.

The contract has been signed with a company whose seat is registered in the Register of Companies in the British Virgin Islands. The British Virgin Islands are not a member of the EU and so consumer protection, which we are familiar with in Czech law or continental law, does not apply there. It should be suspicious that the vacation spots are found on the Spanish coast and yet the second contractual party of the application contract for club membership does not even come from the EU.

„Terms and Conditions“ itself, meaning the rules and conditions, are very strict and non-transparent for the consumer and it is odd that the consumers signed such a document. It is possible that they were swayed by the presentation to such a degree that they didn't pay enough attention to the contract itself.

Article 1 of the regulations states that before the membership is activated the consumer has to visit one of the vacation spots on the Canary Islands (at his/her own expenses) and only afterwards will the membership be activated. This means that only will he/she be able to claim their rights resulting from the contract.

Article 4 of the regulations states that in case you are not able to pay the membership fee by a certain date, all the previously paid money will be forfeited in favour of the second party of the contract. This means that if you do not pay the amount, for example due to illness or a stay in the hospital, or that the money is not deposited on time in the account of the second party due to a banking error, that is completely beyond the control of the consumer, even then the consumer loses previously paid money.

Article 6 states that the consumers are obliged to pay a maintenance fee but it doesn't say how much. (There has been such a case where at a presentation the consumers were told that although the fee isn't high, approx. 3,000 crowns, the actual amount on the invoice was more

than 10,000 crowns.) This article only mentions the regulations of the club, but they weren't presented to the consumer at the signing of the contract.

Case 2 – married couple B:

In this case, the holiday club ABC membership contract is titled only as a membership application /agreement no. 8665. The contractual parties (e.g. parties signing the contract) are the Czech couple at one side and the holiday club ABC, with registered address at the British Virgin Islands, on the other side. Again, the agreement was signed in the Czech Republic at a presentation organized by a Czech intermediary.

It is a pity that in this case the consumers did not notice the fact that honest companies doing business in the Czech Republic are also registered in the Commercial Register of the Czech Republic.

Again, the fact is that the consumers have purchased a membership allowing them to spend one week each year in a resort, however without specifying the resort, for two years and for maximum of four persons.

Moreover, provisions of this contract are construed so the consumer is under impression of his own unimportance in contrast to the exclusivity of the club, to which he is applying for membership by signing the contract. This is evident from the provision of Article D of the Aspects and Conditions, which, rather meaninglessly, states that the *Holiday club ABC is a private membership club which is not open to the general public and the amount paid is only a fraction of the real value.*

Moreover, the provision about the value of the membership can be denoted as false, since if you pay 12 000 CZK for a return ticket per person plus 14 EUR for half-board per day (at the current exchange rate this is 2308 CZK/6 days) plus the proportional part from 25 000 CZK per person and one year, which is 3125 CZK, the resulting value is 17 433 CZK per stay for one week per person, with many legal risks and in a non-specified resort somewhere at Lanzarote. It can be positively stated that the market value of such club membership must be necessarily lower.

Moreover, the provision of the Article C states that *„the total price of 25 000 CZK, which you have paid, is to be paid immediately by the company (intermediary) to the Company (meaning the holiday club ABC) to secure your membership and rights for your future vacation. For this reason, it can not be under any circumstances returned back.“*

This Article C. is wholly in contrary to the Civil Code, as the Civil Code, in its article 57, determines that *„if a consumer agreement is signed outside the common business place of the supplier or if the supplier has no permanent place of business, the consumer has the right to withdraw from the contract in writing within 14 days after signing; if there was no delivery of goods or services by the supplier, the consumer has the right to withdraw from the contract without stating reasons and without a sanction within 1 month. This does not apply for contracts when the consumer explicitly arranged a supplier's visit for the purpose of delivery. At the same time, the supplier must return to the consumer all monies paid within 30 days from the date of withdrawal from the contract.*

The supplier must inform the consumer in writing about his right to withdraw from the contract at the latest at the time of signing the contract; the written notice must also state the

persons responsible for claiming such right including their address or registered address of such person.

If the above conditions are breached, the consumer has the right to withdraw from the contract within one year from signing.“

When the consumers wanted to leave for vacation according to this contract, it was not made possible and the club started to make absurd excuses. Therefore, the consumers have withdrawn from the contract, even in time according to the period listed in Article 57 of the Commercial Code. However, the money was not returned to them.