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IM. BRONISŁAWA CZECHA W KRAKOWIE

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Travel and Tourism Law in the Face of Contemporary Threats to Tourist Safety and Security

KRAKÓW 2021

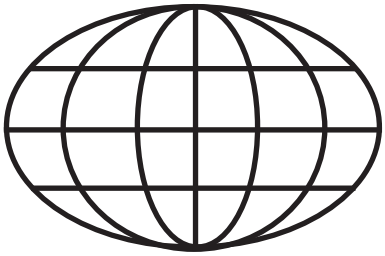
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FROM THE EDITOR

The presented issue of the journal "Folia Turistica" on *Travel and Tourism Law in the Face of Contemporary Threats to Tourist Safety and Security* is already the second thematic issue on legal aspects of tourism. The first one was published in 2009 as No. 20.

This issue was prepared under quite specific circumstances - the difficult times of the COVID-19 pandemic. Tourism was one of the areas of our lives most affected by it. While the central concern of travel and tourism law is the issue of tourist safety and security, the pandemic has made everyone even more aware of how important the issue is. This is also reflected in on-going discussions as well as publications on travel and tourism law in many parts of the world.

The theme of safety and security in the context of travel and tourism law is also the central theme of the articles published in this issue. In these articles, it is presented within different contexts and to varying extents. For obvious reasons, this is not an exhaustive study of the topic. In the articles, research is presented on selected problems.

To conclude this brief introduction, I would like to point out that the journal "Folia Turistica" was included in the list of scientific journals of the Ministry of Ministry of Education and Science in December 2021 and was awarded 40 points[1]. Due to that occasion, on behalf of the editorial board of the journal, I would like to invite all the more interested persons to publish their papers in this journal, also on topics related to the legal aspects of tourism; not only in thematic issues (as I suppose this issue will not be the last thematic issue of "Folia Turistica"), but in others as well.

Piotr Cybula

[1] *Komunikat Ministra Edukacji i Nauki z dnia 1 grudnia 2021 r. w sprawie wykazu czasopism naukowych i recenzowanych materiałów z konferencji międzynarodowych z 1 grudnia 2021 r.* [*Announcement by the Minister of Education and Science from 1 December 2021 on the list of scientific journals and peer-reviewed papers of international conferences of 1 December 2021*]. Online: https://www.gov.pl/web/edukacja-i-nauka/komunikat-ministra-edukacji-i-nauki-z-dnia-1-grudnia-2021-r-w-sprawie-wykazu-czasopism-naukowych-i-recenzowanych-materialow-z-konferencji-miedzynarodowych?fbclid=IwAR1AyJ3f1m-PVVJREhwcMhkkLGm1c2vTsg9ZUz-vh9PNMN7PMKWNesyHlTU (6.12.2021).

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REFUND FOR CANCELLED TRAVEL DURING THE PANDEMIC: COMMISSION DECIDES TO REFER SLOVAKIA TO THE COURT OF JUSTICE*

Monika Jurčová**, Peter Varga***

Abstract

Purpose: The purpose of the article is to assess the conformity of the Slovak solutions with regard to refunds for cancelled travels and their conformity with EU law, i.e. the Package Travel Directive. In the article, the position is analysed of the European Commission and its reflection to Slovak legislation on refunds of travels after cancellation of the breach concerning travels by the travel agencies.
Method: Legal analyses regarding the Slovak amendment of Package Travel Act and comparison of its provisions with the Package Travel Directive.
Findings: In the article, the way is described as to how the Slovak legislator solved the reimbursement for cancelled travels due to pandemic situation. Also provided is the statement regarding the reasoned opinion of the European Commission that followed the adoption of the amendment of the Slovak Package Travel Act. The authors analyse compatibility of the COVID PTA Amendment with European Union law. In the article, it is described that due to time constraints set by the COVID PTA Amendment for refund because of cancelled travels, non-compliance with EU legislation had probably expired by September 2021.
Research and conclusions limitations: The research was focused on EU (Package Travel Directive) and Slovak legislation (Package Travel Act) and assessment of compliance of Slovak with EU law.
Practical implications: The article draws attention to the question whether some effects of the COVID PTA Amendment will persist after September 2021 provided that the topical purpose of this legislation to postpone refund for travellers has already been accomplished by setting the deadline for 14 September 2021. Secondly, it raises the question of possible damage suffered by the individuals due to the breach of EU law by the Slovak Republic.
Originality: As the article is focused on the most current situation, this topic has not been discussed by other authors in other studies. The authors assume a view that makes assessment regarding legality of the Slovak amendment for Package Travel Act with EU law.
Type of paper: Research paper.

Keywords: Package Travel Directive; Package Travel Act; termination; unavoidable and extraordinary circumstances; COVID-19 pandemic; refund of payments.

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Introduction

Due to the COVID-19 pandemic, many travel arrangements had to be cancelled. Under the Package Travel Directive[1], travellers have the right to be refunded or reimbursed without undue delay and, in any event, no later than 14 days after the package travel contract is terminated because of unavoidable and extraordinary circumstances[2]. As the response to the urgent need to save those providing travel services and organisers of travel packages from bankruptcy, many Member States adopted national rules allowing organisers of package travel to deviate from rules conferring the "almost" immediate refund for cancelled travels. The European Commission argues that those national rules breach the provisions of the Package Travel Directive and weaken consumer rights[3]. The European Commission launched infringement procedures against 10 Member States for their rules on package travel in July 2020. These Member States, Slovakia being among them, allowed organisers of package travel to issue mandatory vouchers, instead of reimbursement in monetary form, for cancelled trips during the COVID-19 pandemic, or to postpone refund or reimbursement far beyond the 14-day period set out in the Package Travel Directive. The European Commission proceeded to the next stage of the infringement procedure and sent Slovakia a reasoned opinion in October 2020. Slovakia replied to the reasoned opinion and shared a draft legislative amendment in December 2020. It was planned that the amendment would be adopted in March 2021 and shall enter into force on 1 May 2021. At the end of March 2021, the Slovak authorities informed the European Commission that the draft amendment had not been adopted and that a new legislative process would be initiated. As Slovakia has not yet amended its legislation, the European Commission decided to refer Slovakia to the EU Court of Justice to ensure that this important consumer right on package travel becomes a reality under Slovak legislation once more.

In the paper, analyses are provided regarding the Slovak approach to problems with the liquidity of travel organisers. Slovakia introduced new rules on the variation and termination of package travel contract applica-

[1] Directive (EU) 2015/2302 of the European Parliament and the Council from 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No. 2006/2004 and Directive 2011/83/EU of the European Parliament and the Council and repealing Council Directive 90/314/EEC (OJ L 326, 11 Dec. 2015, pp. 1–33).

[2] See Article 12(2) of the Package Travel Directive.

[3] The Slovak Parliament adopted Act No. 136/2020 Coll. that applies from 29 May 2020 and amended Act No. 170/2018 on travels, linked travel arrangements, certain conditions of business in tourism and on the amendment of certain laws. The aim of the amendment was to provide protection to consumers whose travels will not be possible to be realised in the near future due to a coronary pandemic and to lay down acceptable conditions for travel agents to provide compensation or refunds for cancelled tours.

ble in extraordinary situations [Resolution, 2020]. It is assumed that these rules are in conflict with European Union law because they hinder the possibility of terminating the contract by the traveller and therefore, the right to a refund does not arise until end of August 2021. It may be argued that due to their temporary/transitory nature of this *ad hoc* legislation, the problem of the breach with EU law will be expired by 15 September 2021.

Discussion

In Slovakia, the Package Travel Directive was transposed by the Package Travel Act[4]. The Package Travel Directive provides for a high level of harmonisation in Article 4 and emphasizes the binding nature of the Directive in Article 23. The Package Travel Directive has given the traveller a "generous" right to terminate the package travel contract without owing cancellation fees in such a case when the provision of the service package is significantly affected by unavoidable and extraordinary circumstances[5]. These may include, for example, significant risks to human health, such as the outbreak of a serious disease at a travel destination, which makes it impossible to travel safely to a destination as agreed in the package travel contract [PTD, reasoning 31, article 12(2)]. The European Commission has reflected upon the serious impact of the COVID-19 pandemic on carriers, organisers of package tours and providers of other tourism services as part of package tours. As the response to the conflict between obligations set by Package Travel Directive and the extraordinary situation in the travel industry, the European Commission adopted a specific Recommendation on vouchers to support Member States in setting up attractive, reliable and flexible voucher schemes, reiterating that EU law must be respected and consumers must have an option to choose the type of compensation [Recommendation on Vouchers, 2020][6]. In the Recommendation on Vouchers, the European Commission stresses the importance of preserving passengers' rights, as encumbered under the Package Travel Directive. Therefore, the European Commission's recommendation concerning vouchers, that carriers or organisers may propose passengers or travellers

[4] Act No. 170/2018 on travels, linked travel arrangements, certain conditions of business in tourism and on the amendment of certain laws. The text of the act in Slovak language: Online: https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2018/170/20200721 (29.09.2021).

[5] See Article 12 of the Package Travel Directive that regulates the termination of the package travel contract and the right of withdrawal before the start of the package.

[6] Commission Recommendation (EU) 2020/648 from 13 May 2020 on vouchers offered to passengers and travellers as an alternative to reimbursement for cancelled package travel and transport services in the context of the COVID-19 pandemic [OJ L 151, 14 May 2020, pp. 10–16].

as an alternative to reimbursements in money, shall be subjected to the passenger's or traveller's voluntary acceptance[7]. The Slovak amendment to the Package Travel Act by Act No. 136/2020 Coll. (hereinafter, referred to as the "Covid PTA Amendment") has been enacted on 20 May 2020, briefly after the Recommendation on Vouchers had been published by the Commission on 15 May 2020. We argue that the COVID PTA Amendment in Slovakia does not respect the traveller's right to terminate the contract. The right of the traveller to decide between termination of the contract or the notice on a substitute package (voucher) in Slovakia is harshly restricted.

