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Control and supervision on the part of the Marshal of the Voivodship over tour operators and tourist entrepreneurs

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1. Introduction

In recent decades, there has been an increased demand for qualified tourist services, and thus a very intensive development of this service sector. In such a case, there is always a problem of reliability of the entrepreneur, provision of a service of adequate quality, compliance with legal requirements, including the security conditions of this type of services, etc. State cannot remain indifferent to such threats and must take protective measures towards its citizens against actions that could endanger their legal interests in this respect, and often health or life.

However, it seems that the state of the pandemic announced in connection with the high infectivity and spread of the SARS-CoV-2 (COVID-19) forces the modification of existing assumptions and creation of new strategies for global tourism. Ad hoc, this means the implementation of aid programs for the industry, which estimates that losses in 2020 can amount to USD 300–450 billion, which means a 20% or even 30% decrease in tourism revenues.[1] Although these are only estimates, they certainly illustrate the scale of the problem and convince that optimistic visions of tourist development from the beginning of the 21st century are becoming a thing of the past.[2]

From this point of view, legal regulations regarding the supervision of the tourist services market are gaining new importance. The solutions adopted so far primarily took into account the somehow natural state of tension between the need to ensure a high level of protection for participants of tourist events and conducting tourist activities in conditions of free competition.[3]

2. System of controlling and supervising bodies in the field of tourism services

The analysis of the provisions of the Act on Tourist Events shows that the basic public administration bodies to which the legislator delegates the competence to perform tasks related to the protection of persons using tourism services (travellers) are the Marshal of

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[1] Quoting after WTO: https://www.unwto.org/news/international-tourism-arrivals-could-fall-in-2020 (access date: March 29, 2020).

[2] See e.g. M. Gabryśowá, *Miejsce turystyki w gospodarce i ocena jej jakości*, „Annales Universitatis Mariae Curie-Skłodowska" Sectio H, Oeconomia, 2005, Vol. 6, p. 81 et seq.

[3] Cf. M. Nesterowicz, *Umowy odnoszące się do świadczenia usług*, in: *Prawo zobowiązań – część szczegółowa. System Prawa Prywatnego. Tom 7*, (ed.) J. Rajski, Warsaw 2018, p. 1162.

the Voivodship and the minister competent for tourism. However, there is a clear disproportion between the provisions defining the scope of competences of these bodies. Definitely more powers in this area have been transferred to the competences of voivodship marshals. Therefore, it should be stressed that it is these bodies that bear the main burden of taking actions aimed at protecting the users of tourism services.

Thus, the legislator has decided to delegate the competences in the scope mentioned above to a self-government administration body, in particular to the voivodship self-government body.[4] Therefore, these tasks are implemented within the structures of decentralised administration. However, the legislator materially determines in Article 2 (1) of the Act on Tourist Events that the tasks of the Marshal of the Voivodship regulated in the provisions of this Act are tasks within the scope of government administration, i.e. situates these tasks within the framework of tasks commissioned by voivodship self-government bodies. The above has consequences in paragraph 2 of Article 2 of the ATE, according to which a body of a higher rank than the Marshal in relation to the matters referred to in Article 26 (3), Article 30 (7), Article 32 and in the matters of appeals against administrative decisions of the Marshal of the Voivodship on the refusal to enter in the register of tour operators and entrepreneurs facilitating the acquisition of related tourism services is the minister in charge of tourism. The above constitutes a *lex specialis* in relation to the regulation contained in Article 17 (1) of the Code of Administrative Procedure,[5] according to which the body of a higher degree in relation to the bodies of local government units (including the Marshal of the Voivodship)

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[4] There are no major doubts related to such qualification of this body, despite the fact that Article 15 of the Act of 5 June 1998 on the Self-Government of the Voivodship (i.e. Journal of Laws of 2019, item 512) states that the bodies of this self-government are the voivodship parliament and the voivodship board. The scope of competence, the location of this body within the structures of decentralized public administration, and other attributes clearly indicate the need to treat the Marshal of the Voivodship as a body of voivodship self-government.

