POLAND IN THE PRESENCE OF EU LEGAL REGULATIONS IN THE FIELD OF TOURISM

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Abstract:
This publication will present the selected legal regulations of the European Union and their influence on the shaping of legal solutions related to the tourism law in Poland.

PREFACE

Tourism is one of the fastest developing sectors of economy in the European Union. In the years 2008/2009 the direct share of tourism in the GDB of the EU countries amounted to about 4%, and the direct one to almost 11%. The tourist sector is becoming a more and more essential job market. Tourism is also an innovative and competitive sector as far as the product and the use of new technologies are concerned. At the same time, European tourism is about to face many challenges and problems, including: globalisation, demographic and climatic changes, ageing industrial infrastructure as well as the decrease of Europe's share in the world tourist market. That is why uniform standards of providing tourist services in the member countries are becoming an important issue [Walasek 2009: 9]. Such a unification is facilitated by documents and legal acts issued by the organs of the European community. Hence, this publication will present the selected legal regulations of the European Union and their influence on the shaping of legal solutions related to the tourism law in Poland.

This publication starts with a preface, which constitutes an introduction to the topics discussed. The first part describes the legal sources of the EU and the consequences of their application. In the second part the most important legal regulations related to providing tourism services are presented. The work ends with the summary, presenting the conclusions resulting from the discussion of the topic.

1. Sources of law

The legal system of the European Union is closely integrated with the legal systems of the member countries. Poland, as a member country, is obliged to adjust the internal law to the Union requirements. Consequently, it should follow the community law consisting of the following sources of law:

- International treaties constituting the so called Primary Law of the Union;
- Legal acts issued by the organs of the European Communities, constituting the so-called Secondary Law of the Union;
- General legal regulations of the legal system of the Union (the non-written law of the Union).

Among the above mentioned sources of law there are directives. They are issued by the European Council or the European Commission, with the cooperation of the European Parliament in cases specified by the treaty establishing the European Community. They are published in the Official Journal of the European Union. The legal acts under discussion specify the aim and the deadline by which it is to be implemented. They are addressed to the member countries of the Union, which are obliged to follow them. The complementation of the directives is supervised by the European Commission. Directives belong to the so-called

secondary law of the European Union. They demand from the member countries to adopt measures necessary to obtain the aims presented in them [Gospodarek 2000: 39-40]. The countries are obliged to introduce the directive to the national legal system through internal legal acts. If a country fails to implement the directive or does not implement it correctly or on time, a citizen may initiate a legal action in a national court with the request for compensation for the loss suffered on account of that, when the aim of the directive was to confer rights on individuals and the content of those rights may be established on its basis [Nesterowicz 2006: 17].

Apart from the founding treaties, the primary law comprises also: treaties amending the EU, the protocols annexed to the founding treaties and the amending treaties, as well as treaties of accession of EU member countries.

The secondary law sources, on the other hand, include unilateral acts and agreements. Unilateral acts can be divided into two categories:

- those listed in article 288 of the Treaty on the Functioning of the European Union: regulation, directive, decision, opinion and recommendations,
- those not listed in article 288 of the Treaty on the Functioning of the European Union. These are atypical acts such as communications, recommendations as well as white and green papers.

The agreements will include: international agreements signed by the EU and countries or outside organisations, agreements between member countries and inter-institutional agreements, that is those entered into by EU institutions.

Apart from the above-mentioned sources of law, there are also sources of supplementary law. They enable the Court of Justice to bridge the gaps in the primary or secondary law [http://europa.eu/legislation_summaries/institutional_affairs/decisionmaking_process/l14534_pl.htm, 29. 04. 2013].

2. Main legal regulations in the field of tourism

The first legal act being a manifestation of a common tourism policy of the EU was the Council Resolution of 10th April 1984 on a Community policy on tourism. The Resolution defined the role and importance of tourism as a tool supporting the activity based, among others, on promoting harmonious, constant and balanced economic development and tightening the cooperation between the EU countries in the field of tourism. Another document proposed by the European Commission and accepted by the Council was the Communication „A Community Policy on Tourism". That document emphasised the tourism needs to be considered in the process of essential decision making by countries. It also drew attention to the creation of new legal acts, which would stimulate the development of tourism [Alejziak, Marciniec 2003: 259-297].

Another source of law is the European Convention on the liability of hotel-keepers concerning the property of their guests of 1962 [Journal of Laws, no.22, item 197]. The content of TITLE 29 of the Polish Civil Code reflects the consequence of Polish acceptance of the provisions of that convention. It states that a hotel, motel or a guesthouse may be the subject of such liability. Such liability concerns also vacation lodges, sanatoria or spa hospitals. A travel lodge, a youth hostel and a camping site are exempt from such liability.

