

TOURIST GUIDES AND TOUR LEADERS IN THE LIGHT OF NEW LEGAL REGULATIONS

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Keywords:

- tourist guide,
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Abstract:

The issues related to the functioning and the tasks of tour leaders and tourist guides belong to the most essential ones as far as providing tourist services is concerned. It is their competence, abilities and knowledge that the safety of tourists and the quality of the services offered to them depend on.

That is why the aim of this article is to familiarise the reader with the legal regulations concerning the aforementioned professions and the changes that have taken place in this sphere since January 2014 due to the deregulation of selected professions. The article constitutes an attempt to answer the question whether after the changes tourist guides and tour leaders will be able to provide their services appropriately and without detriment to the interests of customers and travel agencies.

In order to fulfil its aim, this work is based on and analyses legal acts currently in force, concerning the topic, as well as it uses the available literature of the subject.

This article consists of three parts, preceded by the introduction, which presents the aim of the whole work.

In the first part the main concept is presented, as well as the analysis of the tasks of a tour leader and a tourist guide, as described by the currently binding legal acts.

The second part presents the basic issues related to the liability of a tour leader, with a special emphasis on the civil liability and the changes relating to the misdemeanour liability.

The third part discusses the issues that have been mostly affected by the recently introduced changes in the law. It concerns the scope of obtaining qualifications and the control of tourist guides and tour leaders.

The article ends with a summary in which the conclusions drawn during the discussion of the topic are presented.

INTRODUCTION

Issues related to the functioning and tasks of tour leaders and tourist guides belong to the most essential ones when it comes to the provision of tourism services. It is the competences, skills and the knowledge of tour leaders and tourist guides that the safety of tourists and the quality of services provided for them depend on. Therefore, the aim of this publication is to offer an insight into the legal regulations concerning tourist guides and tour leaders as well as into the changes that have occurred in this field since January 2014 due to the deregulation of certain professions. An attempt will be made to answer the question whether after the implementation of the changes in the regulations the tourist guides and tour leaders will be able to provide their services properly and without detriment to the interests of their clients and travel agencies.

This paper consists of three parts preceded by an introduction, which sets the aim of the publication.

The first part discusses the concept and analyses the tasks of tour leaders and tourist guides as defined by the legal acts in force.

The second part presents the basic issues related to legal liability of the tour leader, paying special attention to the civil liability and the newly introduced changes related to the liability for petty offences.

In the third part, the issues affected to the highest degree by the recently introduced legal changes are presented. They concern the topics related to obtaining licences as well as to the inspections that tourist guides and tour leaders are subject to.

The paper ends with a summary, which presents the conclusions drawn during the discussion of the topic.

MATERIAL AND METHODS

In order to achieve the objectives set out in the publication, the available thematic literature was used, including first of all J.Gospodarek's *Prawo w turystyce i rekreacji [Law in Tourism and Recreation]* or Z. Kruczek's *Kompendium pilota wycieczek [Compendium of a Tour Leader]*. Also legal acts related to the topic of this work became important material contributing to the development of this publication. Hence, an analysis of legal acts related to the topic of this article was made. The most important among them are: the law of 29 August 1997 on tourism services and the Ordinance of the Minister for Sport and Recreation of 26 June 2014 on the acquisition of mountain guide licences. Also the information made available by the Marshal's Office in Rzeszów became very useful material. It included the information concerning the inspection of tourist guides and tour leaders. Similarly, the author's own observations and reflections related to the topic discussed proved helpful.

The analysis of the legal acts and of the literature as well as the analysis and description of the available information made it possible to achieve the aim of this work and draw the conclusions presented in the final part.

1. THE CONCEPT AND TASKS OF A TOURIST GUIDE AND A TOUR LEADER

Tour leaders and tourist guides belong to the circle of entities to which the law on tourism services is addressed. They are entities understood as natural persons providing tourism services. Chapter four of the law on tourism services is devoted to them [Walczak 2007: 154].