[5] The Act of 14 June 1960 Code of Administrative Procedure (i.e. Journal of Laws of 2018, item 2096).

is the local government appeal board, unless specific provisions stipulate otherwise. Thus, where the Marshal of the Voivodship is authorized to issue administrative decisions, the legislator decided to maintain appellate review of such decisions in the government administration department.

The subject of the analysis contained in this study, which was specified in the title, are the tasks and competences of the Marshal of the Voivodship. Therefore, further considerations focus on the legal regulations specifying the status of this body, and leave out the issues related to the tasks and competences carried out by the minister in charge of tourism.[6]

The provisions of the Act on Tourist Events allow for distinguishing several categories of competences, which are used by the Marshal of the Voivodship. It seems justified to divide the competences into regulating, control and post-control, within the scope of which one can identify supervisory competences, competences to apply administrative penalties, and competences to take other actions, including primarily corrective ones. The proposed division, owing to its significantly organizing character, has become a determinant of further deliberations, which thanks to its application, in the opinion of the authors, on the one hand, become more transparent and, on the other hand, allow for a synthesis leading to the formulation of summary conclusions.

3. Regulating competences

First of all, the regulatory competences of the Marshal of the Voivodship are of fundamental importance for shaping the market of tourism services, stimulating its development, including the pre-

[6] It is worth noting that it is the minister for tourism who runs the central contact point facilitating administrative cooperation and supervision over the tour operators and entrepreneurs facilitating the purchase of related tourism services who operate in the Member States of the European Union or in countries which have implemented the provisions of Directive 2015/2302 – Article 25 (1) of the ATE.

ventive elimination of entrepreneurs whose reliability as to their proper activity in this respect is questionable. The Act on Tourist Events stipulates that activity in the field of organizing tourist events and facilitating the purchase of tourism services requires an entry in the register of tourist operators and entrepreneurs facilitating purchase of related tourism services. The competent authority for keeping such a register is the Marshal of the Voivodship. Therefore, in terms of keeping registers, the legislator has introduced a regional model, while at the same time abandoning a much more transparent concept of a central register, one which probably with the current technical capabilities would not cause practical problems. The adoption of such a model determined the need to set the rules for establishing the local jurisdiction of the Marshal of the Voivodship, who will be competent to carry out registration activities. In accordance with Article 23 (1) and (2) of the ATE the authority competent to keep the register is the Marshal of the Voivodship competent for the seat of the tourist operator or the address of residence of the tourist operator being a natural person, and in case of a foreign entrepreneur who established a branch in the territory of the Republic of Poland, in accordance with the provisions of the Act of 6 March 2018 on the rules of participation of foreign entrepreneurs and other foreign persons in economic activity in the territory of the Republic of Poland,[7] the authority competent to keep the register is the Marshal of the Voivodship competent for the seat of the branch. In the case of a tourist operator without a seat or a branch in the territory of the Republic of Poland, the authority competent to keep the register is the Marshal of the Voivodship selected by the operator.

The registration procedure is initiated at the request of the tourist operator. According to the regulations, such an application should contain the following data: the name or business name of the tourist operator, its registered office and address, and if the tourist operator is a natural person – address of residence; tax identification number (NIP), if available; identification of the type

[7] Journal of Laws, items 649 and 1293.

of activity; determination of the territorial scope of the activity; indication of the main place of performance of the activity covered by the entry in the register and the branches; e-mail address, if applicable; telephone number, if applicable. Moreover, the tourist operator is obliged to attach to the application a copy or the original of a guarantee or agreement, certified by an advocate, legal counsel, or notary public, which forms a financial security in case of the entrepreneur's insolvency, and a statement, the content of which is specified in the Act.