This is statutory liability, that is one resulting from a statute. For the statutory liability to arise the fact of bringing things into the hotel or a similar establishment is important. The thing brought in is the thing which, during the time the guest uses the hotel or a similar establishment, is in the hotel or a similar establishment, or is outside the hotel or similar establishment and has been entrusted to the person running the hotel or similar establishment for profit or to a person employed by him (e.g. luggage entrusted to the hotel employee) or deposited in the place indicated by the person running the hotel or similar establishment for profit or by a person employed by him (e.g. suitcases in the luggage compartment of a hotel

bus) or in a place intended for that purpose (e.g. a hotel storeroom). A thing brought in is also a thing which in a short, customarily accepted period before or after the guest uses the services of the hotel or similar establishment has been entrusted to the person running the hotel or similar establishment for profit or to a person employed by him or deposited in a place indicated by them or intended for that purpose. Motor vehicles, things left in them and living animals are not deemed things brought in (art.846 §4).

The liability of the hotel under discussion concerns the loss or damage of the things brought in by the guests using the services of a hotel or similar establishment. The liability of the person running the hotel for profit is based on the strict liability rule. He is exempt from such liability in the following circumstances related to:

- The properties of the thing brought in;
- Force majeure;
- The fault of the aggrieved party or a person that accompanied him, was employed by him or visited him [Gospodarek 2007: 354-359].

As it has been mentioned, the hotel shall not bear responsibility if the damage resulted from the properties of the thing brought in, e.g. the food brought in the room, which goes off. However, the hotel shall be held responsible in case of a breakdown of the fridge in which the food of the hotel guest was stored. On the other hand, force majeure will be understood as the forces of nature, which cause the partial or complete damage of the things brought in by the hotel guest. However, the breakdown of the hotel appliances, e.g. the elevator, heating or plumbing will not constitute the force majeure.

The third group of exempting circumstances takes place e.g. when the hotel guest left a window open near a busy street or did not lock the door while leaving the room [Nesterowicz 2012: 131-133].

A sine qua non for the possibility to claim for compensation is the immediate notification about the damage. The liability of the hotel limits the scope of the obligation to remedy the damage to one guest to one hundred times the amount due for the accommodation provided to him for one 24-hour period. Liability for each thing cannot exceed fifty times of the amount indicated (art. 849 §1).

The aforementioned limitations do not apply in the situation when the person running the hotel for profit accepted the things for safekeeping (art. 849 §2). A hotel is obliged to accept for safekeeping money, securities and valuable objects, especially valuables and objects of scientific and artistic value. It may refuse to accept such things only if they pose a threat to safety or if, given the standard of the hotel, their value is too high or they occupy too much space (849 §3).

The regulations of the civil code exclude the possibility of exclusion or limitation of the statuary liability of the hotels by a contract or the announcement [Gospodarek 2007: 354-361].

Among the sources of law in the EU, directives constitute an important category. Among the most essential ones, there is the Council Directive of 13th June 1990 (90/314/EEC) on package travel, package holidays and tours [Official Journal of the EU L 158]. The directive under discussion concerns the tourist event organised by a tourist agency. Such an event should consist of at least two services for a joined price. The directive includes regulations of a unified character for all member countries of the EU. It guarantees the minimal level of protection for the customers of travel agencies. The member countries may, however, increase the level of protection in their internal regulations. The document discussed imposes obligations both on the tourist organiser and on the retailer of the package travel. One of the most essential aspects is providing the consumer with a document which specifies the price of the travel and detailed information concerning the date of the travel, the itinerary, the address of the organiser, retailer and insurer, payment dates, the minimal number of persons

required for the travel, the deadline for informing the consumer in case of cancellation of the travel, the deadlines by which the consumer must make any complaint concerning failure to perform or improper performance of the contract by the travel agency as well as special requests which the consumer submitted to the organiser and which were accepted. The directive also introduces solutions concerning the increase in the price of the tourist event. According to it, the price shall not be subject to revision unless the agreement provides for such a possibility and precisely specifies the way of calculating it. The price may be revised if one of the three conditions is met:

- The increase in transport costs;
- The increase in dues, airport or port fees;
- The change of the exchange rates.

Moreover, the price cannot be increased in the period of twenty days prior to the departure date.