According to the law on tourism services, a tourist guide is 'a person professionally showing tourists or visitors round selected areas, towns and buildings, providing professional information about them and providing care over the tourists or visitors within the scope resulting from the contract.' A tour leader, on the other hand, is defined as 'a person accompanying, on behalf of a tourism organiser, the participants of a tourist event, exercising care over them and overseeing the way in which the services are performed to their benefit, as well as providing basic information concerning the visited country and place.' [Art. 3, points 7a and 7b of the law of 29 August 1997 on tourism services (Journal of Laws, no.133, item 884 with further amendments)].

The law on tourism services enumerates also the tasks of a tour leader and a tourist guide. In case of a tour leader these are:

- Keeping watch on behalf of the tourism organiser over the way services are provided to the clients;
- Accepting notifications from the clients concerning failures in the performance of the services;
- Providing care over the clients within the scope resulting from the contract;

- Pointing out local attractions and providing basic information concerning the country and place being visited.

The law outlines also generally the tasks performed by tourist guides. They include:

- Showing tourists or visitors round;
- Providing professional and updated information about the country, visited towns, buildings and areas;
- Providing care over the tourists in the scope resulting from the contract;
- Care over the safety of the tourists or visitors, in particular during outings requiring adequate techniques and specialist equipment [Art. 20, paragraphs 1 and 2 of the law on tourism services].

Among the most essential tasks of a tour leader there are those concerning the sphere of care and safety, information and the realisation of the tourist event in accordance with the contract. The first of the aforementioned tasks are connected with the tour leader's constant availability for the participants of the tourist event, which results in their ability to contact him or her. That is why the participants of a tourist event should be familiar with his or her phone number and current location (e.g. a hotel room). Moreover, a tour leader is obliged to provide help in the situations connected with the necessity of the intervention of the consular staff, medical staff, insurance institutions, the police or other services. He or she should also provide help with making use of various institutions (for example a bank or a post office). A tour leader should also perform the role of an interpreter, but only in those situations when it is necessary and essential for the proper realisation of the services. What is meant here is, for example, contacts with the border control or accommodation in a hotel facility. A tour leader accompanies the participants of a tourist event and responds to the reports concerning the failures to perform the services specified in the contract.

The second one among the basic tasks consists in providing information. It refers to the information of the:

- Organisational type – consisting in informing the client thoroughly about the course of particular items from the schedule of a tourist event;
- Sightseeing type – consisting in providing insight into the basic information concerning the culture, geography or administration of a given area;
- Local type – concerning the traditions and habits of the local community as well as the weather (atmospheric) situation in the visited area.

The third group of tasks is closely related to the realisation of a tourist event. The tour leader acts as a representative of the tourism organiser both with reference to the tourists and to the subcontractors of the travel agency [Meyer 2006: 151-153]. That is why, in accordance with the law on tourism services, the leader should receive a written assignment which specifies the place or area and the timeframe of providing the service as well as an authorisation to act on behalf of the tourism organiser in the scope necessary to conduct the tourist event [Art. 30, paragraph 3 of the law on tourism services]. Acting on behalf of a tourism organiser, a tour leader can, among others, reprimand a tourist who is causing trouble, receive complaints from the clients or react in contacts with a subcontractor of a travel agency with reference to the inappropriate performance of the service.

In case of a trip involving travelling abroad, the tour leader should speak the appropriate foreign language. For practical reasons, that should be a language commonly known in the visited country. In case of trips for foreign tourists, both the tour leader and the tourist guide should know a language enabling easy contact with the tourists or a language agreed upon with the foreign contractor [Art. 31 of the law on tourism services].

Certain similarities and differences can be pointed out between the tasks and functions of a tour leader and a tourist guide. As far as the tour leader is concerned, he or she:

- Stays with the group of tourists from the departure to the arrival;
- Takes care of the smooth performance of the services specified in the contract;
- Takes care of the group;
- Solves problems;
- Passes on organisational, sightseeing and historical information;
- Is required to possess organisational skills.

A tourist guide, on the other hand:

- Meets the participants of a tourist event for several hours and passes detailed information about the visited area;
- Must have a big sightseeing and historical knowledge;
- Should pass his or her knowledge on in an interesting way;
- Should have a good rapport with the group.

What results from the tasks of a tourist guide and a tour leader presented above is that both the tour leader and the guide are obliged to take care of the group and watch over the smooth course of the event. Certainly, the scope of these tasks results from the aims and specific character of these professions [Janicka 2009: 80-81].