In this paper, we analyse and discuss the following aspects of the COVID PTA Amendment:

a) The issue of compatibility concerning the COVID PTA Amendment with European law. Our primary aim in this respect is to answer the question as to whether the COVID PTA Amendment establishes an obstacle to exercising the traveller's right to terminate the contract according to Section 20, Par. 3 and Section 21, Oar. 2 of the Package Travel Act and/or, therefore, hinders his/her right to refund and whether this Amendment meets the requirements of Recommendation on Vouchers.
b) The partially temporal nature of COVID PTA Amendment limited by dates as outlined below in relation to the pertaining breach of EU law and acceptability of the action later brought to the EU Court of Justice by the European Commission.

Taking this timeline set by the COVID PTA Amendment into regard, it is inevitable to discuss all the outlined problems in 3 time periods:

– from the declaration of an extraordinary situation for the territory of the Slovak Republic (12 March 2020) (or existing extraordinary situation at the travel destination other than Slovakia preceding 12 March 2020) until the COVID PTA Amendment has been effective (28 May 2020);
– from the time when the COVID PTA Amendment has been effective (29 May 2020) until the deadline set by the legislator for reaching an agreement on substitute packages (31 August 2021);
– from 1 September 2021, there is no special time limit for postponing the refund for travellers, provided that the termination occurs on the basis of the unavoidable and extraordinary circumstances.

[7] See point 1 of the Recommendation: "This Recommendation concerns vouchers that carriers or organisers may propose to passengers or travellers, as an alternative to reimbursement in money, and subject to the passenger's or traveller's voluntary acceptance".

Refund for cancelled package as a "hostage" to changes in the ordinary legal regime of the variation and termination of a package travel contract

a) The unilateral change of the package travel contract by the travel organiser

The travel organiser is not entitled to unilaterally change the terms of a package contract other than the price according to Section 19 of the Package Travel Act before the start of the package, unless the travel organiser has reserved this right in the package contract, the change is negligible and the travel organiser informs the traveller of the change in an unambiguous, comprehensible and certain manner via a durable medium. The general contract law in Slovakia does not allow other possibilities for the travel organiser either [Jurčová 2021]. If the travel organiser is forced to substantially change any of the basic features of the tourism services according to the contract before the start of the package, it proposes a change of the package contract to the traveller [Section 20, Par. 2]. The traveller may accept the change or terminate the contract without paying a cancellation fee.

The COVID PTA Amendment has introduced a new provision – Section 33a PTA – that is directly related to the provision from Section 20, Par. 3 of PTA on the change of the package travel contract. Under Section 33a, Par. 1 of PTA:

> If, in consequence of an extraordinary situation due to the COVID-19 outbreak in the Slovak Republic or a similar situation at the place of destination or at any point of the itinerary of the package, it is not possible to provide the traveller with basic features of the tourism services according to the package contract, the travel agency is entitled a) to propose a change to the package contract, or b) to send a notice of a substitute package to the traveller, if the traveller does not accept the proposed change of the package contract according to notice a).

The transitional provisions modify the regime of Section 20, Par. 3 PTA. The traveller's right guaranteed by this provision in an extraordinary situation to terminate the package contract without payment of a cancellation fee is thus disputed, limited, excluded or modified; and instead of this, the traveller receives a notice of a substitute package (unless s/he or she accepts the proposed change), which serves as a "voucher" for the use of tourism services at the price of payments for the original package[8].

[8] "The notice of the substitute package is in written form and is delivered on a durable medium in the manner in which the package contract was delivered to the traveller, unless the parties have agreed otherwise. The notice of the substitute package contains in particular information on:
a) The sum of payments received on a basis of the package contract;

The right to refuse a substitute package in writing within 14 days from the date of delivery of the notice regarding the substitute package is granted only to selected groups of persons [Package Travel Act, Section 33a, Par. 4, 5]; a negotiation on the basis of the voucher remains open to other travellers. The travel organiser is obliged to agree with the traveller on the provision of a substitute package no later than on 31 August 2021 [Package Travel Act, Section 33a, Par. 7].

The COVID PTA Amendment does not entitle the travel organiser to unilaterally change the package contract, but non-acceptance of a proposal to change the contract neither causes the termination of the package contract nor establishes the right to demand a refund of the package price (respectively, payments of the package price which have already been made) according to Section 20, Par. 4 of PTA. For this reason, the basic principles of the change in the package contract regulated by Section 20 of the PTA are affected and amended by the transitional provisions at least in 2 aspects. The refusal of the proposal to change the contract by the traveller does not cause the termination of the contract. The new regime prolongs the contractual obligation of the traveller, delays the settlement of payments from the contract and the maturity of the right to a refund in the amount of the package price.

b) Termination by the traveller between 12 March 2020 and 28 May 2020

If the traveller terminated the package contract within the period from 12 March 2020 to 28 May 2020 (hereinafter, also referred to as the "decisive period") according to Section §21, Par. 2 PTA, and, on the basis of this termination, the travel organiser has not returned all payments received on the basis of the package contract to the traveller, the procedure under the COVID PTA Amendment should be as follows:

1) proposal of a change to the contract by the travel organiser [Section 33, Par. 1 of PTA];
2) notice of a substitute package (voucher), if the change has not been accepted by the traveller [Section 33a, Par. 3 PTA];
3) the right to refuse, within the set time limit, a substitute package available only to selected entities to whom the payment for the package will be subsequently refunded [Section 33a, Par. 4 -6 PTA];
4) otherwise, recommendation to reach an agreement on a substitute package by 31 August 2021 [Section 33a, Par. 7 PTA];
5) if no agreement is reached until end of August 2021, the price will be refunded by 14 September 2021 [Section 33a, Par. 9 PTA].

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b) The fact that the basic features of the tourism services contained in the package contract may be changed after agreement with the traveller for the substitute package;
c) The traveller's right to assign the package contract according to Section 18".

The effects of termination will not be granted to traveller in the decisive period if, at the same time, no settlement of the parties' claims were reached until the entry of the COVID PTA Amendment into force. The same regime is also applied to the termination by a traveller without giving a reason during the decisive period, if no settlement was reached between the parties[9]. In this case, the PTA is silent on whether – the travel organiser would retain the right to demand cancellation fee according to Section 21, Par. 1 of the PTA if a settlement occurred according to point 5 presented above. The inclusion of these terminations in the protection regime is probably justified by the extraordinary situation in which many travellers preferred financial loss in the form of a cancellation fee for fear of COVID-19 and did not communicate the termination with reference to the extraordinary situation, although this motive may (but may not) have been paramount.

The steps leading to a refund for the traveller, as indicated above, clearly demonstrate that the COVID PTA Amendment does not meet the requirements of the Commission's Recommendation on Vouchers. A notice for a substitute package issued by the travel organiser opens the negotiation process until end of August 2021 and only a restricted group of travellers may benefit from voluntary acceptance of this voucher.

c) The traveller's right to terminate the contract between 29 May 2020 and 31 August 2021

If the traveller wishes to terminate the package contract due to the ongoing COVID-19 pandemic from 29 May 2020, the COVID PTA Amendment allows to distinguish 2 possible scenarios:

---

[9] See also the explanatory memorandum to the COVID PTA Amendment;

Section 33a, Par. 10 PTA:

"The provision states precisely that even if, at the time of the extraordinary situation until the entry into force of the Act, the traveller or travel agent withdrew from the package contract due to an exceptional and unavoidable circumstance (e.g. the spread of COVID-19), the original package contract lasts if the travel agency has not returned all payments paid on a basis of the package contract to the traveller. It is a matter of clarifying and refining the procedure applicable to package contracts from which the parties have withdrawn. If the withdrawal was effective, it would not be possible to follow up on the original contract and the purpose of the Act, which is to extend the package contracts, would be frustrated.

However, if the travel agency has returned all payments received on the basis of the package contract to the traveller, the bill does not relate to such a situation".

Section 33a, Par. 11:

"The provision addresses a situation where, at the time of the extraordinary situation until the entry into force of the Act, the traveller withdrew from the contract with the obligation to pay cancellation fee (Section 21, Par. 1) and did not pay the cancellation fee until the entry into force of the Act - in which case, Section 1 applies and the travel agency offers him or her a change in the package contract or an substitute package. However, if the traveller has paid cancellation fee to the travel agency on the basis of withdrawal from the contract, s/he is not affected by the bill".

a) if, in consequence of an extraordinary situation due to the COVID-19 outbreak in the Slovak Republic or a similar situation at the place of destination or at any point of the itinerary of the package, it is not possible to provide the traveller with basic features of the tourism services according to the package contract (Section 33a par. 1);
b) if, despite the extraordinary situation due to the COVID-19 outbreak in the Slovak Republic or a similar situation at the place of destination or at any point of the itinerary of the package, it is possible to provide a package according to the package contract.

In situation a), if the performance of the contract is not possible, we assume that the travel organiser itself will take the initiative and will proceed according to the above-mentioned manual of changing the contract, providing a substitute package, or deferral of the refund, respectively. It is quite theoretical to consider whether a traveller should and could terminate the contract in a situation where a package cannot be provided. These will mostly be cases in which, for example, air connection with the country is still excluded, the area is declared high-risk, closed off, etc.