Another provision, essential from the point of view of protecting the customer, is the obligation of the tourist organiser to notify the customer as quickly as possible about the change of the essential terms of the contract still before the beginning of the event. In such an event, the customer must make a decision and immediately notify the travel agency whether he accepts the terms of the contract or whether he withdraws from the contract. If, in such a situation, the customer withdraws from the contract or if the organiser for whatever reason other than the fault of the customer, cancels the travel before the departure date, the customer is entitled to the following:

- requesting a participation in a substitute event or
- return of the money paid and at the same time a due compensation for the failure to perform the contract, unless the cancellation of the travel happened on the grounds of the lack of the requested number of participants [Nesterowicz 2006: 17-18].

The protection resulting from the directive concerns also the situation when the organiser is unable to provide the services stipulated by the contract. In such a case he can provide at his own expense a substitute service of equivalent or higher quality. If the substitute service is of lower quality, the organiser returns part of the amount paid to the consumer on the grounds of the difference between the services. When that is impossible or if the consumer, for a justified reason, does not accept the change of the service, the organiser is obliged to provide for the consumer transport back to the place of departure or another return-point agreed upon. The customer may, in such a case, claim compensation. The directive discussed enables also member countries to limit, in the form of internal regulations, the liability of tourism organiser for the damage resulting from the failure to perform or the incorrect performance of the service within the boundaries described by international agreements. The liability for damage other than personal injury may also be limited in its quantity to the 'reasonable' boundaries.

On top of that, the tourism organiser is obliged to have sufficient protection in case of insolvency. Such a proof of security should be delivered to the customer. Such security may nowadays come in the form of bank guarantee, insurance guarantee, insurance contract or, in the case of events organised in the territory of Poland, a trust account. What also results from the document discussed is that the member countries are obliged to enforce the liability of the organiser towards the consumer for the improper performance of the obligations resulting from the contract, regardless of whether he performs them himself or acts through his sub-contractors. The organiser should be liable to the consumer for the failure to perform the contract or the improper performance of the contract unless the non-performance or the improper performance of the contract took place due to the reasons attributable to the

consumer or the third parties or due to a case of force majeure [Nesterowicz 2006: 18-20]. The directive contains also an annex, presenting elements, which have to be included in a contract about a tourist event. The directive defined, among others, the subjects participating in the process of providing tourism services, including the consumer. It also defined the contract as an agreement connecting the consumer with the organiser or the retailer. It defined the notion of the package of services as not fewer than two services. It emphasised the rule that brochures and folders presented to the consumers should be legible, should honestly specify the price and include accurate information on the destination, means of transport, place of accommodation (localisation, category), standard of meals, itinerary, information about passport and visa requirements, the amount of advance payment, schedule of payment and the minimum number of participants, as well as the deadline of notifying the consumer about the potential cancellation of the event [Walczak 2007: 171-172].

As an effect of adjusting to standards specified in the abovementioned directive, the Law of 29th August 1997 on tourism services [Journal of Laws, no. 133, item 884] came into being. It became the basis for creating standards of tourism service quality, facilitating the business trading and, in consequence, providing a better protection for the consumer. This regulation was meant to enable the administrative organs and the local governments to undertake organisational and coordinating measures aiming at the development of tourist economy and eliminating pathological phenomena threatening the interests of consumers [www.mgip.gov.pl].

As already mentioned, the directive discussed here puts a special emphasis on providing proper protection of the customer's interests in case of insolvency of the travel agency. These matters have been regulated by the legal acts, recently issued by the Minister of Finance. These are: The Minister of Finance Regulation of 19th April 2013 on the minimum level of bank or insurance guarantee required in case of activity carried out by tourist organisers and sellers [Journal of Laws, no.0, item 511] and The Minister of Finance Regulation of 22nd April 2013 on the obligatory third party insurance resulting from the activity performed by tourist organisers and sellers [Journal of Laws, no.0, item 510].

They replaced the regulations of December 2010 in force till then. The aim of the newly issued regulations is to substantially increase the guarantees that travel agencies are obliged to provide, and, consequently, ensure that tourist organisers secure adequate means which should be suitable to cover the costs of the tourists' return to the country and the refund of the payments they have made. This is supposed to protect the Marshals of the Voivodships (and the national budget) from spending money on covering the costs of the return of customers from trips as well as other costs related to participation in a tourist event. Moreover, an office has been set up in the Ministry of Sport and Tourism, the aim of which is to monitor the tourist market and provide help to the marshal offices and tourists themselves.