Both the tour leaders and the tourist guides must have a certified knowledge of foreign languages. Such certificates may be in the form of:

- A diploma certifying graduation from a philology department;
- A diploma certifying graduation from a teacher training college;
- A certificate proving graduation from a school abroad in which there was a foreign language of instruction;
- A certificate proving the knowledge of foreign languages at the fluency level of B2 according to the Common European Framework of Reference for Languages of the Council of Europe.

The persons who do not hold such documents can take exams testing the knowledge of a foreign language. The examination board is appointed by the voivodship marshal from among the people from the list of a minister for the issues of tourism [Art. 32 of the law on tourism services].

2. THE BASIS FOR THE LEGAL LIABILITY OF THE TOUR LEADER AND THE TOURIST GUIDE

Both a tourist guide and a tour leader may be employed in various forms. Most commonly it is the commission contract. In such a case the mutual contacts of both parties are regulated by the civil law. Another form is the innominate contract, similar to the commission contract, which is a so-called 'contract for the provision of tour leading or tourist guiding services'. The tour leader and the tourist guide can also 'register' their own business and provide their services to the benefit of a travel agency on the basis of an appropriate contract. The most beneficial solution for the tour leader or the tourist guide is being employed within the employment contract, when the labour code applies. In such a situation the travel agency is liable for all the damages caused to the client (tourist). The liability of the tour leader or the tourist guide is limited to the liability of an employee, being of the recourse character towards the employer. In case the tour leader or the tourist guide cause damage unintentionally, the liability amounts up to the three-month salary resulting from the employment contract. In case of causing an intentional damage, their liability towards the employer is full (without the sum limit). If, however, the tour leader or the tourist guide provide services as their own businesses, their liability towards the clients is full (without the sum limit).

In principle, civil liability to the benefit of the tourists is borne by the tourism organiser. It comprises also actions and omissions committed by tourist guides and tour leaders. It is so

because the tour leaders represent the travel agency in contacts with the clients and service providers. A tour leader is not a third party, but a representative of a travel agency acting on behalf of the agency and carrying out the contract entered into with the client. A tourist guide, on the other hand, in contacts with the travel agency is a person for whom the event organiser takes liability towards the client within the scope of actions that he has been entrusted with [Nesterowicz 2012: 28-29].

The civil liability of a tour leader and a tourist guide may have the form of the tort liability or indemnity. In the former case we are dealing with a wrong, so called delict. It consists in inflicting damage by a tour leader on another person, due to intentional or non-intentional fault. In practice such situations happen rarely. They occur most often when the tour leader or the tourist guide have damaged or stolen some property or have damaged the reputation or the bodily inviolability of a tourist.

The latter of the aforementioned types of civil liability is called indemnity. We can speak of indemnity in case of a failure to perform or improper performance of the obligations resulting from the contract. If the tour leader or the tourist guide do not perform their duties properly they can be held liable, as described.

As the tour leader acts as a person representing the tourism organiser, performing tasks assigned by the organiser, a dissatisfied client pursues claims against the tourism organiser, who is responsible for performing the tasks specified in the contract. In such a situation, the tour leader or the tourist guide are not held liable directly to the client, but to the tourism organiser. The travel agency, which has satisfied the claims of the client, shall have recourse claims towards the tour leader or the tourist guide. They shall have to pay due compensation to the travel agency because of exposing it to financial consequences.

As it has already been mentioned, the scope of liability depends to a large extent on the type of employment of the tour leader or the tourist guide. In case of an employment contract the scope of liability towards the travel agency as an employer depends on whether the damage was caused intentionally or unintentionally.

In case the tour leader or the tourist guide is employed on the basis of a commission contract or an innominate contract (e.g. a contract for the provision of tour leading services) we are dealing with the liability up to the full amount of the damage caused. While assessing the compensation you consider, in case of a material damage, the real damage (the value of a damaged thing, repair costs). The claimant may also demand that the lost gains (lost profits) be considered. In case of a non-material damage, the claimant may demand compensation for the damage suffered [Kruczek (red.) 2006: 120-121].

