

CONTROL POWERS OF THE VOIVODSHIP MARSHAL IN THE TOURISM SECTOR

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- tourism,
- legal regulations,
- control

Abstract:

The aim of this article is to point out the subjects conducting control related to providing tourism services and to present the rules that such control is based on as well as its scope. The aim is also to indicate the most common problems occurring during this type of control.

The article starts with an introduction in which the purpose of the work is specified. The first part discusses the idea of control and oversight, focusing on the authorities and their activity undertaken within control and oversight. Chapter two discusses types and the scope of control performed with reference to providing tourism services by the subjects entitled to it, with a special emphasis on the voivodship marshal. The work ends with the summary presenting the conclusions drawn from the discussion of the topic.

Summing up, the control of tourism enterprises and taking disciplinary measures against them are one of the most important competences of the voivodship marshal. However, for that control to bring desired effects, adequate means, not only financial, but also personal, need to be provided, and supported with suitable legal acts.

INTRODUCTION

Control is an indispensable element of every activity. It is present both in subjects conducting economic activity and in state institutions (offices). As such, it concerns both individual, group and state activity.

Tourism services are provided by various subjects. According to the law on tourism services, tourism services are defined as ‘tour-guiding services, hotel services and all other services provided for tourists or visitors [Art.3, point 1 of the Law on tourism services (Journal of Polish Laws, no.133, item 884 with further amendments)]. These services are provided by the subjects defined as tourism enterprises. Such services are designed for customers; hence there is a necessity to respect their rights. Unfortunately, not all the subjects function in accordance with the law. Consequently, in order to avoid cases of violation of the customers’ interests, the entities providing tourism services should be subjected to efficient control.

The aim of this article is to point out the subjects conducting control related to providing tourism services and to present the rules that such control is based on as well as its scope. What is more, the aim is also to indicate the most common problems and shortcomings found in the course of such control.

The article starts with an introduction in which the purpose of the work is specified. The first part discusses the idea of control and oversight, focusing on the authorities and their activity undertaken within control and oversight. Chapter two discusses types and the scope of control performed with reference to providing tourism services by the subjects entitled to it,

with a special emphasis on the voivodship marshal. The work ends with the summary presenting the conclusions drawn from the discussion of the topic.

MATERIALS AND METHODS

In order to pursue the aims specified in this paper, several books on the topic were used, including first of all: *Prawo w turystyce i rekreacji* by J.Gospodarek or *Przedsiębiorstwo turystyczne w gospodarce rynkowej* by A.Rapacz. Also legal acts related to the topic of this work became important research material. Here came the analysis of legal acts related with Voivodship Marshal's control rights in tourism, the most important of them being: Law of 29th August 1997 on tourism services and The Regulation of the Minister of Sport and Tourism of 16th November 2011, amending the regulation on hotels and other facilities which provide hotel services. Also the information and documents provided by the Marshal's Office in Rzeszów turned out to be very useful. Among them there were written notes made on the basis of control minutes and control reports. Finally, personal observations related to the controls in questions proved to be useful.

The analysis of the legal acts and the literature as well as the analysis and description of the information and documents made it possible to fulfil the aim of the work and draw conclusions which are presented in the final part of this paper.

1. The concept and scope of control

Control is a part of activity of every administration. According to J.Starościak 'The essence of controlling activity is to observe certain phenomena, analyse their character and submit the conclusions to the bodies supervising the activity of administration.' W. Dawidowicz, on the other hand, claims that 'control means an activity consisting in:

- Investigating the current state of affairs;
- Juxtaposing what exists in reality with what should exist;
- Explaining the reasons for the occurrence of the discrepancies found;
- Formulating recommendations allowing for the avoidance of similar discrepancies in the future.'