The increase in the guarantee level, and, in consequence, in the obligatory fees of the travel agencies may, as a result, lead to serious financial problems and even to bankruptcy, especially in case of smaller travel agencies. That can also discourage new business from setting up travel agencies.

There are also two other secondary acts important for tourism: directive 84/450/EEC of 10th September 1984 on misleading advertising and comparative advertising [Official Journal of the EU L 250] and directive 85/577/EEC of 20th December 1985 on protection of

the consumer in respect of contracts negotiated away from business premises [Official Journal of the EU L 372].

Yet another legal act of the EU, important from the point of view of tourism, is the directive of the 16th October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis (94/47/EEC) [Official Journal of the EU L 280] It specifies the terms of use of tourist facilities or their parts for a strictly specified period of time, for a given flat fee and with the obligation to cover the costs of maintenance of a given facility. It concerns the services of so-called time-sharing. [Gospodarek 2003: 39-40]. This directive was issued in order to unify the diverse regulations concerning time-sharing in Europe. Time-sharing consists in the right to use a tourist facility in a specified time for a flat fee. The aim of the directive is to protect the purchasers from potential abuse on the part of the sides providing and offering the services of time-sharing. In accordance with the aforementioned directive, the customers renting a room in a hotel or an apartment for a given time have to be accurately informed about the scope and schedule of the service before signing the contract as well as given time to consider it and the opportunity to potentially withdraw from the contract [Walasek 2009: 54-56]. The contract has to be drawn up in the language of the country of residence of the contracting party or in his native language. Prior to the signing of the contract, the purchasers (using the object of the time-sharing) must obtain in the written form detailed information about the property. This includes: the data concerning the legal status of the seller, the ownership of the property, a detailed description of the property, the description of the service available to the purchaser, the description of the regulations and costs of maintenance and administration of the property, the price of the purchase and additional fees. The contract must also include the time of the purchase, the specification of the right of withdrawal from the contract and a clause stating that the purchaser will not be charged with any extra costs other than those specified in the contract.

On 14th January 2009 European Parliament and the Council issued a new directive on time-sharing [Official Journal of the EU L 33]. The member countries of the EU became obligated to adjust to the directive by 23rd February 2011. In case of Poland that directive resulted in the passing of a new law of 16th September 2011 on timeshare [Journal of Laws, no. 230, item 1370]. The implementation of the aforementioned legal acts modified to some extent the understanding of the timeshare services. According to new regulations, the time-sharing contract is any contract entered for at least one year, on the basis of which the consumer, for a given fee, obtains the right to use at least one place of accommodation for more than one period of use. The consumer may withdraw from the contract without providing the reason within 14 days of signing the contract.

Another example of EU legal act protecting the rights of consumers is seen in the directive 93/13/EEC of 5th April 1993 on unfair terms in consumer contracts [Official Journal of the EU L 95/29]. It concerns unfair terms on contracts which contain provisions which are not the subject of individual negotiations between the consumer and the supplier of the service and which are to the detriment of the consumer due to the lack of balance in the parties' rights and obligations. Even if the consumer signs a contract containing the illegal provisions, they will not be binding for the customer; they will become invalid by virtue of law [Nesterowicz 2012: 153-154].

Among the so-called secondary sources of law there are also regulations. These are abstract acts, with general application, binding in their entirety, directly effective and applicable. A decision, on the other hand, is a legal act, which is legally binding. If there is an addressee listed in it, it is binding for them only. This is a definite and individual act. It can be addressed both at states, natural persons and legal persons [Barcik 2012: 23]. In the treaty on functioning of EU, also recommendations and opinions were mentioned as a source of law. Council recommendation 86/665/EEC of 22nd December 1986 on standardising hotel information system can serve as an example of a recommendation related to tourism. The aim of that act was to protect the hotel guests against misleading information on the standard of hotels and other hotel establishments as well as on the scope of services offered by them. The recommendation defined the scope and type of information that should be made available in official brochures about hotel establishments. Another recommendation was issued by the Council on 22nd December 1986. It concerned fire safety in hotels. It specified the requirements in the field of protection of hotel guests against the danger of fire in a hotel establishment. It concerned, among others, the necessity of marking emergency exits, the decrease in the use of inflammable materials, installing technical appliances providing their safe usage or installing alarm systems [Gospodarek 2003: 41-42].

As far as tourism in its European dimension is concerned, the issue of EU citizenship seems important. It is related, among others, to the right of a citizen of a member country to use the diplomatic and consular protection in the territory of a third country in the situation when a given member country does not have its representative in that third country. Hence, the citizen of the country that does not have its representative in the country he is visiting, in a crisis situation, may refer to the representative of any member country for help.