The changes introduced from January 2014 have also affected the issue of criminal liability. Under the current legal state, Art. 60¹ par. 4 point 1 provides that ‘whoever performs the tasks of a mountain guide without the licence required for a given mountain region’ is subject to restriction of personal liberty or fine.

Art. 138d, on the other hand, states that: ‘Whoever misleads as to the possession of the licence while undertaking the tasks of a mountain guide in a given mountain region is subject to restriction of personal liberty or fine’ [Law of 20 May 1971 Code of Petty Offences (Journal of Laws no.12, item 114 with further amendments)]. The previously mentioned petty offences concerned also city and countryside tourist guides and tour leaders.

3. ACQUISITION OF LICENCE, INSPECTION

Essential changes in the professions of a tour leader and a tourist guide took place as the law of 13 June 2013 on the change of the laws regulating the performance of certain professions [Journal of Laws 2013, item 829] came into force. The changes concerning the tourist guides and the tour leaders came into force in January 2014. Also a new executory ordinance to the law of 29 August 1997 on tourism services came into being. That is the

Ordinance of the Minister for Sport and Tourism of 26 June 2014 on the acquisition of the mountain guide licence [Journal of Laws 2014, item 868]. That order lifted the previously binding ordinances of 2011 concerning tourist guides and tour leaders [Ordinance of the Minister for Sport and Tourism of 4 March 2011 on tourist guides and tour leaders (Journal of Laws, no.60, item 302)].

According to the amendment to the law on tourism services only mountain guides need to acquire a licence from the voivodeship marshal in order to perform their profession. The licence can be granted to a person fulfilling the following conditions:

- The person is over 18 years of age;
- The person has not been convicted for wilful misconducts or other misconducts related to the performance of tasks of a tourist guide or a tour leader;
- The person has completed secondary education;
- The person has completed a theoretical and practical training for a given area and passed the exam for a mountain guide [Art.21, paragraph 1, point 1b of the law on tourism services].

The exam for a mountain tourist guide is conducted by an exam board appointed by the voivodeship marshal having jurisdiction over the given mountain area [Art. 25, paragraph 1 of the law on tourism services]. The licence of a mountain tourist guide is issued by the voivodeship marshal by means of an administrative decision. The licence is granted upon the request of the applicant by the voivodeship marshal having jurisdiction over the place of residence of the applicant, and in case of that place being outside Poland – the voivodeship marshal chosen by the applicant [Art. 28, paragraph 1 of the law on tourism services].

The application submitted in the office of the voivodeship marshal having the right jurisdiction should include the following information:

- First name and surname of the candidate for the mountain guide;
- Names of the parents;
- Date and place of birth;
- Place of residence or contact address;
- Indication of the area covered by the licence.

In case of applying for the licence of the mountain guide of the 3rd class, the application should include the following attachments:

- Exam certificate;
- Certified to be true copy of the certificate or diploma certifying the completion of secondary education;
- Certificate of no criminal record for the wilful misconduct or other misconducts related to the performance of tasks of a tourist guide or a tour leader;
- Proof of the payment of the administrative fee.

On the other hand, the application for the licence of the mountain guide of the 1st and 2nd class the following should be attached:

- Certificate of the exam passed in front of an appropriate board;
- A document or documents confirming conducting trips for the period of time required to obtain the licence of the 2nd or 1st class, issued either by an association organising mountain guides or by a unit entrusting this person with conducting trips;
- A statement with a list of passes through the mountain areas in the period of time when the person held the mountain guide licence of the 3rd class;
- One photograph;
- Proof of the payment of the administrative fee.

In case of applying for the licence for an additional area you attach:

- An exam certificate for the additional licence area;

- One photograph;
- Proof of the payment of the administrative fee [Par. 22 of the Ordinance of the Minister of Sport and Tourism on the acquisition of the mountain guide licence (Journal of Laws 2014, item 868)].

The qualifications obtained are proved by the issuing of a licence card and an id card of a mountain guide [Par. 7 of the Ordinance of the Minister of Sport and Tourism on the acquisition of the mountain guide licence].