The concept of control should be differentiated from the idea of oversight. We are dealing with 'oversight in the situations when the supervising body is equipped with means of influencing the activity of the supervised bodies. The supervising powers in case of oversight 'mean controlling powers together with the possibility of affecting the bodies or institutions supervised in a binding way.' Oversight may be applied only in the situations specified in appropriate laws, by means of applying legal measures. The most common measures used in oversight are: the possibility of lifting the ruling of the lower-level authority, the possibility of suspending the ruling of the lower-level authority, the confirmation of the ruling of the lower-level authority, the possibility of suspending the activity of the lower-level authority [7].

The phenomenon of control is closely connected with the functioning of a tourism enterprise and providing tourism services. We can distinguish here, among others, between the control realised in the administration and the management control. Generally speaking, control means comparing the factual circumstances with the desired ones. In administration, control is performed by authorities which are entitled to it. It is performed with respect to the criteria of legality, reliability and purposefulness. The aim of control is to prevent deficiencies and to rectify the errors found. Administrative control is of the consequential character and it depends on the subject that is to be controlled. The control is carried out through observation and assessment of the activity of a given subject and through formulating conclusions aiming at prevention of further deficiencies. Administrative control can be divided into external and internal. Internal control is performed by subjects functioning in the sphere of public administration. External control is performed by authorities of government administration as well as by specialised bodies such as, for example, Supreme Audit Office or Commissioner for Civil

Rights Protection. Each control can be divided into stages. These are the following: the stage of preparation for the control, establishing the factual circumstances, indicating deficiencies and discrepancies, conclusions from the control performed and control recommendations [<http://www.prawo24.pl/a/poj%C4%99cie-i-istota-kontroli-administracji> (15.07.2013)].

As far as the control in a company is concerned, it can be understood in two ways. It can be ‘a process of the company’s management’s activity, the primary aim of which is to regulate and correct all the activities for the assurance of their future efficiency and effectiveness.’ The control in a company may also consist in ‘regulating the activities of the organisation in such a way as to facilitate the accomplishment of its aims.’

Control may be applied to the following resources of a company:

- Tangible resources – the use of resources, production quality, the condition and ways of using the PP&E;
- Human resources – the appropriateness and the way of performing personnel policy, methods of performing work and the results obtained by the employees;
- Financial resources – capital sources, capital use, cash management, financial results of the company;
- Information resources – market analysis, marketing activity, work schedule.

Control of a company may be of external or internal character. The internal control is performed by an internal unit, specially set up for that purpose. Here we have: Supervisory Board, Quality Control Division, Internal Control Division, Self-contained Position for Control. The organisation of internal control and the way of its implementing are established by the management of the company. The external control, on the other hand, is performed by the external bodies, remaining outside of the organisational structure of the company. Here come, for example: The Treasury Control, Sanitary Inspection or the National Labour Inspectorate. This control is based on the legal regulations which are in force.

There is one special type of control, namely audit. This is external or internal control performed by specialised subjects, usually at the request of the controlled party. Here we mostly deal with a financial audit or a quality audit.

The control of a company can be differentiated according to various criteria. Taking into consideration the scope of the control, it can be divided into:

- Full control – full control of a field of the company’s activity;
- Random control – comprising only some elements of the company’s activity.

On the other hand, the character of control constitutes a criterion on the basis of which control can be divided into:

- Formal – checking credibility of documents and correctness of their drafting;
- Substantial (content-related) – checking the purposefulness and relevance of the activity of the company in a given sphere [6].

The function of general organisation, management and control can be also performed by the proprietors of the company. They carry it out through formulating aims of the company, defining the rules of its organisation and the use of the resources [5].

2. Legal basis for the control performed by Voivodship Marshal and other subjects

On the basis of the law of 29th July 2005 on the change of certain laws with reference to changes in the division of tasks and competences of local administration [Journal of Laws, no.175, item 1462], the voivode lost the executive powers with respect to tourism specified in the regulations of the minister of tourism. The realisation of those competences was taken over from January 2006 by voivodship government and, in the executive aspect, by the voivodship marshal [4].