From 29 May 2020, we consider scenario b) to be more frequent (depending on the pandemic waves). According to this provision, if the traveller does not agree with the provision of the package, s/he is obliged to inform the travel organiser in writing within the specified time period[10]. The travel organiser is required to send a notice providing a proposal for a substitute package to the traveller within 14 days from the date of delivering the information on the disagreement with the provision of the package and to proceed as in the case of termination by the traveller during the relevant period. The right to refuse a substitute package, which in the decisive period belongs to selected groups of persons, is not applied in this situation.

If, after 29 May 2020, the traveller sends the travel organiser notice of terminating the package contract, according to Section 21, Par. 2 of PTA, and s/he requests a refund of payments for the package, the question is whether the travel organiser is entitled to assess his/her expression of will as disagreement with the provision of the package and deprive him or her (equally, as for termination in the decisive period) of the right to immediate refund and shift him or her into the process for a proposal for change and a voucher for a substitute package. To what extent is the fear of travelling to "so-called less risky countries" a subjective and to what extent an objective factor? These are issues that may need to be addressed in decision-making practice. It must be noted that in some cases, travellers may clearly benefit from these provisions. If the traveller has clearly subjective reasons for not

[10] No later than 30 days before the start of the package; the first 30 days from the effective date of the COVID PTA Amendment, no later than 15 days before the start of the package.

wanting to go on holiday, without the COVID PTA Amendment, s/he would be obliged to pay a cancellation fee. Thus, the regime of transitional provisions according to Section 33, Par. 12 of the PTA provide significantly more advantageous solutions with regard to a change in mind.

d) Termination by the traveller from 1st September 2021

The extent of the applicability concerning the procedure under the COVID PTA Amendment following August 2021 is questionable due to various reasons. Package travel contracts concluded in 2021 have already included special provisions for extraordinary situation, the interpretation of the term extraordinary has to be ascertained flexibly, and under Section 33a, Par. 13 PTA, the pre-payments for packages have been restricted.

Under Section 33a, Par. 9 PTA, if the travel organiser does not agree with the traveller on the provision of substitute package by 31 August 2021, the travel organiser shall be deemed to have terminated the package travel contract and shall be obliged to refund the traveller for all payments received under the package travel contract without delay by 14 September 2021 at the latest.

We argue that after August 2021, the period for refund by the travel organiser will be subject to ordinary regime (14 days), however, payment of the cancellation fee by the traveller may be questionable due to various grounds. In the pertaining extraordinary situation after 1 September 2021, we should distinguish 2 types of situations (provision of the package is not possible and the provision of the package is still possible but the traveller does not agree with its provision). The question is – which part of the COVID PTA Amendment is still applicable? Technically, its applicability is connected with the persisting extraordinary situation. Functionally, its content has been concentrated on postponing the refund for the cancelled trips and the deadline set by the COVID PTA Amendment is 15 September 2021. In our opinion, the most crucial question regarding the applicability of the COVID PTA Amendment is the applicability of Section 33a, Par. 12 PTA. This provision provides higher standards for the traveller to disagree with the provision of the services under the package travel contract and opens negotiation on substitute packages. In contrast to the right of the traveller to terminate the contract under Section 21, Par. 2 of PTA due to unavoidable and extraordinary circumstances that significantly influence the provision of the package or the transport of the travellers, the right of the traveller to disagree under Section 33a, Par. 12 PTA probably does not require a comparatively analogous level of negative influence concerning the extraordinary circumstances on the package travel[11].

[11] According to the explanatory memorandum to the COVID PTA Amendment, Section 33a, Par. 12 addresses a situation in which it is possible to undertake a travel package during an extraordinary situation, but the traveller does not want to travel for subjective reasons (e.g.

The traveller execute use his/her right under Section 33a par.12 no later than 30 days before the start of the package in the situation when it is possible to travel during an extraordinary situation, but the traveller does not want to travel for subjective reasons (e.g. poor health situation, worries about travel). If the traveller notifies his/her wish in writing, the travel organiser is obliged to send notice of a substitute package to the traveller within 14 days from the date of delivery of the information on the disagreement, with the provision of the package.

In situations where such a wish does not lead to the automatic termination of contract by 31 August 2021 and the travel organiser does not benefit from postponement of refunds, a question should be posed concerning the effects of the traveller notification on the package travel contract, particularly in the scenario when the agreement on the substitute package has not been reached by the parties. Technically, this is a question open to interpretation regarding traveller's notice, as already mentioned above. After 1 September and in the persisting extraordinary situation in Slovakia, a solution can be found somewhere between Section 21, Par. 1 of PTA (the right of the traveller to terminate and to pay a cancellation fee) and Section 20, Par. 3, Section 21 Par. 2 PTA (the right of the traveller to terminate without payment of a cancelation fee). Notwithstanding, the final solution to this problem allows to indicate that the provisions of Section 33a PTA introduced by the COVID PTA Amendment can cause further problems also after the deadline for payments has expired.

The assessment of the traveller‘s termination of the contract according to Section 21, Par. 2 shall also depend on other factors, i.e.:

- An interpretation of the term "if unavoidable and extraordinary circumstances occur at the place of destination or its immediate vicinity which significantly affect the performance of the package or the carriage of travellers to the place of destination". We may assume that in the package travel contracts concluded after the outbreak of the COVID-19 pandemic, the interpretation of the term "extraordinary" will probably differ from interpretation of this term in contracts concluded earlier. Such a distinction must also be clearly emphasized in contracts from 2020 and those concluded in 2021.
- Classification of the legal act of termination/disagreement with the provision of the package according to the contract.

Under Section 33a, Par. 9 PTA, if the travel organiser does not agree with the traveller on the provision of substitute package by 31 August 2021, the travel organiser shall be deemed to have terminated the package travel

poor health situation, worries about travel). In such cases, the traveller informs the travel organiser in advance (so as not to incur disproportionately high costs for the travel organiser, e.g. with the sale of the package to another person) that s/he will not embark on the package travel.

contract and be obliged to refund the traveller for all payments made under the package travel contract without delay and by 14 September 2021 at the latest. Notwithstanding, the extraordinary situation still in force, in fact, makes the further application of Section 33a PTA introduced by the COVID PTA Amendment questionable.

Conclusions

From the steps taken by the European Commission, it is clear that there was inconsistency between EU (i.e. the Travel Package Directive) and Slovak law (i.e. the PTA). As the Slovak legislator decided to regulate the national law that is not consistent with EU law, there are some consequences the Slovak Republic may face.

The European Commission used its competence to start a procedure for breaching EU law against a Member State that is in breach of EU law according to Article 258 of TFEU[12]. Non-transposition of a directive or it improper transposition is considered a significant breach of EU law and the European Commission may start negotiations with the government of the Member State that is in breach of EU law since the procedure comprises of 2 consecutive stages: (i) pre-litigation stage and, if this fails, the (ii) litigation phase, where the European Commission brings the Member State before the Court of Justice of the EU. As already noted, the European Commission delivered the Slovak Republic a reasoned opinion after the Slovak Republic delivered its arguments. The reasoned opinion is a significant step as an action brought by the European Commission that can only be based on the arguments clearly set put in the reasoned opinion[13].

As the Package Travel Act is no more in breach with EU law due to the fact that Amendment PTA introduced a special COVID regime in force until 31 August 2021, and the travellers will be refunded the price of the package travel up to 14 September 2021, there is no breach of EU law following 15 September 2021. Despite the Slovak Republic not breaching EU law after 15 September 2021, the European Commission may still bring action against the Slovak Republic if it believes that there is still an interest in pursuing the action in order to establish the basis of liability which a Member State

[12] To view the steps realised by the European Commission, see the press communication of the European Commission: Online: https://ec.europa.eu/commission/presscorner/detail/en/IP_21_1830 (29.09.2021).

[13] See Judgment of the Court from 10 December 2002, Case C-362/01, Commission of the European Communities vs. Ireland (ECLI:EU:C:2002:739), point 17: *The proper conduct of the pre-litigation procedure constitutes an essential guarantee required by the EC Treaty not only in order to protect the rights of the Member State concerned, but also so as to ensure that the contentious procedure will have as its subject-matter a clearly defined dispute*.

may incur as a result of its default as regards other Member States, the Community or private parties[14].

From the perspective of EU law, if an individual suffered damage due to the breach of EU law by the Slovak Republic – e.g. the travel agency refused to refund the traveller and became later insolvent, and the traveller did not receive his/her price refund – it may become liable for such damage. This concept developed by the EU courts enables individuals to claim damage or loss against member states that failed to comply with EU law[15]. We are not aware of such a procedure before that executed in Slovak courts, but in the future, we cannot exclude that damaged travellers may seek compensations from the Slovak Republic, bringing action against the Slovak Republic if they suffered damage in direct connection with the illegal state caused by avoiding the rules of the Package Travel Directive.

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[14] See judgment of the Court of 18 January 1990, C-287/87, Commission of the European Communities v Hellenic Republic [ECLI:EU:C:1990:19].

[15] See Judgment of the Court from 19 November 1991, Joined cases C-6/90 and C-9/90 Andrea Francovich and Danila Bonifaci and others vs. Italian Republic (ECLI:EU:C:1991:428). The concept of the liability of a member state for damage it has cause by breach of EU law was developed by the Francovich case in which the state the Italian citizens suffered harm because the Italian state had not implemented a directive that guaranteed redundancy payments. Francovich and other employees were made redundant after their employer became insolvent. Due to the insolvency of the employer, the employees did not get any redundancy payments. The Court was dealing with this case and was of opinion that the individuals' rights would be weakened if they could not claim damages for harm or loss caused by a member state's failure to comply with EU law. The Court considered that the principle of state's liability is inherent in EU law.