The situation is different in case of city guides, countryside guides and tour leaders. In their case the requirements are limited to: at least 18 years of age, completion of secondary education and certificate of no criminal record for the wilful misconduct or other misconducts related to the performance of tasks of a tourist guide or a tour leader [Art. 22 of the law on tourism services]. The Ordinance of the Minister for Sport and Tourism of 25 June 2014 on foreign language exams for tourist guides and tour leaders [Journal of Law 2014, item 869], is yet another new legal regulation concerning the issue of tourist guides and tour leaders. This ordinance regulates the procedure of entering candidates for the exam and conducting the foreign language exam by a board appointed by means of a decision of a voivodeship marshal.

The changes in force since January 2014 have affected also the issue of inspection of tourist guides and tour leaders. In accordance with the regulations in force till the end of 2013 the inspection activities covering tour leaders and tourist guides were performed by a team appointed nominally, in writing by the marshal and comprised:

- Possession of licence – its area and validity;
- Correctness of performing the tasks of a tourist guide and a tour leader.

The persons performing the inspection informed the marshal with the jurisdiction over the place of the inspection about its results. Then the results of the inspection were passed on to the voivodeship marshal who granted the licence. Only the latter was able to take disciplinary action against a tour leader or a tourist guide [Art. 29 of the law on tourism services in the wording in force until 2013]. After finding some faults, the voivodeship marshal was able to, first of all, suspend the licence of a tour leader or a tourist guide for a period of up to 12 months. The licence of a tour leader or a tourist guide could be suspended for recurring failures in performing the tasks or in the conduct of a tourist guide or a tour leader. The marshal had the right to condition the return of the suspended licence on the passing of a testing exam [Art. 26 of the law on tourism services in the wording in force until 2013].

According to the information obtained from the Marshal's Office in Rzeszów, in the years 2010-2013 no inspection of tourist guides or tour leaders was performed. According to the office, such a state of affairs comes down to the lack of appropriate financial resources, the load of the officers with other duties, vagueness of the regulations concerning the inspection or the necessary presence of the police during the check of the ID of the tourist guides or tour leaders [The information made available by the Marshal's Office in Rzeszów].

The Voivodeship Marshal performed his inspection powers also towards the organisers of courses for tourist guides and tour leaders. The scope of the inspection covered:

- Conformity of the data included in the statement addressed to the Marshal with the factual findings;
- Conformity of the performed activity with the obtained entry in the register of course organisers;
- Following the conditions of training as specified by the law.

Such an inspection comprised:

- Control of the documentation of the training;
- Assessment of the conformity of the curriculum to its realisation;
- Securing appropriate storage and access to the documentation;

- Checking whether the proper conditions for the realisation of the classes are provided. The inspection was performed by the people authorised in writing by the marshal. It took place in the presence of the head of the training or a person authorised to substitute the head. The voivodeship marshal performed the inspection of the trainings routinely every three years in case of organisers whose licence had a provision allowing them to conduct constant trainings. In case of faults, the marshal was allowed to call on the subject organising the training to rectify the problem within a deadline. In case of a failure to remove the faults the organiser could be removed from the register, which amounted to being banned from organising trainings [Art. 24 of the law on tourism services in the wording in force until 2013].

In the light of the new regulations concerning tour leaders and tourist guides [the law of 13 June 2013 on the change of the laws regulating the performance of certain professions (Journal of Laws, no.0, item 829, item 829)], the aforementioned inspection regulations are fully applicable onto to mountain tourist guides, because it was only in their case that the requirements concerning the completion of a specialist training and the necessity to pass an exam in front of a board appointed by a voivodeship marshal were maintained. Also the organisers of trainings for mountain tourist guides still remain subject to full inspection resulting from the law on tourism services.

In case of tour leaders or the countryside or city tourist guides the inspection was retained, however its scope has been significantly reduces. Actually, it comprises only the fulfilment of the following requirements: having at least secondary education, being over 18 years of age and holding a certificate of no criminal record for the wilful misconduct or other misconducts related to the performance of tasks of a tourist guide or a tour leader [Art.10 of the law of 13 June 2013 on the change of the laws regulating the performance of certain professions] The current regulations do not specify, however, in what way such an inspection can be performed and what consequences it could have.

From the information obtained at the Voivodeship Marshal's Office in Rzeszów it follows that such inspections are basically not performed.