Thanks to the law of 2005, the voivodship marshal took over the voivode’s powers related to the tourism in their area. Consequently, the powers of the voivodship government increased. The voivode’s powers are currently limited to oversight over the entities of local

government and supervision over the bodies of integrated government administration, including among others: monument preservation authorities, voivodship environment protection inspector office or voivodship commercial inspection.

On the basis of the law of 23rd January 2009 on voivode and government administration in a voivodship [Journal of Laws, no.31, item 206 with further amendments] in the area of a voivodship there are bodies of non-integrated administration dealing with tourism. They can also perform control functions related to providing tourism services. These bodies include: the heads of the customs chamber, the heads of customs offices, commanding officers of border guard units, public sanitary inspectors, heads of seafarer's offices or voivodship inspectors of road transport [3].

The shape and the realisation of tasks from the field of tourism, including control, are also affected by central bodies of government administrations. Here we have:

- Main Inspector of Road Transport – control of the regulations in the sphere of road transport;
- Civil Aviation Authority President– oversight over and enforcement of legal regulations in the sphere of civil aviation and aviation commercial activity;
- Main Inspector of Environmental Protection – control of respecting the regulations of the law of 27th April 2001 on the environment protection [Journal of Laws, no.62, item 627 with further amendments],
- Main Construction Supervision Inspector – the body of architectural-construction administration, a body of construction inspection;
- Main Sanitary Inspector – the oversight over the hygiene conditions, rest and recreation as well as over the condition of food and gastronomy [1].

Another central body of government administration performing controlling and overseeing functions is the President of the Office for Competition and Consumer Protection. It works on the basis of the law of 16th February 2007 on competition and consumer protection [Journal of Laws, no.50, item 331]. It was established to take action aiming at the protection of the entrepreneurs' and consumers' rights. This protection applies to, among others, tourists using the services of a travel agency or hotel guests. Among the tasks realised by the president of this Office there are:

- undertaking measures resulting from the laws on combating unfair competition,
- appealing to entrepreneurs and their associations with reference to issues concerning protection of consumers' rights and interests,
- appealing to specialised units and appropriate bodies of state control to carry out research concerning respecting consumers' rights,
- oversight over general safety of products designed for consumers in the scope resulting from the laws on general safety of products,
- initiating inspections of goods and services, carried out by consumer organisations,
- developing and publishing texts and educational programs popularising the knowledge of consumers' rights,
- collecting and distributing legal documents from the field of protection of competition and consumers.

What is important from the point of view of tourism is that this body is entitled to prevent the use in contracts of inadmissible provisions, entered into the register kept by the President of the Office for Competition and Consumer Protection and to prevent the violation of the obligation to provide consumers with reliable, true and full information [1].

However, it is the office of voivodship marshal that is the most essential controlling authority in tourism due to the scope of its controlling rights. Its controlling obligations were

specified in the law on tourism services. The control of voivodship marshal in the sphere of tourism is carried out in three fields:

- Control of tourism organisers, agents, and intermediaries;
- Control of hotel facilities;
- Control of tourist guides and tour leaders.

The necessity of carrying out the control of tourist providers was signalled in the law of 2nd July 2004 on freedom of economic activity [Journal of Laws, no.173, item 1807 with further amendments]. Article 70 of the aforementioned law states that ‘the compliance with the conditions required for the performance of the regulated economic activity is subject to control conducted, in particular, by the authority keeping a given Regulated Activity Register.’ Regulated activity is conducted by travel agencies functioning as tourism organisers and intermediaries. That is why the obligation to conduct the control is on the voivodship marshal who keeps a register of tourism organisers and intermediaries. Such control can be also carried out by the minister of tourism. Pursuant to the provisions of the law of 29th August 1997 on tourism services, control comprises:

Conformity of the data included in a statement provided by the entrepreneur for the voivodship marshal with the factual circumstances;

Conformity of the activity performed with the register entry obtained;

Respecting the conditions of conducting economic activity as specified by the law;

- Conformity of the activity conducted with the agency agreements entered into;
- The issue of whether the entrepreneurs contracting agents respect the conditions regulating the performance of economic activity as specified by the law [Art. 9 of the law on tourism services].