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USE OF PASSENGER LOCATION CARDS IN THE ERA OF THE COVID-19 PANDEMIC, AND THE PROCESSING OF PERSONAL DATA OF AIR PASSENGERS

Katarzyna Biczysko-Pudełko*

Abstract

Purpose: The aim of the article is to analyse the processing of personal data of air passengers during the SARS-CoV-2 pandemic in the context of doubts that have arisen in connection with the need for these passengers to provide their personal data as part of filling out the Passenger Location Card questionnaire.
Method: The research method used in this study is case study.
Findings: In the study, it was showed that firstly, the data of air passengers processed in relation to the application of the Passenger Location Card by the State Border Sanitary Inspectorate in Warsaw should be protected under the provisions of the General Regulation on the protection of personal data. Furthermore, their controller, i.e. the State Border Sanitary Inspectorate in Warsaw, did not fulfil its obligations in this regard. This, in effect, justifies the conclusion that the processing process not in accordance with the law on the protection of personal data.
Research and conclusions limitations: The analysis concerned only passengers of aircrafts arriving and/or departing from airports located on the territory of the Republic of Poland.
Practical implications: The analysis carried out in this study may provide a solution to the issues that have arisen in the public sector with regard to the processing of personal data collected from air passengers on the basis of the Passenger Location Card questionnaire and thus, the conclusions may prove useful for data controllers who should be aware of such problems, but also for air travellers as data subjects who should be protected by the General Data Protection Regulation and their rights in this regard.
Originality: This analysis, if only for the reason that it is an analysis of a problem that has come to light relatively recently (March 2020), has so far, only been the subject of consideration in press articles.
Type of paper: Problem article.

Keywords:
aircraft passengers; personal data; SARS-CoV-2; General Data Protection Regulation.

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Introduction

When more and more cases of a new pneumonia-causing disease began to be reported in the 11-million-strong city of Wuhan in central China's Hubei province in December 2019, terms such as epidemic[1] or pandemic[2] were of little interest to the world. Few, apart from the scientific community and the medical profession, had any knowledge of viruses belonging to the coronavirus group. For the international community and millions of people in world-wide, however, the lesson came very quickly. Already in March 2020 – as indicated by statistics made available by Google Trends – both the phrases "epidemic" and "coronavirus" the value of 100 in the ranking of popularity of searches on Google presented, and so (according to the adopted for the purposes of this statistic), the scale of the highest[3], and the media around the world [Roxby 2020], including Poland, reported on the fact that the World Health Organization recognised that we are dealing not with an epidemic, but with a pandemic of the coronavirus – SARS-CoV-2 [United Nations 2020]. As reported at the time, 118,000 cases of infection had already been confirmed world-wide in 114 countries, and fewer than 4,300 people had died. In Poland, however, as of 16 March 2020, there were 177 confirmed cases of infection with SARS-CoV-2, from which 4 people had died[4].

As a consequence of the-above, and not surprisingly, the reality of millions of people began to be created through the prism of the rapidly spreading disease caused by SARS-CoV-2, and the governments of individual countries or representatives of supranational institutions began to develop strategies and plans for combating this coronavirus. Thus, a kind of "new order" emerged, in which society not only had to function all over the world, but which also directly forced legislators of individual countries to adopt completely new legal solutions, and moreover, if not verified, they at least had to pose questions about the accuracy of the legal solutions adopted so far and the possibility of their implementation in a world overwhelmed by the pandemic. And so, parallel to the sense of fear for one's own health and that of one's loved ones, hundreds of media reports on new findings by scientists

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[1] Polish: *epidemia.*

[2] Polish: *pandemia.*

[3] The keyword "epidemic", according to data published by Google trend, gained the highest popularity, i.e. 100 points, during the period from 8 to 14 March 2020. See: keyword, "epidemic", Online: https://trends.google.pl/trends/explore?q=epidemic (04.11.2020). In contrast, the keyword "coronavirus" peaked in popularity between 15 and 21 March 2020. Online: https://trends.google.pl/trends/explore?q=coronavirus (4.11.2020).

[4] *WHO ogłasza pandemię koronawirusa. Już 114 państw walczy z zagrożeniem* [Eng. *WHO Reports Coronovirus Pandemic. Already 114 Countries are Combating the Threat*]. Online: https://polskieradio24.pl/5/1223/Artykul/2471607,WHO-oglasza-pandemie-koronawirusa-Juz-114-panstw-walczy-z-zagrozeniem (4.11.2020).

concerning the development of the pandemic, questions of legal nature began to multiply in the public area[5] – from the most far-reaching ones, such as the legitimacy of restrictions on human rights, e.g. personal and political freedom, social rights, onto those concerning, for example, the legal aspects of organising remote work (which is supposed to be one of the ways of limiting the spread of the pandemic), further to those related to widely-understood travel safety. And it is the latter that is analysed in this paper. The scope of considerations are strictly limited to the issue of protecting the personal data of air passengers during the aforementioned SARS-CoV-2 pandemic.

Above all, it is important to note that it is tourism and the closely-related airline industry that are particularly vulnerable to the reorganisation of life that the global infectious disease pandemic is undoubtedly causing. For it is clear that in a situation which, according to United Nations data, in 2019, the number of international tourists reached the scale of 1.5 billion people, and about 9 billion people travelled domestically[6], the governments of many countries, in order to prevent the further spread of the disease, began to introduce various types of restrictions to combat SARS-CoV-2. As far as Poland is concerned, the Act from 2 March 2020 on Special Solutions to Prevent and Combat SARS-CoV-2, Other Infectious Diseases and Crisis Situations Caused by Them[7] was passed, which amended the Act from 29 August 1997 on hotel, tour guide and tourist excursion leader services, and a number of executive acts were adopted[8].

Parallel to the above activities, legislators and representatives of various bodies, including government administration, began to undertake actions that were intended to limit the spread of the coronavirus. Nonetheless, at the same time, they became the subject of numerous discussions of public and media nature, concerning the compliance of these actions with the widely-understood personal data protection law, more specifically – the provisions of the Regulation of the European Parliament and of the Council (EU) from 27 April 2016 on the protection of natural persons in relation to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC[9] and the Act from 10 May 2018 on the protec-

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[5] See: E. Hondius, M. Santos Silva, A, Nicolussi, P. Salvador Coderch, Ch. Wendehorst, F. Zoll, *Coronavirus and the Law in Europe*. Online: https://www.intersentiaonline.com/bundle/coronavirus-and-the-law-in-europe (4.11.2020).

[6] United Nation 2020, *Policy Brief: COVID-19 and Transforming Tourism*.

[7] *Act from March 2, 2020 on special solutions related to prevention, counteraction and combating COVID-19, other infectious diseases and crisis situations caused by them*, Dz. U. 2020, item 374.

[8] I.e.: *Regulation of the Minister of Health from 7 March 2020 on the list of diseases triggering mandatory quarantine or epidemiological surveillance and the period of mandatory quarantine or epidemiological surveillance*, Dz. U. 2020, item 376.

[9] *Regulation (EU) of the European Parliament and Council from 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free move-*

tion of personal data[10]. In this respect, the issue of the compliance of the so-called Aircraft Passenger Location Card with the RODO regulations particularly resonated.

Thus, it seems that undertaking analysis in this direction will have significant practical value, because the exegesis of the relevant legal norms may serve to solve concrete factual problems, or at least their assessment in light of the applicable law.

Secondly, such a choice of topic seems to be all the more justified by the fact that it is precisely the said right to protection of personal data – which after all, has the character of a fundamental right – that during a pandemic is indicated as the one that may hinder the realisation of activities undertaken in the fight against an infectious disease such as SARS-CoV-2.

Thus, putting together the two above-mentioned reasons, I considered it justified to discuss considerations on the issue of personal data protection during the SARS-CoV-2 pandemic, whereby, I narrowed my field of research to persons travelling by air to or from Poland.

Factual circumstances

In the first months of the fight against the coronavirus pandemic, i.e. in March 2020, air travellers at airports in Poland were handed so-called 'Passenger Location Cards', which had to be filled in with the passenger's details, i.e.: surname, first name, middle name, address of permanent residence, telephone, e-mail, and the details of a contact person, names and surnames of travelling companions (both related and unrelated), and also, in the case of travelling with children, their exact age – which, as it was announced, was to be a tool to fight the SARS-CoV-2 pandemic by enabling the health services to take appropriate action when detecting a case of infection among passengers. From the beginning, however, such measures raised concerns among travellers as to their compliance with data protection regulations.

Passenger Location Cards in light of RODO regulations

First of all, in light of RODO regulations, there should be no doubt that the data requested from air passengers will constitute personal data. As stated in Article 4 of RODO, personal data shall mean any information relating to an identified or identifiable natural person ("data subject"); an identifiable

ment of such data and repealing Directive 95/46/EC (General Data Protection Regulation), Official Journal of the EU L No. 119, p. 1, hereinafter: RODO or General Data Protection Regulation.

[10] *Act from 18 May 2018 on the protection of personal data*, Dz. U. 2018, item 1000.

natural person is one who can be identified, directly or indirectly, in particular, by reference to an identifier such as a name, identification number, location data, online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the natural person [See more: Litwiński 2018, pp. 172-197; Lubasz 2018, pp. 163-185]. On the other hand, it seems more debatable whether in fact the previously indicated scope of personal data collected through the Passenger Location Card is adequate and limited to what is necessary to achieve the purposes for which the data are collected (Article 5 (1) (c) of RODO). In this respect, the need to indicate the age of the child, rather than simply whether the child has reached the age of majority, should be negatively assessed. As a side note, it should be pointed out that the scope of data collected from passengers travelling by trains[11] is much narrower and does not concern, for example, data of travelling companions.