If the application is submitted together with the necessary documents, the Marshal of the Voivodship is obliged to make an entry of the tourist operator in the register within 7 days from the day of its receipt. In the elements of this procedure, the legislator has applied the construction of silent settlement of the matter by the registration authority. If the Marshal does not make the entry within the previously indicated time limit, then after 14 days from the date of receipt of the application to this authority the tourist operator may start his/her business activity. However, this does not apply in the case where the application for registration had some deficiencies. In such a case, if the application contains deficiencies, the Marshal of the Voivodship is obliged, not later than within 7 days from the date of its receipt, to call on the entrepreneur to remove them. Then, after completing the application, the Marshal will be obliged to make an entry within 7 days from the date of its receipt, and if she/he fails to do so, similarly, the tourist operator will be able to start business activity after 14 days from the date of receipt of the supplement to the Marshal.

The register of tour operators and entrepreneurs facilitating the purchase of related tourist services is public. However, the legislator excludes from this rule the data listed in Article 24 (6), which include: the address of residence of the entrepreneur, if different from the address at which the business activity is performed, as well as the e-mail address and his/her telephone number. On the basis of the collected data the Marshal is competent to issue certificates of entry into the register. Such certificates are issued upon request and their form (paper or electronic) depends on the applicant's wishes. In addition, the legislator shapes the right of

everyone to request information covered by the register by making an inquiry in relation to specific tourist operators.

The essence of records and registers is to collect up-to-date data. In connection with the above, legal solutions have been introduced into the Act on Tourist Events to ensure that the data covered by the register are updated. As results from the Act, in case of a change in the data entered in the register, the tourist operator is obliged to submit an application to change the entry in the register within 14 days from the day on which the change of these data took place. Moreover, the tour operator or the entrepreneur facilitating the purchase of related tourism services is obliged to notify the authority keeping the register of a change in the entry in the CEIDG (Central Registration and Information on Business) or in the Register of Entrepreneurs of the National Court Register, consisting in the disclosure of information about the suspension, extension of the suspension, or resumption of business activity, within 7 days from the date of disclosure of that information. Failure to fulfil this obligation with regard to the disclosure of information on the resumption of business activity in the register after the expiry of the period of suspension has very far-reaching consequences, namely, in accordance with paragraph 3 of Article 26 of the ATE, in such a situation the Marshal of the Voivodship is obliged to remove, by way of an administrative decision, the tour operator or the entrepreneur facilitating the purchase of related tourism services from the register.

The Marshal's regulating powers are based on the concept of related decisions, both in terms of taking registration activities and issuing decisions on removing entities from the register. This is intended to eliminate the arbitrariness of this body and is in line with the general tendency to eliminate the discretionary decisions of administrative bodies in matters of conducting business activity.

4. Control competences

The Act on Tourist Events also delegates to the Marshal of the Voivodship a number of powers of control, the application of which

is to determine the factual situation making it possible to assess whether it is justified to apply supervisory measures, administrative penalties, or to take other actions, including those of a corrective nature. Therefore, control measures are characterized by their passive character and constitute an instrument for obtaining information on entrepreneurs conducting activity consisting in providing tourism services, as well as on their activity in the monitored scope.

The main provision which is the basis for the Marshal's control activities is article 30 of the ATE. In this article, the legislator concentrates on precise definition of the subject matter area of potential control which may be carried out by the Marshal. According to this provision, the Marshal of the Voivodship (analogous powers are vested in the minister in charge of tourism) is authorized to control the activities conducted by the tourist operator in the area of: compliance with the actual state of affairs of the data contained in the declaration attached to the application for entry in the register of tour operators and entrepreneurs facilitating the purchase of related tourism services; compliance of the activity with the obtained entry in the register; compliance with the conditions for conducting the activity specified in the Act on Tourist Events, in particular as regards the amount of financial security and payment of contributions to the Tourism Guarantee Fund; compliance of the activity with the concluded agency agreements; as well as compliance with information obligations towards travellers referred to in Chapter 6 of the Act on Tourist Events[8]. In addition,