Among the issues discussed, what is also important is the laws and regulations concerning crossing the national borders. The regulations of crossing the borders of the EU are specified by the treaty of 14th June 1985 on gradual abolition of checks at common borders, signed in Schengen and the performance agreement following the treaty of 19th June 1990 [Official Journal of the EU L239]. Thanks to that, crossing borders between member countries of the EU has become considerably simpler.

In Poland there are two basic types of visas. These are the Schengen visa and the national visa. The Schengen visa is issued by the Polish organs on the basis of the regulation of the European Parliament and the Commission no 810/2009 of 13th July 2009 establishing a Community Code of Visas [Official Journal of the EU L243]. This visa may be of the transit or stay character. Such visas are issued by the organs of the state belonging to the Schengen Zone. A stay visa allows people to one or more entries to the countries of the Schengen Zone on condition that the duration of the stay or the total duration of all the consecutive stays in the territory of the Schengen countries does not exceed 3 months within each 6-month period, counting from the first entry to the territory. A third country citizen who has obtained a visa allowing him to enter e.g. Poland is allowed to travel freely around all countries belonging to the Zone. The validly time of the visa is up to 5 years. On the other hand, the transit visa allows people to transit to the territory of a third country through the country belonging to the Schengen Zone. The Schengen visa may be obtained after fulfilling the following criteria:

- you need to submit the right application,
- you need to present a valid travel document,

- you need to justify the purpose of the trip, present documents concerning accommodation or evidence of being in possession of adequate means to cover the costs of accommodation,
- you need to have documents certifying that the person applying for the visa is in possession of adequate means allowing for covering the costs of maintenance throughout the planned stay and to cover the costs of return to the country of origin or residence,
- you need to pay a visa fee,
- you need to have a proof of medical expenses insurance for the territory of Schengen (at least 30 thousand Euro),
- the person crossing the Schengen border cannot be listed in the Schengen Information System as a person who has not been allowed to enter
- the person crossing the border cannot be considered as unwanted, that is the one whose presence in the Schengen Zone countries would cause a threat to the public order, defence or the security of the Schengen Zone country [Barcik 2012: 68,74-75].

CONCLUSION

This publication aimed at presenting issues essential from the point of view of unifying the terms of providing tourist services in the European Union.

The purpose of the publication was to present selected legal regulations of the European Union and their influence on the shaping of the legal developments related to the tourism law in Poland.

One of the basic rules applying in the relations between the European Union and its member countries is the superiority of the EU law. That means the priority in applying the EU law over the national law. This rule is closely related to another, which is described as the direct effect rule of applying EU law in the member countries. It means that the organs of the member countries are obliged to base their activity on the norms of the European Union law. Abiding by this rule may mean the obligation to refrain from certain actions or the obligation to undertake them. The regulation concerns all the biding norms of the European Union law, which means treaty norms as well as norms resulting from the regulations, directives, decisions and provisions of international agreements [*Guide to the EU law*, http://www.cie.-gov.pl].

With reference to the discussion of the topic, the following conclusions are drawn:

- Poland as an associated and then member country of the EU was obliged to follow the legal rules and regulations of the EU. The gradual unification and adjustment of Polish legislature to the EU law came as a consequence;
- Actions of that type referred to tourism as well;
- Intensified actions of the Polish employer can be noticed in the field of protection of the customer using tourist services. Such actions are often forced by the directives imposed on the member countries of the EU. The directive on timeshare and the one on tourist travels can serve as examples;
- It can be noticed, however, that some adjustment steps are taking place quite slowly. The law on tourism services, which had to be updated several times in order to fulfil the EU requirements, can serve as an example;
- The issue of complying with Polish regulations adjusted to the European Union standards also constitutes a problem. Such regulations are often not respected by travel agencies and hotel operators.
- It can be also noticed that the interests of tourists are not properly protected in case of insolvency of the travel agency. That is supposed to be remedied thanks to new regulations concerning bank and insurance guarantees as well as the foundation of the Tourist Guarantee

Fund, which, instead of the voivodship government, will be organising the return of the customer's return from a tourist event in case of insolvency of the travel agency.

Summing up, it may be stated that there is no doubt that legal regulations of the EU influence the observance of customer's rights, and, consequently, the increase in tourism safety. The biggest problem, however, lies in breaking the laws by the subjects providing tourist services and in the lack of adequate enforcement of the law by the relevant state institutions.

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