Furthermore, it also seems indisputable that the data will undergo a processing operation, which means an operation or set of operations which is performed upon personal data or sets of personal data, whether or not by automatic means, such as collection, recording, organisation, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction (Article 4 (2) of RODO).

Finally, within the context of the previously cited facts relating to the Passenger Location Cards, and the fact of their presentation for the purpose of providing personal data at numerous airports in Poland, and in view of the wording of Article 3 of the General Regulation on the protection of personal data defining the territorial scope of application of the DPA, assessment of the application of provisions regarding this act in relation to the processing of personal data covered by the Passenger Location Cards seems to require no further comment. As stated in Article 3 (1) of RODO, this Regulation applies to the processing of personal data in connection with the activities of an establishment of a controller or a processor in the Union, regardless of whether the processing takes place in the Union. According to Paragraph 2, this Regulation shall apply to the processing of personal data of subjects residing in the Union by a controller or processor not having an establishment in the Union, where the processing activities are related to: (a) offering goods or services to such data subjects in the Union, whether or not they are required to pay; or (b) monitoring their behaviour, insofar as that behaviour takes place in the Union. By contrast, Paragraph 3 of Article 3 provides that this Regulation applies to the processing of personal data by a controller who does not have an establishment in the Union but has an es-

[11] *Karty lokalizacji pasażerów w pociągach – ważne informacje* [Eng. *Passenger Location Cards on Trains – Important Information*]. Online: https://utk.gov.pl/pl/aktualnosci/15812,Karty-lokalizacji-pasazerow-w-pociagach-wazne-informacje.html (18.02.2021).

tablishment in a place where the law of a Member State is applicable under public international law.

Therefore, it remains to be decided whether the prerequisites pertaining to the substantive scope of RODO application, i.e. those specified in Article 2 of the Regulation, are met in the present case, and more specifically, whether the application of the Regulation's provisions is excluded due to the fact of personal data processing:

a) in the course of an activity which falls outside the scope of Union law;
b) by Member States when carrying out activities which fall within the scope of Chapter 2 of Title V of the TEU;
c) by a natural person in the course of a purely personal or household activity;
d) by competent authorities for the purpose of prevention, investigation, detection or prosecution of criminal offences or the execution of penalties, including protection against and prevention of threats to public security.

Providing an answer to the above question seems to be indispensable if one takes into account the fact that the legitimacy of the exclusion of the RODO provisions and the Act on the Protection of Personal Data in the case in question was justified by the State Border Sanitary Inspector in Warsaw, precisely because of the need to carry out tasks aimed at ensuring national security as one not covered by the scope of Union law. As stated in the message posted on the website of Warsaw Chopin Airport[12]:

> in accordance with Article 6 (1) of the Act from 10 May 2018 on the protection of personal data (Dz.U. 2019, item 1781), the Act in question and Regulation 2016/679 (RODO) do not apply to the processing of personal data by units of the public finance sector (which is a public administration body – the State Border Sanitary Inspector in Warsaw) to the extent to which such processing is necessary for the performance of tasks aimed at ensuring national security, one of the components of which is individual and collective protection of citizens against threats to their life and health (health protection in the context of identifying and counteracting threats to health security).

Therefore, the *sine qua non* condition for further consideration is to refer to the concept of national security and the exclusive competences of the EU Member States related to ensuring it, which will further allow to assess the accuracy of the assumptions adopted by the State Border Sanitary Inspectorate in Warsaw.

In this regard, it should first be emphasised that the concept of national security has not been defined in the primary law of the European Union.

[12] *Karta Lokalizacyjna Pasażera (pytania i odpowiedzi)*. Online: https://www.lotnisko-chopina.pl/pl/aktualnosci-i-wydarzenia/0/983/szczegoly.html (18.10.2020).

The Treaty on European Union merely states that the Union "shall respect the essential functions of the State, in particular, those for ensuring its territorial integrity, maintaining law and order and safeguarding national security. In particular, national security is the sole responsibility of each Member State"[13]. Interpretative guidance should therefore be sought, for example, in secondary legislation, the case-law of the Court of Justice or the doctrine of law and security studies, which is proving successful.

An attempt was made, among others, by J. Kurek to define the scope of state activities included in the national security. J. Marczak states that [Kurek 2017, p. 43]:

> these are the activities of the state which refer to the protection and defence of national values against threats – external and internal of both military and non-military nature, i.e. general protection and defence of vital national interests of the state (among others, its national identity, inviolability and territorial integrity and constitutional order, understood as the "hard core" – values and principles, cardinal for the systemic foundations of a given state). These are areas of activity which, irrespective of the political, economic and military alliances in force, should remain in the area of exclusive competence of the state and should not be the subject of the delegation regulated in Article 90 (1) of the Polish Constitution.

Moreover, as A. Dymerski rightly notes, "helpful in carrying out such an analysis, although not limited to this activity only, may be referring to the provisions of the National Security Strategy 2014, which is a document concerning the security of the State"[14].

In the document, national interests are defined and identified, *inter alia*, as: maintaining and demonstrating the readiness of the integrated national security system to exploit opportunities, take up challenges, reduce risks and counter threats; improving the integrated national security system, especially its management elements, including ensuring the necessary resources and capabilities; developing a defence and protection potential adequate to the needs and capabilities of the state and increasing its interoperability within NATO and the EU, or such issues as developing close co-operation with all neighbours and building partnership relations with other states, including those serving to prevent and resolve international conflicts and crises; protection of the Polish borders, constituting

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[13] *Treaty on European Union,* Official Journal of the EU C 202 of 2016, p. 13.

[14] A. Dymerski, *Krytyczne uwagi na tle regulacji dotyczącej bezpieczeństwa narodowego w świetle art. 6 ustawy z dnia 10 maja 2018 r. o ochronie danych osobowych* [Eng. Critical Remarks Based on Regulations Regarding National Security in Light of Art. 6, Act from 10 May 2018 on the Protection pf Personal Data]. Online: https://www.linkedin.com/pilse/krytczyne-uwagi-na-tle-regulacji-dotycz%C4%85cej-w-%C5%9Bwietle-adam-dymerski (18.10.2020).

the external border of the EU; counteracting organised crime, including that economic; protection of public order; improving systemic solutions for counteracting and fighting terrorism and proliferation of weapons of mass destruction; ensuring safe functioning of the Republic of Poland in cyberspace[15].

Thus, when juxtaposing the understanding of the notion of national security presented by the State Border Sanitary Inspector in Warsaw, i.e. the protection of individual and collective citizens against threats to their life and health (health protection in the context of identifying and counteracting threats to health security), with the way this notion seems to be identified by representatives of science (i.e. as universal protection and defence of vital national interests of the state: *inter alia*, its national identity, inviolability and territorial integrity and constitutional order), doubts may arise regarding the recognition of tasks performed by the State Border Sanitary Inspector in Warsaw as general protection and defence of vital national interests of the state: among others, its national identity, inviolability and territorial integrity and constitutional order. Recognition of the tasks performed by a border sanitary inspector as those aimed at ensuring national security, may also raise doubts. And although, of course, in this respect one cannot lose sight of the fact that "the coherence of EU law and the internal market requires the understanding of concepts such as 'public security' – which are not developed in the provisions of the Treaty – be subject to interpretation and assessment by the court". Nevertheless, as M. Rojszczak accurately noted, the case law to date indicates that in cases where states have signalled applicability of subjective exemption from the privacy provisions, the court recognises the applicability of EU law [Rojszczak 2018, p. 165].

Therefore, considering the binding nature of EU law, the principle of its effectiveness and uniform application, I agree that the reference made by the State Border Sanitary Inspector in Warsaw to the exception in Article 2 (2) (a) of the Regulation on the protection of personal data as excluding the application of RODO provisions in the case of processing data obtained from the Passenger Location Card form, is unfounded and misconceived. This conclusion gives grounds to further analyse whether, in the present case, the personal data of air passengers are processed in a way compliant with the provisions of RODO. This requires, in the first place, at least analysis of whether the controller has fulfilled all the obligations laid down by the General Regulation.

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[15] *National Security Strategy of the Republic of Poland*, Warsaw 2014, p. 11-13. Online: https://www.bbn.gov.pl/ftp/SBN%20RP.pdf (12.11.2020).

Processing personal data of air passengers and selected responsibilities of the controller

One of the most important obligations of the personal data controller is the so-called information obligation, the scope of which is specified by the provisions of Article 13 (with regard to the data subject) and Article 14 (when the data are obtained otherwise than from the data subject) of RODO. According to the former, i.e. Article 13, the controller, when collecting personal data, shall provide, *inter alia*, the following information: his/her identity and contact details and, where applicable, the identity and contact details of his/her representative; where applicable, the contact details of the Data Protection Officer; the purposes of processing the personal data, and the legal basis for the processing; where the processing is based on Article 6 (1) (f) – the legitimate interests pursued by the controller or by a third party; information on the recipients or categories of recipients, if any, of the personal data. Moreover, as provided for in paragraph 2 of Article 13, when personal data are collected, the controller shall provide the data subject with, among others, information on the period for which the personal data will be stored and, when this is not possible, the criteria for determining this period; information on the right to request access to personal data concerning the data subject from the controller, its rectification, erasure or restriction of processing or the right to object to processing, as well as the right to data portability; and if the processing is based on Art. 6 (1) (a) or 9 (2) (a) - information about the right to withdraw consent at any time without affecting the lawfulness of the processing carried out on the basis of consent before its withdrawal and a number of others.