[8] In accordance with Article 39 (1) and (2) of the ATE, the tour operator, the entrepreneur facilitating the purchase of related tourism services, and the travel agent, where the tourist event is sold through his/her intermediary, shall, prior to the conclusion of the agreement, provide standard information to travellers through a relevant standard information form. Where a type of related tourism service is not covered by the standard information form, the entrepreneur facilitating the purchase of the related tourism service shall provide the traveller in a clear, comprehensible, and visible manner with information on: the coverage in the event of insolvency; the sole responsibility for the proper performance of the service by each individual service provider in accordance with the agreement; and the non-application of the provisions of the Act which only apply to tourist events to related tourism services.

the Marshal of the Voivodship has also been authorized to control the activities of entities not entered in the register with regard to their organization of tourist events and to facilitate the purchase of related tourism services to the extent necessary to determine whether the activity requires an entry in the register. In this respect, therefore, the Marshal has the competence to verify whether the business activity is eligible for recognition as a regulated activity requiring registration as referred to in Part V. In relation to travel agents and other persons concluding agreements on participation in a tourist event with travellers on behalf of tour operators, the Marshal of the Voivodship is authorized under this provision to carry out inspections of their activity in terms of meeting the obligations set out in the Act when concluding these agreements. In addition, the legislator authorizes the Marshal of the Voivodship to control the compliance of activities carried out by tour operators or entrepreneurs facilitating the purchase of related tourism services with the provisions of Article 7, Article 8, Article 9 (3) and (4) and Article 12 (1) and (2) of Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004,[9] and Articles 9, 10 (2) to (5), 14 (3) and (4) and 15 of Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/200.[10] Depending on post-control findings, the minister in charge of tourism and the Marshal of the Voivodship will be entitled to take adequate post-control measures, according to the legislator, which are analysed in Part V.

In order to make a reliable assessment of the activities of controlled entities, the legislator also shapes the powers of the Marshal of the Voivodship in the area of:

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[9] OJ EU L 334 of 17.12.2010, p. 1, as amended; hereinafter: Regulation 1177/2010.

[10] OJ EU L 55 of 28.02.2011, p. 1; hereinafter: Regulation 181/2011.

- access to data contained in the list of agreements on participation in a tourist event and agreements concluded by the traveller with an entrepreneur facilitating the purchase of related tourism services conducted by the tour operator or such an entrepreneur;
- access to information contained in the Central Register of Tour Operators and Entrepreneurs Facilitating the Purchase of Related Tourism Services.

The powers of access to information collected in the register are vested in the Marshal of the Voivodship, regardless of the place of residence of the tourist operator or his/her place of residence (if the tourist operator is a natural person).

Among the control competences of the Marshal of the Voivodship one should also include the obligations imposed under the Act on Tourist Events by the legislator on tour operators and entrepreneurs facilitating the purchase of related tourist services. Their implementation serves the purpose of obtaining information necessary to assess compliance with the law by these entities. Pursuant to Article 7 (1), item 2 of the ATE, the above mentioned tour operators and entrepreneurs are obliged to submit to the Marshal of the Voivodship the originals or copies of the financial security in their possession, certified as true copies by an advocate, legal adviser, or notary public, not later than 14 days before the expiry of the term of the agreement or previous guarantee, or in the case of tourist operators ceasing or suspending their activity, to notify the Marshal of the Voivodship about terminating or suspending the activity of the tour operator or the entrepreneur facilitating the purchase of related tourism services, which releases them from the obligation to submit documents confirming the financial security.

The above control powers are used to assess compliance with the provisions of law by entities operating in the field of providing tourism services. The resulting findings shall then serve as a basis for undertaking the post-control activities of the Marshal of the Voivodship, as provided for in the Act on Tourist Events.