The provisions of the law on freedom of economic activity specify that the authority keeping the regulated activity register may conduct control in the sphere of:

- Conformity of the activity performed with the register entry;
- Respecting the conditions of performing the economic activity;
- Defence or security of the state or protection of security or personal property of citizens.

On the other hand, the persons authorised to conduct control have the right to:

- Enter the real property, building and the premises on the days and in the hours in which the economic activity should be performed;
- Request oral or written explanations, presentation of documents and release of other data related to the control conducted [2].

As it has been mentioned before, control does not only mean the establishing of the factual circumstances and juxtaposing them with the desired conditions. Control may result in the discovery of shortcomings and taking disciplinary measures towards the controlled body. The consequences for the entrepreneurs are specified by Article 71 of the law on freedom of economic activity. It allows the authority keeping the regulated activity register to make a decision to prohibit the entrepreneur from conducting the activity covered by the entry if:

- The entrepreneur has submitted a statement on meeting the conditions required to conduct this activity inconsistent with the actual state;
- The entrepreneur has failed to correct a breach of conditions required to conduct the regulated activity within the time limit set by the authority;
- The authority ascertains a gross breach of conditions required to conduct the regulated activity by the entrepreneur [Art. 71 of the Act on freedom of economic activity]

Such a prohibition results in the removal of the entrepreneur from the regulated activity register for the period of 3 years.

The law on tourism services, in article 10a, defines precisely the understanding of ‘a gross breach of conditions required to conduct the activity’. Such a situation takes place when:

- A customer is offered a contract on a tourist even without a collateral in case of insolvency;
- A failure, despite the request, to provide the voivodship marshal with the original or a copy authorised by the sides that have signed it of the valid document certifying the collateral of the entrepreneur in case of insolvency;
- Conducting the activity outside the territory specified in the application;
- Accepting payments from the clients otherwise than through a trust account, in spite of submitting a due statement [8].

Apart from removing the entrepreneur from the register of tourism organisers and intermediaries, the voivodship marshal may impose a financial penalty in the amount of up to 50 thousand PLN.

In accordance with the law on tourism services, the controlling function is performed not only by the voivodship marshal but also by other public administration authorities.

In accordance with the binding regulations, the controlling functions with reference to the subjects performing accommodation services are carried out by:

- Voivodship marshal – with reference to the hotel facilities from the area of a given voivodship;
- Minister of tourism – with reference to hotel facilities;

According to the regulation of the Minister of Sport and Tourism of 16th November 2011, amending the regulation on hotels and other facilities which provide hotel services [Journal of Laws, no.259, item 1553], the aforementioned authorities entitled to conduct control of hotel facilities with respect to their compliance with the requirements concerning the equipment and the scope of services offered, including food services, may conduct their control:

8. Ex officio – if it is justified by the information about the change of conditions of performing the activity or a breach of requirements;
9. Upon the request of the entrepreneur, an association functioning in the sphere of tourism and hotel services or an association representing the interests of consumers.

The voivodship marshal conducts a periodic inspection of hotel facilities at least once in every three years [§ 8 of the regulation of 16th November 2011 amending the regulation on the hotel facilities and other facilities which offer hotel services].

During the control, the authority conducting the control may perform the following controlling activities:

- Conduct the control of all the rooms and equipment belonging to the controlled property;
- Request from the manager of the property and all the other people employed in that place written and oral information about the issues related to the subject of the control;
- Request the release of documents confirming the fulfilment of the requirements necessary for the performance of the hotel services by the facility [Art. 40 of the law on tourism services].