Meanwhile, according to media reports, the Passenger Location Cards mentioned above contained only the following information: "Your data will be protected in accordance with the Personal Data Protection Act and used only to protect public health". Thus, in no way can one risk the statement that the controller of data, according to its own declarations – such a message was read out by the on-board personnel – being the State Border Sanitary Inspector in Warsaw, complied with its obligation to provide information, which further implies the conclusion that even in this scope, its actions are not compliant with the provisions of the General Regulation on the protection of personal data. This thesis is not even undermined by the argument presented by PGIS that the obligation to use the Passenger Location Card results from Appendix No. 9 – "International Standards and Recommended Practices" – being the implementation of Article 37 of the Convention on International Civil Aviation signed in Chicago on 7 December 1944, nor by the fact that, as it was argued by PGIS representatives, the information clause is placed on the website of the Border Sanitary and Ep-

idemiological Station. The latter circumstance, in particular, does not seem to be in line with the obligation of "transparency" regarding data processing, stemming from the provisions of RODO, which – as specified by Article 29 – the Working Party (now: European Data Protection Board) in its guidelines – requires that all information and all communications relating to the processing of such personal data should be easily accessible and comprehensible and should be in clear and plain language. This principle concerns, in particular, the information of data subjects on the identity of the controller as well as the purposes of the processing and other information intended to ensure that the processing is fair and transparent in relation to the data subjects, and the right of data subjects to obtain confirmation and information as to the personal data concerning them that are being processed. Furthermore, the guidelines also made clear that the wording "shall provide" used in Articles 13 and 14 of RODO, in the context of the information obligation, should be understood as meaning that it is "the controller who must actively take steps to provide the data subject with the information in question or actively direct him/her to the place where the information is to be found (e.g. by providing a direct link, encouraging the use of a QR code, etc.). The data subject should not have to actively search for the information referred to in these Articles among other information, such as the terms and conditions of use of a website or an application [Article 29, Working Party, 2020, pp. 6-7].

Within the context of the previously discussed lack of implementing of the obligation resulting from Article 13 of RODO by PGIS, it seems all the more justified to provide a few words of comment on the accuracy of the assumption made by PGIS that it is the controller of the data collected using the Passenger Location Card form. Nevertheless, the above-mentioned information, at least from 30 May 2020, i.e. from the date of entry into force of the provisions of the Regulation of the Council of Ministers from 29 May 2020 on establishing certain restrictions, orders and prohibitions in connection with the occurrence of an epidemic[16], seems to raise doubts. The regulation in question states that a cabin crew shall hand over passenger location cards for health purposes to a person designated by the airport operator. The person designated by the airport operator transfers the health location cards to the competent local governor in order to enter the data contained therein into the information and communication system. Analogically, this issue was also regulated in the Regulation of the Council of Ministers from 21 December 2020 on establishing certain restrictions, orders and prohibitions in connection with the occurrence of an epidemic. This, in turn, leads

[16] *Regulation of the Council of Ministers from 29 May 2020 on the establishment of certain restrictions, orders and prohibitions in connection with the occurrence of an epidemic*, Dz. U. 2020, item 964.

to the conclusion that the claim stating the PSIG fulfils the role of data controller in the case of data collected with the use of the Passenger Location Card is incorrect.

Conclusions

In light of the above considerations, it seems legitimate to conclude that in the current case concerning the Passenger Location Card, the controller (did not fulfil its informational duty by placing the information required by law on the Passenger Location Card form itself. Moreover, there is no reason to believe that the obligation to provide information could have been fulfilled by providing the information required by the General Data Protection Regulation even on the website of the controller. Moreover, the fact that the controller's website includes a message which, on the one hand, informs that: "in accordance with Article 6 (1) of the Act from 10 May 2018 on the protection of personal data (Dz. U. 2019, item 1781), the Act in question and Regulation 2016/679 (RODO) shall not apply to the processing of personal data by units of the public finance sector (which is a public administration body - the State Border Sanitary Inspector in Warsaw) to the extent necessary in processing for the performance of tasks aimed at ensuring national security", and on the other, that "obtaining personal data through the use of the Passenger Location Card tool, it should be indicated that this activity is in accordance with Art. 6 (1) (c-d) of Regulation 2016/679 (RODO)" still seems to lead to the conclusion that the actions taken in this regard by the State Border Sanitary Inspector in Warsaw were inconsistent and completely incompatible with the provisions of the personal data protection law.

However, the above statement seems to be worrying for at least two reasons. First of all, it should be noted that if the controller processed the personal data of air travellers in a manner compliant with the provisions of the General Data Protection Regulation, it would guarantee, or at least create a likelihood for better protection of personal data of natural persons - air travellers, which even in times of the SARS-CoV-2 pandemic, should be a standard activity. After all, it should be borne in mind that if the controller had complied with its duty to inform, it would have enabled travellers – the data subjects – to update their data, which would also have had direct impact on the possibility of undertaking more effective action against the coronavirus by gaining the opportunity to more effectively contact travellers who were on a flight with an infected person.

Secondly, one cannot lose sight of the fact that, since the application of the provisions of the General Data Protection Regulation, public awareness concerning the protection of their rights in this regard has increased significantly. Therefore, if the data controller had taken transparent actions and

had been legally authorised to do so, the controversies related to providing passengers with questionnaires to be filled in, whose form, content and lack of any detailed information as to the need to fill in the questionnaires would certainly not have arisen, The form, content and lack of any detailed information on the need to fill in the questionnaires *a priori* caused a significant number of travellers, as it results from media reports, to either not fill in the Passenger Location Cards, or did so in an illegible manner – which only weakened or even nullified the actions undertaken in this respect as an effective tool in the fight against the rapidly spreading SARS-CoV-2 pandemic.

Hence, one has to agree with the conclusion of the statement made by the European Data Protection Board on the processing of personal data in the context of the COVID-19 pandemic, namely that [European Data Protection Board 2020]:

> data protection legislation (such as RODO) does not hinder the efforts undertaken in the fight against the coronavirus pandemic. The fight against infectious diseases is an important objective shared by all nations and should be supported in the best possible way. It is in the interest of humanity to limit the spread of diseases and to use modern techniques to fight against epidemics affecting large parts of the world. However, the EDPS would like to stress that also in this exceptional situation the data controller and the data processor must guarantee the protection of the data subjects' data.

Otherwise, i.e. if the controller does not ensure the protection of personal data, which in conclusion should also be mentioned, the data subject shall have the possibility to assert his/her rights before a court, i.e. pursuant to Articles 79 and 82 of RODO, the possibility to lodge a complaint to a supervisory authority or at least the right to demand an explanation or fulfilment of the demand concerning e.g. rectification of data, their deletion, etc.

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THE ROLE, TASKS AND LEGAL FORMS REGARDING THE ACTIVITY OF A NATIONAL PARK DIRECTOR IN ENSURING THE SAFETY OF TOURISTS VISITING NATIONAL PARK AREAS

Piotr Ruczkowski*

Abstract

Purpose: The aim of the article is to analyse a national park director's legal position, roles, tasks and legal forms of operations in ensuring the safety of tourists visiting a national park.
Method: The theoretical nature of this article determines the choice of research methods and their application. A dogmatic method (analytical and dogmatic) involving legal exegesis using linguistic and non-linguistic rules of legal interpretation is the predominant method applied in the article.
Findings: The national park director's legal status is not clearly defined by the legislator and therefore, raises doubts. The legislator defines a national park director as a national park authority and a nature protection authority, directly indicating that this authority performs the tasks of a regional director aimed at nature protection within the national park area. The director of a national park may be classified as an administering entity, or on account of his/her tasks and powers, a public administration authority in a functional sense. However, it is misleading to treat national park directors as public administration authorities *sensu stricto*, i.e. the authorities who are part of the state machinery (authorities acting directly on behalf of the state or local self-governments), whose basic and, in principle, sole purpose is to perform public administration tasks (e.g. minister, province administrator, commune head). However, some authors consider national park directors to be public administration bodies *sensu stricto* [Makuch 2020, p. 527]. It has been confirmed in research that there is great diversity concerning tasks, powers and legal forms of operations at the disposal of a national park director, which can be used to ensure the safety of tourists visiting national parks. These are legal and factual activities of regulatory and non-regulatory nature. The tasks and competencies of national park directors include, first of all, protecting national park resources (environmental protection), and also providing access to national parks so as to ensure the safety of people who visit them.
Research and conclusions limitations: The author focuses on analysis of the national legal framework. The origin of institutions and comparative legal analyses have been omitted.
Practical implications: In the research, the current legal status is shown, and this can be considered the basis for further legislative work.
Originality: To date, research on the national park directors' tasks, roles and legal forms of operation in ensuring the safety of tourists visiting national parks has been very scarce. Most of such issues are raised while discussing wider problems related to nature protection as well as tourism, and are not subject to in-depth examination [Wolski 2010, pp. 75-83].
Type of paper: The article presents some theoretical concepts. It is a general overview article.

Keywords: national park director; national park; safety of tourists; legal forms of public administration activity; administering entities; administrative apparatus.

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Introduction

The fundamental research issues and objectives of the article include analysis of a national park director's position in the state political system, his/her tasks and legal forms of activity in ensuring the safety of tourists visiting national parks. In this article, of particular interest will be the evaluation of a park director's position in the administrative apparatus structure and legal forms of operations applied by directors along with their classification within the system of legal forms of public administration activity.

The issues analysed in this article are significant for the reason that a national park director's powers and legal forms of activity define his/her effectiveness not only in achieving the main objective of nature protection, but also in ensuring the safety of tourists visiting national parks. The above issues raise doubts in the doctrine and need in-depth reflection. The final outcome of the author's research is to determine whether the legal status, powers and legal forms of operations at a park director's disposal are sufficient to effectively ensure the safety of national park visitors.