5. Post-control competences

As a result of the control activities undertaken, the Marshal of the Voivodship obtains information on the activities of tourist operators. They constitute a basis for the assessment of the legitimacy of the application of post-control activities, the legal basis for which is specified in the Act on Tourist Events. The legislator differentiates the post-control competences of the Marshal depending on the irregularities found and the actual state of affairs that they caused. The analysis of legal regulations in this area makes it possible to introduce a classification of these measures by distinguishing corrective measures aimed at protecting tourist operators against the undesirable effects of their actions, strictly supervisory measures aimed at correcting or leading to discontinuation of tourism service provision activities and registration activities related to the application of such measures, as well as measures consisting in applying penalties to tourist operators provided for in the Act.

Corrective measures are applied in the case of insolvency of tour operators or entrepreneurs who facilitate the purchase of related tourism services.[11] In the case of insolvency, tour operators should have adequate financial security. In the light of the Act on Tourist Events, these are bank or insurance guarantees, insurance contracts for travellers or, if the entrepreneurs provide tourist events or facilitate the purchase of related tourism services provided exc-

[11] For a legal definition of insolvency, see Article 11 of the Act of 28 February 2003, Bankruptcy law (i.e. Journal of Laws of 2019, item 498) – a debtor is insolvent if it has lost the ability to perform its due monetary obligations. The debtor is presumed to have lost the ability to perform its due monetary obligations if the delay in performing the monetary obligations exceeds three months. A debtor that is a legal person or an organizational unit without legal personality, to which a separate act grants legal capacity, is also insolvent if its monetary obligations exceed the value of its assets, and this state of affairs persists for a period exceeding twenty four months. More on the insolvency of a tourist operator in: D. Szafran, *Ochrona konsumenta w razie niewypłacalności biura podróży*, Acta Erasmiana vol. XIII, Wrocław 2016, p. 101 and subsequent articles.

lusively on the territory of the Republic of Poland, agreements for a tourist escrow account.[12] Pursuant to Article 14 (2) of the ATE, the content of a bank guarantee or insurance guarantee or insurance agreement for the benefit of travellers includes an authorization for the Marshal of the Voivodship or an entity authorized by him/ /her to issue an instruction to pay an advance payment to cover the costs of continuation of the tourist event or costs of return of travellers to their country.

An insolvent tour operator is required to provide the Marshal with a statement indicating, among other things, that s/he is unable to cover the cost of continuing the tour or the cost of the travellers' return to the country.[13] This declaration shall be immediately forwarded by the Marshal to the entity providing financial security. If it is not possible to obtain this statement, the Marshal shall apply in writing to the entity providing financial security (bank, or insurance guarantee, or insurance contract for the benefit of travellers) for payment of funds directly to travellers, if circumstances clearly indicate, that the tour operator or entrepreneur facilitating the purchase of related tourism services is not able to honour the agreements concluded with the travellers and to ensure that the costs of continuing the tour or of the travellers' return to their country are covered or that travellers are reimbursed for payments or parts of payments made for the tour or related tourism services which have not been or will not be provided.[14]

The entity providing financial security, upon receiving each instruction of the Marshal of the Voivodship or an entity indicated by him/her authorized to issue an instruction to pay an advance to cover the costs of continuation of the tourist event or the costs of the travellers' return to the country, unconditionally and im-

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[12] Cf. art. 7 (2) items 1–3 of the ATE.

[13] At the same time, the tour operator provides the marshal with a list of contracts which have not been or will be performed and contact details of the tour leader or a person representing the tour operator who takes care of the travellers, if such a leader or such a person has been appointed – cf. art. 13 (1) of the ATE.