As a consequence of shortcomings observed during the control the voivodship marshal may issue a decision about the change of the type or the category of the facility or about revoking the decision about the classification of the facility. As a consequence of the control, a cease and desist may be issued until the shortcomings have been removed [Art. 41 of the law on tourism services]

The controlling activities of the controlling units may cover all the equipment and rooms belonging to the controlled premises. The units may also request from the manager of the premises or other people employed there any written and oral information on the issues being the subject of the control. The controllers may also request documents confirming the fulfil-

ment of any sanitary, fire-safety or other requirements. After the control, a report should be drafted, presenting in a detailed way the course of the control as well as the comments of the controlling team and the post-control recommendations together with the deadlines for their implementing. The controlled side may introduce its own comments into the report. The report should be signed by both sides, that is the controlling and the controlled side. Controlling activities in hotel facilities may be also conducted by controlling units set up by the minister of tourism. However, this power of the minister is used very rarely (as an exception). Respective laws on tourism services shall apply to the controlling activities undertaken by the unit set up by the minister. The minister shall inform the voivodship marshal that has classified a given facility about the results of the control [2] as this is the authority that keeps the register of facilities and may take disciplinary actions against the entrepreneurs that have been entered into it.

Under the voivodship marshal's control there are also tour leaders and tourist guides. Since this January new laws have been in force, regulating it. According to the previous regulations the controlling activities were performed by units whose members were personally authorised in writing by the marshal and comprised:

- Commune head, administrator, mayor – with reference to other facilities in the area of a given commune, in which hotel services are provided.
- Possessing qualifications as to the scope and validity;
- Correctness of performance of the tasks of a tourist guide or a tour leader.

The persons conducting the control informed the marshal having jurisdiction over the place of the control conducted about its results. Then, the results of the control were transferred to the voivodship marshal that had granted the powers. Only that marshal could take disciplinary measures against a given tour leader or a tourist guide. [Art. 29 of the law on tourism services]. As a consequence, the qualifications of the tour leader or a tourist guide could be suspended for a period of time of up to 12 months. The qualifications of a tourist guide or a tour leader could be suspended due to repeated failures in performing tasks or in the behaviour of a tourist guide or a tour leader. The marshal was entitled to condition the restitution of qualifications on the results of a verifying exam [Art.26 of the law on tourism services].

The voivodship marshal carried out his controlling powers with reference to organisers of trainings for tourist guides and tour leaders. The control was conducted in the following aspects:

- Conformity of the data included in the statement provided for the marshal with the factual circumstances;
- Conformity of the activity performed with the entry obtained in the register of training organisers;
- Following the conditions of the training as specified by the law.

Such a control also consisted in:

- Checking the documentation of the training;
- Assessing the conformity of the curriculum of the training with its realisation;
- Securing the proper archiving of the documentation and making it accessible;
- Checking whether proper conditions for carrying out the classes were secured.

The control was conducted by persons authorised by the marshal. It took place in the presence of the head of the training or a person authorised as a deputy head. The voivodship marshal conducted control *ex officio* every three years in case of organisers with the entry enabling them to carry out trainings regularly. In case of shortcomings, the marshal was empowered to appeal to the subject organising the training to correct them within the deadline specified. In case of a failure to correct the shortcomings, the organiser could be removed

from the register, which equalled a prohibition of organising trainings [Art. 24 of the law on tourism services].

In the light of the new regulations concerning tour leaders and tourist guides [Law of 13th June 2013 on the change of laws regulating the performance of certain professions (Journal of Laws, no.0, item 829)], the aforementioned regulations concerning control are fully applicable only in case of mountain guides, as only in their case were the requirements concerning completion of an appropriate training and necessity of passing an exam in front of a board appointed by the voivodship marshal upheld. Also full control, resulting from the law on tourism services, still applies to organisers of trainings for mountain guides.

In case of tour leaders or tourist guides, both hiking and sightseeing ones, the control has been upheld, however its scope was significantly limited. As a matter of fact, it comprises mostly: having completed at least secondary education, being over 18 years old, not having been convicted of intentional crime or any other crime committed while performing the tasks of a tourist guide or a tour leader [Art.10 of the law of 13th June 2013 on the change of the laws regulating the performance of certain professions].