Within this context, it is worth emphasizing that, as Janusz Sondel rightly pointed out, broadly-understood tourism law 'also contains provisions, the aim of which is not to protect tourists but rather to protect nature against them, and above all, to protect it from excessive or uncontrolled tourist traffic'. These are primarily areas of particular natural, historical, cultural and other value, which could be devastated by too much tourism. This specifically applies to national parks that are very sensitive to excessive numbers of visitors, as well as to nature reserves, landscape parks and, to some extent, other woodland areas. There is a clear conflict of interest here between tourism and ecology, and it is precisely the role of law to find a sensible compromise in this respect. In particular, the Act from 16 April 2004 on nature conservation is intended to serve this purpose [Sondel 2006, p. 8].

The nature of the article determines the choice of research methods and their application. A dogmatic method (analytical and dogmatic) involving legal exegesis using linguistic and non-linguistic rules of legal interpretation is the predominant method applied in this article. Due to the adopted research assumptions, neither historical nor comparative legal methods have been used.

Literature overview

Analysis of the national park director's legal position, competences and legal forms of activity mostly appears in papers devoted to broader issues of nature protection or tourism [Rakoczy 2009, p. 82; Gruszecki 2016, pp. 623-645; Sondel 2006, pp. 7-26; Radecki 2011, pp. 99-100]. However, it is seldom

the subject-matter of any specific studies [Wolski 2010, pp. 75-83; Makuch 2020, pp. 514-528]. The-above also applies to the national park director's' activity in the field of ensuring the safety of tourists.

In literature, there is no clear answer to the question of the park director's legal position or status in administrating the system's entity. This issue is either omitted or presented in a limited scope and without wider justification. Some authors, however, clearly support the view that a national park director is not only a public administration authority, within the meaning of Article 5 (3) in conjunction with Article 1 (2) of the Code of Administrative Procedure [Act from 14 June 1960 – the Code of Administrative Procedure, consolidated text: Dz. U. 2021, item 735, as amended] – hereinafter abbreviated as k.p.a., but also a public administration authority *sensu stricto* (in the doctrinal sense) [Makuch 2020, p. 516, p. 527].

Discussion

The position, tasks and powers of nature protection authorities are primarily defined by the Act on the protection of nature [*Act from 16 April 2004 on the Protection of Nature*, consolidated text in Dz. U. 2021, item 1098, with later amendments] – further abbreviated as u.o.p. This also applies to directors of landscapes and national parks. Because of the issues outlined in the title of the article, we will focus on the analysis of the park director's legal status, tasks, powers and legal forms of his/her operations related to the safety of tourists visiting national parks.

The legal status of a national park director is determined by several factors that should be identified. First of all, the-following must be enumerated: 1) appointment procedures; 2) tasks and competencies; and 3) legal forms of operations assigned to this entity.

The director of a national park is appointed for a period of 5 years by the Minister of Environmental Issues from among candidates selected in a competition. The minister also dismisses the park director. In the case of dismissal, the minister may entrust the performance of his/her duties to a deputy until a new national park director is appointed, but for a period not exceeding 6 months.

The legislator defines a national park director as a national park (Art. 8c (1) of u.o.p.) as well as a nature protecting authority (Art. 92 (2c) of u.o.p.). In this context, it is worth noting how the term of a national park is understood. A national park is a state legal entity within the meaning of the Public Finance Act [*Public Finance Act from 27 August 2009*, consolidated text: Dz. U. 2021, item 305, as amended], and is one of the forms of nature protection (Art. 6 (1) (1) and Art. 8a (1) of u.o.p.). According to Art. 8 (1) and (2) of u.o.p., the national park covers an area of outstanding environ-

mental, scientific, social, cultural and educational value, with an area of no less than 1,000 ha, which protects the whole of the nature and qualities of the landscape. National parks are created to preserve biodiversity, resources and components of inanimate nature and qualities of the landscape, to restore the proper condition of nature resources as well as components, and to reconstruct distorted natural habitats, plants, habitats of animals or fungi [Radecki 2011, pp. 92-94]. As it can be seen, the purpose of national parks is primarily the protection of nature, while the use of their resources for tourism purposes is of secondary importance and is, in a sense, conditioned and regulated by the need to take protective measures (national parks in other countries such as Germany or Austria serve similar purposes, see R. Breuer [2008, pp. 677-678; Jahnel 2010, p. 538]. Nevertheless, the tasks of national park authorities also include the provision of access to national park areas, *inter alia*, as part of promotional education and nature protection activities.

It should be emphasized that the legal status (including the position in the administering entity system) of a national park director is not clearly defined by the legislator and may raise doubts. In particular, the question may be asked as to whether we are dealing with a public administration entity in a strict and doctrinal sense, or maybe such an entity but in a functional sense (an entity additionally performing functions and tasks of public administration). It is worth noting that the legislator does not explicitly mention the national park director among consolidated local government authorities (acting under the authority of the province administrator) and non-consolidated government authorities (local government authorities subordinate to the relevant minister or central government authorities/heads of state legal entities and heads of other state organisational units performing government administration tasks in the province). National park directors have not been listed in the catalogue of non-consolidated government authorities in the current wording of Art. 56 (1) 1 of the Act from 23 January 2009 on province administrators and government administration in provinces [*Act from 23 January 2009 on province administrator and government administration in provinces,* consolidated text: Dz. U. 2019, item 1464 - hereinafter abbreviated as "u.w.a.r.w."], despite the fact that s/he is, *de facto*, the head of the state legal entity (national park). Nevertheless, in the case of the law based on Art. 9 (3) of the Act on government administration in a province that is no longer in force [*Act from 5 June 1998 on government administration in provinces*, consolidated text: Dz. U. 2001, No. 80, item 872], the national park director was identified as a non-consolidated administration authority [Ruling of the Poznań Regional Administrative Court from 9 November 2010, IV SA/Po 938/10, CBSA]. Also, in another ruling from 29 September 2011, the administrative court recognised park directors as public administration authorities [Judgment of the Warsaw Regional Administrative Court from 29 September 2011, IV SA/Wa 999/11 CBOSA].

However, it should be stressed here that, as a rule, a public administration authority is an administering entity, who either acts directly on behalf of the state, e.g. a minister, province administrator, or on behalf of a local self-government unit, e.g. a commune head, and was created specifically (exclusively) to carry out relevant tasks of public administration, i.e. to perform public tasks [see: Detterbeck 2008, pp. 62-65; Kahl, Weber 2011, pp. 155-156; Zimmermann 2016, pp. 177-178].

As mentioned above, a national park director is a body of a legal person (a body of a national park) and acts on its behalf. This body performs tasks assigned to a national park by law, including national park management and its representation before third parties.

The analysis of the national park director's position in the state political system, including his/her tasks and powers, as defined by the legislator, may indicate that s/he should be classified as an administering entity or a public administration authority on the basis of his/her functions, within the meaning of the provisions of Art. 5 (2) (3), in conjunction with Art. 1 (2) of k.p.a. At this point, it should be note that according to the above-mentioned provisions of k.p.a., public administration authorities comprise both the authorities *sensu stricto,* e.g. ministers, central government administration authorities, province administrators, local government administration authorities (both consolidated and non-consolidated administration), as well as other entities established by virtue of law or under agreements to deal with individual matters by issuing administrative decisions or silent settling of matters in administrative proceedings (i.e. public administration authorities in a functional sense). The national park director who has regulatory powers can certainly be included in this category. However, it is misleading to classify a national park director as a public administration authority *sensu stricto* (in a doctrinal sense), including non-consolidated government administration authorities because, as indicated above, the national park director was not listed in the catalogue of such administration authorities under Art. 56 (1) of u.w.a.r.w. Nonetheless, within this context, it should be borne in mind that the national park director performs the tasks of regional director of environmental protection in the field of nature conservation in the national park areas (Art. 94 (1) of u.o.p.). As it can be seen, the national park director not only carries out tasks assigned to a national park by law, including management of the national park and its representation before third parties, but also performs additional functions typical for public administration. As indicated above, currently, some representatives of the doctrine include the national park director of the public administration authorities *sensu stricto* [Makuch 2020, p. 527].

Concluding, a national park director is primarily a public administration authority in the functional sense (at present, not included in the list of non-consolidated government authorities) and performs tasks assigned to

a national park by law, among others, the management of the national park and its representation before third parties. Furthermore, the director performs functions and applies methods as well as legal forms of activity characteristic of public administration; it is an entity responsible for nature protection and s/he is an employee of the National Park Service, whose responsibility is primarily to conserve nature.

In u.o.p. and other provisions, the legislature does not define the national park director's tasks related to the safety of tourists visiting the park. However, such competencies may be derived from the provisions defining the scope of a national park director's operations, in particular, from his/her general authority to manage the national park. making it accessible to the public, and duties related thereto. Since the primary purpose of national parks is to conserve nature, it seems obvious that the legislature has stressed the importance of implementing this goal. The performance of other tasks, including access to the park area for tourist and recreational purposes, take place alongside the primary objective, which is nature conservation in the park area.