[14] Cf. art. 13 (2) of the ATE.

mediately (i.e. within 3 working days of receiving the instruction), shall transfer the advance to cover the costs of continuation of the tourist event or the costs of travellers' return to the country. The Marshal shall then present to the entity providing financial security, a written settlement of the received advance for the costs of continuation of the tourist event or the costs of the travellers' return to the country, within 60 days from the date of receipt of the payment, under pain of the obligation to return the advance.[15]

If the financial security is insufficient to cover the costs of the continuation of the trip or the travellers' return to the country, the entity providing such security shall immediately inform the competent Marshal and the Insurance Guarantee Fund. The Marshal or an entity designated by him/her shall then apply to the Insurance Guarantee Fund for disbursement of funds from the Tourist Guarantee Fund,[16] but only if the financial security proves insufficient to cover the costs of continuation of the trip or the costs of the travellers' return to their country, covering in particular the costs of transport and accommodation, including in a reasonable amount the costs incurred by the travellers.[17]

In the event of the insolvency of the tour operator or the entrepreneur facilitating the acquisition of related travel services, the Marshal or an entity authorized by him/her shall carry out activities related to the organization of the travellers' return to the country, if the tour operator or the entrepreneur facilitating the purchase of related tourism services, despite its obligation, does not ensure this return.[18]

Given the significance of legal effects, the possibility of applying supervision measures takes a special place among the post-control

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[15] Cf. art. 15 (1) and (2) of the ATE.

[16] It is important to stress at this point the role that the Tourist Guarantee Fund plays in the system of travellers' protection. More on this subject: E.J. Wanat-Połeć, G.A. Sordyl, *Wzmocnienie ochrony konsumentów niewypłacalnych touroperatorów w Polsce a koncepcja utworzenia Turystycznego Funduszu Gwarancyjnego*, „Annales Universitatis Mariae Curie-Skłodowska" Lublin – Polonia XLIX, Lublin 2015, passim.

[17] Cf. art. 20 (1) – (4) of the ATE.

[18] Art. 14 (1) of the ATE.

competences of the Marshal. The application of a supervision measure is an effect of control of the minister in charge of tourism, which leads to the discovery of deficiencies in the way the tourist operator performs his/her activity. However, before the Marshal applies the supervision measure, s/he should call on the tourist operator to remedy the deficiencies found as a result of the inspection within a specified time limit.[19]

The supervision measures shall take the form of an administrative decision. The Marshal shall issue administrative decisions on removing a tourist operator from the register and on the ban on performing the activity included in the register for 3 years. Such a decision may be issued if the tourist operator has not remedied the breach of conditions required to perform the activity of the tour operator or the entrepreneur facilitating the purchase of related tourism services within the time limit set by the Marshal of the Voivodship or if the tourist operator has submitted the declaration referred to in Article 24 (2) of the ATE[20] inconsistent with the actual state of affairs. The Marshal shall issue a decision on removing the tourist operator from the register and banning the activity covered by the entry in the register for a period of 3 years, also if s/he finds a gross violation by the tourist operator of the conditions required to perform the activity of a tour operator or an entrepreneur facilitating the purchase of related tourism services.[21] If the gross violation of the conditions of conducting business activity consists in evading, despite a call, the obligation to submit declarations in a timely manner or to pay due contributions to the Tourist Guarantee Fund,

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[19] Cf. art. 30 (6) and (6a) of the ATE.

[20] In this case, it concerns a declaration that the data contained in the application for entry in the register of tour operators and entrepreneurs facilitating the purchase of related tourism services are complete and true and that the tour operator is aware of and complies with the conditions for carrying out the activity of organizing tourist events or facilitating the purchase of related tourism services laid down in the Act on Tourist Events.

[21] A catalogue of cases of gross violation of the conditions for the performance of the activity of a tour operator or an entrepreneur facilitating the purchase of related tourism services is provided in Article 31 of the Act on Tourist Events.

then the decision in question shall be issued at the request of the Insurance Guarantee Fund,[22] unless the entrepreneur fulfils its statutory obligations before the administrative decision is issued. The decisions listed herein are immediately enforceable.