As an example of control activity of the Voivodship Marshal we can use the activities carried out by the Marshal's Office in Rzeszów. They are presented in the table below.

Table 1. The number of controls carried out by the Voivodship Marshal of the Podkarpackie Voivodship comprising hotel facilities, travel agencies, tourist guides and tour leaders in the years 2010-2013

Year of control	Hotel facilities	Travel agencies	Tourist guides and tour leaders
2010	36	3	0
2011	40	5	0
2012	31	10	0
2013	34	11	0
Total	141	29	0

Source: The author's own study based on the information provided by the Marshal's Office of the Podkarpackie Region.

The most common shortcomings encountered during the control of hotel facilities were:

- Confirmation of compliance with fire-safety, sanitary and construction requirements missing;
- Residential unit equipment missing;
- Sanitary facility equipment missing;
- Disabled facilities missing.

On the other hand, among the most common shortcomings found during the controls of travel agencies were those in the contracts for tourist services, including:

- Entry number in the register of tourism organisers and intermediaries missing;
- Category of the hotel facility, according to the regulations of the country of residence, missing;
- Scope of insurance and the insurance provider's name missing;
- Complaint-filing procedures missing;
- The provision stating that in the last 20 days prior to the commencement of the tourist event the price specified in the contract cannot be increased – missing.

As far as the control of tourist guides and tour leaders is concerned, according to the written information provided, the Marshal's Office in Rzeszów did not perform any of such controls. The information provided by the Marshal's Office clarifies that this situation often results from lack of suitable financial resources, work overload, lack of clarity of the law in the sphere of control as well as from the obligatory presence of the police while checking the identity of tour leaders or tourist guides [materials provided by the Marshal's Office in Rzeszów]

CONCLUSION

The purpose of this work was to point out the authorities conducting control related to providing tourism services, to discuss the regulations which such a control is based on and the scope of such a control. The aim was also to indicate the most common problems occurring during such a control. The work was based on the analysis of legal acts related to the powers of public administration authorities in the sphere of tourism.

With reference to the discussion of the topic the following conclusions can be drawn:

- The voivodship marshal is the most important controlling authority in tourism. Other authorities should be remembered as well, for example: the minister of sport and tourism, Public Sanitary Inspection, State Commercial Inspection, the Office for Competition and Consumer Protection, Police or Voivodship Inspection of Road Transport;
- As results from the law on tourism services, it is mostly the voivodship marshal that can take administrative-legal disciplinary measures against tourism entrepreneurs. Such measures consist in, among others, the possibility of removing a travel agency from the register of tourism organisers and intermediaries as well as using financial penalties towards them or changing the classification of hotel facilities;
- Among the most common problems occurring with reference to control there are: lack of adequate financial means in the marshal offices allowing frequent and regular controls, lack of clarity of the legal regulations concerning control, the obligatory participation of the police (for example while checking the identity of a controlled tour leader);
- New regulations of the law on tourism services do not specify precisely in what way the control of tour leaders will be conducted and what disciplinary measures the controlling authority can take;
- The consequences provided by the Polish regulations are insufficient and ineffective. That is proved by common cases when the interests of the customer are infringed, among others, by travel agencies organising tourist events or by entrepreneurs providing hotel services. Among the most common shortcomings indicated by the teams controlling travel agencies and hotel facilities there are: errors in contracts entered into by travel agencies, and, in case of hotel facilities, a failure to meet sanitary, construction and fire-safety requirements.
- Not only efficiency and frequency of controls are conditions sine qua non of the legal functioning of tourism enterprises. What is also important is the clarity and transparency of legal acts concerning control.

Summing up, the control of tourism enterprises and taking disciplinary measures against them are one of the most important competences of the voivodship marshal. However, for that control to bring desired effects, adequate means, not only financial, but also personal, need to be provided, and supported with suitable legal acts.

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