Due to the changes that took place in 2014, a question arises – in what way shall tourist agencies recruit their tour leaders and how shall they be supervised. As far as the recruitment of the tour leaders is concerned, after the deregulation of professions, the biggest travel agencies, like for example Rainbow Tours, announce and carry out trainings for tour leaders themselves. Such a training comprises theoretical and practical classes and ends with an internal examination. In this way travel agencies employ prepared and trained persons to attend to trips organised by them [<http://rainbowtours.edu.pl>]. Such a policy is practised in big travel agencies, which value their reputation and the safety of the tourist. Internal trainings for city and countryside tourist guides and tour leaders are also organised and conducted by local branches of the Polish Tourist and Sightseeing Society (PTTK) [<http://www.pttk-gdansk.pl>].

A research covering a group of 50 persons holding the qualifications of tourist guides or tour leaders proves that they are very sceptical towards the inspection of tour leaders and city and countryside tourist guides, claiming that such inspections are basically not performed by voivodeship marshals and it does not look as if the situation was going to change. The research also proves that while employing tourist guides, tourism entities consider most of all their experience and the qualifications obtained before the deregulation of professions [research conducted by J.Wasyłowska for the purpose of the MA thesis].

CONCLUSION

Tourist guidance has accompanied tourism basically from the beginning. The knowledge, abilities, attitudes and involvement of tourist guides affect not only the satisfaction of the clients but also their safety. Also from tour leaders one should expect

adequate knowledge and skills, which will allow them to perform the tasks specified in the law on tourism services properly [Gospodarek 2007: 80-81]. There are doubts, however, about whether the current legal regulations will allow it.

The aim of this publication was to offer an insight into the legal regulations concerning the tour leader and the tourist guide as well as the changes that have taken place in this area since January 2014, due to the deregulation of certain professions. With reference to the realisation of the topic, the following conclusions arise:

- As a result of the changes in the legal regulations, essentially, the tasks of a tourist guide and a tour leader have not changed. Among the tasks of a tourist guide there is still most of all showing tourists and visitors round selected areas, towns and objects, as well as providing professional information about them. On the other hand, the tasks of a tour leader still consist in watching, on behalf of the organiser, over the way in which the services are provided and taking care of the clients;
- Due to their tasks and the character of their work, both the tour leader and the tourist guide are held liable. The laws regulating civil liability have basically remained unchanged; however the liability resulting from the function performed has been limited by new regulations to mountain tourist guides. In case of tour leaders we do not deal with administrative liability towards the voivodeship marshal due to the fact that he does not grant licences to the tour leaders and, consequently, he cannot take actions consisting in suspending or withdrawing the licences;
- As a consequence of the ‘deregulating’ law of 2013, a candidate for a tour leader does not have to fulfil special requirements. He or she does not have to complete a specialist training, nor does he or she take an exam in front of a board appointed by the voivodeship marshal. The only requirements are: being of age, no criminal record and secondary education. The same applies to the city guides and the countryside guides. In case of the mountain tourist guides the requirements have remained unchanged.
- The changes in force since 2014 have affected the sphere of inspection of tourist guides and tour leaders. The regulations concerning the inspection of mountain guides have not changed. In case of city and countryside guides and tour leaders the inspection of the voivodeship marshal has been limited to the fulfilment of the requirements specified in Art.22 of the law on tourism services. As results from the introduced changes, only in case of mountain tourist guides can disciplinary action be taken with reference to faults discovered during an inspection. The voivodeship marshal can suspend or withdraw the licence of a mountain guide.

The aforementioned conclusions indicate certain dangers resulting from the introduced changes concerning tourist guides and tour leaders. On the one hand, it was the legislator’s intention to increase the availability of the profession of a tour leader and a tourist guide. On the other hand, however, there is a threat to the interests of the client, as there is a high risk of the client being served by a tour leader or by a city or a countryside tourist guide who does not have adequate knowledge, experience and abilities. It is not only about the lack of professional information, but also about the safety of the tourist and the ability to react in crisis situations. Certainly, a person without a proper training and experience will not be able to realise the statutory duties properly. Hence, a question arises: how will travel agencies deal with the current legal situation? At the moment the question cannot be answered. Time will tell how this problem will be dealt with by the subjects related to tourism and what consequences that will have for the client.

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