Moreover, the Marshal of the Voivodship is entitled to issue – upon request or *ex officio* – a decision on removing a tourist operator from the register. The Marshal of the Voivodship shall remove the tourist operator from the register at the request of this operator following the cessation of the activity covered by the entry in the register. Furthermore, the Marshal shall take such a decision *ex officio* when s/he receives information from the Central Registration and Information on Business or the National Court Register about the removal of the tourist operator from CEIDG or NCR ex officio. Removal of the tourist operator from the register also takes place in case of lack of notification about the change of entry in the Central Registration and Information on Business or in the Register of Entrepreneurs of the National Court Register, consisting in the disclosure of information about the resumption of the activity, after the period of suspension. The Marshal of the Voivodship shall also remove *ex officio* tourist operators having their registered office in the territory of countries which, on the basis of an agreement with the European Union and its member states, have implemented the provisions of Directive 2015/2302/EU into their national legal order.

In the case of conducting the activity of a tour operator or an entrepreneur facilitating the purchase of related tourism servi-

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[22] In the event of failure to comply with the obligation to submit a declaration or to pay due premiums on time, the Insurance Guarantee Fund shall call the tour operator or the entrepreneur facilitating the purchase of related tourism services in writing to comply with the obligations specified in section 1 within 14 days of receiving the call. After the ineffective lapse of the set deadline, the Insurance Guarantee Fund shall be entitled to claim the premiums due together with interest. The call shall be communicated to the competent Marshal. In the event of failure to meet the deadline specified in the call, the Insurance Guarantee Fund shall apply to the competent Marshal of the Voivodship for an administrative decision on the removal of the tourist operator from the register and on the ban on the performance of activities covered by the entry in the register for a period of 3 years – cf. article 37 (2) of the ATE.

ces without the required entry in the register, the Marshal of the Voivodship shall confirm this state of affairs by way of a decision indicating the date on which the activity of a tour operator or an entrepreneur facilitating the purchase of related tourism services without the required entry in the register was confirmed and at the same time prohibit the activity of a tour operator or an entrepreneur facilitating the purchase of related tourism services for a period of 3 years *ex officio* and of the confirmation. The decision in question is immediately enforceable.

The Marshal of the Voivodship, by way of an administrative decision, shall remove from the register a tourist operator entered in the register acting as a tourist agent, who commits the following infringements:

- does not clearly indicate in the agreements concluded with the travellers the relevant tour operator which s/he represents, or
- concludes agreements on participation in a tourist event for the benefit of a tourist operator who, despite such an obligation, has not been registered or does not have financial security in case of insolvency, or acts without or exceeds the scope of a valid agency agreement, or fails to fulfil information obligations towards travellers.

A tourist operator who is not entered in the register and who, acting as a tourist agent for travellers, commits the above mentioned infringements, shall be deemed to be a tour operator performing the activity without the required entry in the register.

The tourist operator may not obtain a new entry in the register before the lapse of 3 years from the date on which the administrative decision on removing from the register and banning the activity covered by the entry was effectively delivered to him/her.

An inspection may also result in a financial penalty. Penalties are imposed by the Marshal of the Voivodship for infringement by a tour operator or an entrepreneur facilitating the purchase of related tourism services of obligations or conditions specified in the provisions of Regulation No. 1177/2010 or Regulation No. 181/2011. In case of infringement of the provisions of Regulation No. 1177/2010, the maximum amount of the fine is PLN 50,000, while a tourist

operator infringing the provisions of Regulation No. 181/2011 is subject to a fine of up to PLN 30,000. These penalties constitute state budget income.

The aforementioned financial penalties are imposed by the Marshal of the Voivodship by way of an administrative decision. In this case, the decision may be appealed against to the Local Government Appeal Board.

Financial penalties not paid on time shall be subject, together with default interest, to collection in accordance with the procedure laid down in the provisions on administrative enforcement proceedings.

6. Final conclusions

Tourism is a social phenomenon and until recently one of the most dynamically developing sectors of the economy. Tourist enterprises recorded profits, and tourists reached the most remote corners of the world. Therefore, legal solutions adopted in Poland take into account the relationship between the need for free competition and consumer protection, which is essential for the proper functioning of modern tourism.

The legislator decided to create a system of control and supervision bodies in the field of tourist events and services. In terms of the subject, the system is made up of voivodship marshals and the minister in charge of tourism. From the political point of view, this is a partially decentralized system. Therefore, it adopted an administrative model of traveller protection, in which the executive body of the voivodship self-government plays a key role. Analyzing the provisions of the Act, however, it is difficult not to notice certain systemic inconsistencies in shaping systemic and procedural solutions. On the one hand, the legislator delegates competence in the field of instance control to the minister in charge of tourism, and on the other, in the case of a decision of the voivodship marshal to impose an administrative penalty, he leaves it in the hands of a self-government appeal board. One should also ask a question about the reasons justifying the transfer of supervisory and control

competences to the voivodship marshal. It seems that, given the nature of the tasks carried out in this respect, these competences should be implemented by local government administration bodies – voivods.

The overall assessment of the legal regulation leads to the conclusion that the legislator has created a system that on the one hand has a chance to eliminate a priori entrepreneurs whose eventual activity could expose potential clients to "inconveniences" associated with faulty tourist services, on the other it allows an adequate response in the case of providing services improperly, or even exposing clients to damage, and thirdly allows disciplinary action against entrepreneurs. However, the crisis caused by the COVID 19 pandemic confirms the belief that in this type of activity, which is the provision of tourist services, threats are difficult to predict, usually sudden and unexpected, but also that they affect both customers and entrepreneurs. Meanwhile, the legislator proposed solutions where, within the framework of measures, public administration bodies at most, can focus their activities on minimizing the inconvenience and damage caused by the activities of unreliable tourism entrepreneurs; it is travelers and their needs that are the focus of the legislator and the executive authorities. Tourist entrepreneurs were burdened with numerous obligations, the implementation of which is subject to control and supervision by public administration bodies.

However indispensable and even desirable, such a system does not fulfill its role in the era of growing threats and risks, which affects both travelers and tourist entrepreneurs. Recently, we are witnessing phenomena for which virtually no legislator was prepared. Certainly, the experiences of this period should lead to the creation in the future of a multilateral protection system allowing to support not only the recipients of tourist services, but also entrepreneurs operating on this market. It is certainly difficult to expect that it will be possible to ultimately create a system that will eliminate adverse events, while fully compensating for the inconvenience. However, it is necessary to monitor threats based on, among others, current experience, and try to create a control and supervisory system as effective as possible and capable of

counteracting dangerous phenomena for both recipients of tourist services and entrepreneurs who are co-creating this market.

STRESZCZENIE

Kontrola i nadzór marszałka województwa nad organizatorami turystyki oraz przedsiębiorcami turystycznymi

Przedmiotem tego opracowania jest analiza dotychczasowego prawnego modelu ochronny i reglamentacji w obszarze usług turystycznych, ze szczególnym uwzględnieniem roli marszałka województwa, jako organu administracji publicznej, któremu przekazano do realizacji zadania państwa w tym zakresie.

Słowa kluczowe: kontrola; nadzór; turystyka; marszałek województwa

SUMMARY

Control and supervision on the part of the Marshal of the Voivodship over tour operators and tourist entrepreneurs

The subject of this study is the analysis of the current legal protection and regulation model, with particular emphasis on the role of the Marshal of the Voivodship as a public administration body to which state tasks in the area of conducting business activity in the tourist services industry have been delegated and an attempt to assess such shaped legal regulations.

Key words: control; supervision; tourism; Marshal of the Voivodship

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