It should also be noted that the protection of tourists' interests (as tourism service consumers) is not, in principle, the subject-matter of u.o.p. but of other provisions, in particular, the Act on Package Travel and Linked Travel Arrangements [Act from 24 November 2017 *on Package Travel and Linked Travel Arrangements*, consolidated text: Dz. U. 2019, item 458, as amended]. However, in the case of adventure tourism, especially mountain- or water-related, issues concerning the tourists' safety are regulated in separate normative acts [Act from 18 August 2011 *on Safety and Rescue in the Mountains and at Organised Ski Areas,* consolidated text: Dz. U. 2019, item 1084 – hereinafter referred to as "u.b.r.g."; Act from 18 August 2011 *on the Safety of Persons in Water*, consolidated text: Dz. U. 2020, item 350 – hereinafter referred to as "u.b.o.w."]. The provisions of the aforementioned acts specify, in particular: 1) entities responsible for ensuring mountain and organised ski area safety; 2) safety conditions for persons in the mountains and at organised ski areas, in particular, of those practising sports, recreation or tourism there; 4) duties of tourists in the mountains and at organised ski areas, in particular, those practising sports, recreation or tourism, as well as 1) entities responsible for ensuring safety of persons swimming, bathing or practising sports or recreation in water; and 2) safety conditions for persons swimming, bathing or practising sports or recreation in water. The aforementioned acts impose obligations on the management of national and landscape parks to ensure the safety of tourists, which will be discussed below.

Returning to the provisions of u.o.p., it should be stressed that the national park director is required to draw up a draft for the national park protection plan (this plan is published as a decree of the competent minister in charge of the environment). The plan must take the existing external and

internal threats into account, also from the point of view of threats to people visiting national park area. It should be noted that the national park protection plan should indicate areas and places available for scientific, educational, tourist, recreational, sports, amateur fishing and fishing purposes, and specify the ways of accessing them (Art. 20 (1) and (2) of u.o.p.). The designation of accessible areas and places, *inter alia*, for tourist purposes, must ensure that such destinations are safe for the persons visiting them.

The national park director implements the protection plan and issues orders specifying how to use the national park areas for scientific, educational, tourist, recreational and sports purposes. Among the detailed competencies of the park director, the marking of hiking, cycling, skiing and horse-riding trails must be mentioned (Art. 15 (1) (15) of u.o.p), as well as places designated for climbing, caving or water reservoir exploration (Art. 15 (1) (17) of u.o.p.). Such activities must be intended not only to conserve nature but also to ensure the safety of people visiting national parks. An example of implementing the above-mentioned regulations is Order No. 13/2019 from 12 March 2019 issued by Ojców National Park Director, on the detailed rules of making Ojców National Park available for hiking, cycling, horseback riding and cross-country skiing [Online: http://www.ojcowski-parknarodowy.pl/main/zarzadzenia.html (20.09.2020)]. Annex No. 1 to the Order specifies the rules governing access to Ojców National Park for hiking, cycling, horseback-riding and cross-country skiing. In the rules routes, trails and facilities available for hiking, cycling, skiing and horseback--riding are enumerated, as well as the ways of using them for tourist and recreational purposes, taking the safety of people visiting the park into account. In particular, the possible occurrence of biotic, abiotic and anthropogenic threats was indicated and the prohibited forms of tourism and recreation were defined.

In the article, no room is left for detailed analysis of the above-mentioned rules, but it should be highlighted that similar rules have been introduced by directors managing other national parks who take distinctive features of the parks managed by them into consideration.

It is also worth noting the tasks of the National Park Service defined in Art. 103 (1) and (2) of u.o.p., which include, among others, combating environmental crimes and offences committed in parks, giving access to parks for tourist purposes and maintaining the infrastructure managed by parks in a proper condition, which also translates into ensuring the safety of tourists visiting them.

As mentioned above, national and landscape park authorities are obliged to ensure the safety of tourists in the mountains under the provisions of u.b.r.g. (see: Art. 3(1) and (2)). In compliance with Art. 3(1) of u.b.r.g., the authorities of national and landscape parks situated in the mountains are responsible for the safety of persons visiting the them. To ensure safety in

the mountains, the authorities must, in particular: 1) designate and mark areas, facilities and equipment used for sports, recreation or tourism; 2) establish the rules for the use of given areas, facilities or equipment; 3) provide entities authorised to deliver mountain rescue services with conditions enabling them to offer assistance and rescue to persons who have suffered accidents or are at risk of losing their lives or health; 4) announce avalanche alerts. Moreover, under Art. 19 (1) of u.b.r.g., the managers of organised ski areas are responsible for the safety of users of such areas.

The obligation to ensure the safety of persons in water areas located within national or landscape parks applies to national park directors (see: Art. 4 (2) (1) of u.b.o.w.). The persons responsible for safety in water, including national and landscape park directors, are referred to as "water area managers" (Art. 4 (2) of u.b.o.w.). According to Art. 4(1) of u.b.o.w., ensuring safety in water areas consists of: 1) preparing, in co-operation with the police and entities operating in the given area, as referred to in Article 12(1), risk analysis, including identification of places where the safety of persons swimming, bathing, doing sports or recreational activities is endangered; 2) marking and protecting areas, facilities and equipment intended for swimming, bathing, doing sports or recreational activities in water; 3) conducting preventive and educational activities regarding water safety, which consist, in particular, of: a) marking dangerous spots, b) supervising, in co-operation with the police and the entities referred to in Article 12 (1) as dangerous places, including those traditionally used for bathing, (c) raising awareness of risks associated with water areas, specifically, through educational campaigns targeting schoolchildren and young people, (4) providing weather warnings and information about other factors that may cause inconvenience or weather-related health and life threats; (5) creating conditions for providing assistance and rescue to persons who have had accidents or are at risk of losing their lives or health.

A manager of the designated water area is obliged to put the following information in publicly accessible places: 1) rules for the designated water area usage; 2) restrictions on the use of the designated water area; 3) accident notification methods along with emergency numbers. The responsibilities of the designated water area manager include: 1) in the case of bathing beaches, swimming pools and other facilities with pool basins with a total area exceeding 100 m^2 and a depth of more than 0.4 m at its deepest point or more than 1.2 m: a) marking zones for swimmers and non-swimmers, b) providing paddling pools for children, 2) providing lifeguards for permanent pool supervision; 3) building lifeguard observation stands; 4) providing rescue and auxiliary equipment as well as signalling and warning devices (visual and auditory); 5) removing any objects which may cause injuries or other accidents from the bottom surface of the swimming or bathing area; 6) creating rules for designated water area usage known to the public;

7) providing information on decisions to prohibit or give approval for use of the designated water area.

Under Art. 6 of u.b.o.w., a designated water area manager or a person authorised by him/her may refuse to admit or require a person to leave this area if the person's behaviour clearly shows that s/he is under the influence of alcohol or drugs.

Finally, it is worth recalling that according to Art. 8e (4) of u.o.p., national park directors are also responsible for some tasks and competences defined in the Act on Forests [*Act from 28 September 1991 on Forests,* consolidated text: Dz. U. 2021, item 1275 – hereinafter abbreviated as u.l.]. These activities are, first of all, related to forest management but among them, we can also identify the measures intended to ensure safety of persons visiting forests. Such measures may include temporary bans on access to forests when wood stands have been destroyed or significantly damaged, or when there is a high fire risk or economic operations in respect of breeding, forest protection or logging are being conducted (See Art. 26 (2) of u.l.). Such situations may be a real threat to the health and lives of people visiting forests for tourist and recreational purposes.

Conclusions

The legislator does not clearly define a national park director's legal status or his/her position in the administrative apparatus structure. A national park director has not been explicitly classified as a local unit of consolidated or non-consolidated government administration. The employer defines a national park director as a national park authority and nature conservation authority, and clearly indicates that s/he director carries out the tasks of a regional nature protection director in respect of nature conservation in the park assigned to his/her care. Appointment procedures, tasks, powers and legal forms of his/her operations indicate that he should be classified as an administering entity or a public administration authority in a functional sense, including public administration authorities within the meaning specified in Art. 5 (2) (3) in conjunction with Art. 1 (2) of k.p.a. However, it is misleading to classify a national park director as a public administration authority *sensu stricto*, i.e. an authority who is part of state administration, whose primary and, in principle, sole purpose is the performance of public administration duties.

It is worth highlighting that some authors include national park directors not only into public administration authorities within the meaning of Art. 5 (2) (3), in conjunction with Art. 1 (2) of k.p.a. but also into public administration authorities *sensu stricto* (in a doctrinal sense) [Makuch 2020, p. 527].

It is also worth emphasizing that national park directors are facing a conflict between the value of protecting various precious components of animate and inanimate nature and the value of ensuring tourist safety. In the author's opinion, the life and health of tourists should be given priority over the protection of valued environmental components since human life is undoubtedly the supreme value. In balancing these two goods, the principle of proportionality of the measure applied to achieve the aim should be taken into account. In this study, large variety has been shown of tasks, powers and legal forms of activity at the disposal of the national park director which can be used to ensure the safety of tourists in the national park. The national park director's tasks and powers include not only protecting national park resources, but also granting access to national park areas and determining the ways of such access, *inter alia*, for tourist and recreational purposes, in a manner that ensures the safety of people in the area. Among the above mentioned forms of national park director's operations, legal and factual actions (material and technical operations as well social and organisational activities) can be mentioned, both of a regulatory and non-regulatory nature. Among the legal acts of the director, there are general and abstract (e.g. orders), general and specific (e.g. periodic bans on entering the forest) and individual acts (e.g. administrative decisions).

As it appears, both the national director's tasks, powers and forms of legal activity allow him/her to effectively ensure the park visitors' safety in typical circumstances. There is no doubt, however, that even the most perfect legal regulations would not replace experience, common sense or caution, and the laws of nature often have the upper hand. They can only help minimise the risks of tourism. Additionally, not only does the research allow to present a national park director's current legal status, but it should also encourage the legislature to reorder and enhance the scope of national park director's tasks, powers and legal forms of activity related to the safety of national park visitors. Such amendments should primarily aim at extending directors' authoritative legal forms of activity in respect of tourist traffic management and strengthening human and material resources of the services directly connected with national park directors. It seems necessary to undertake such legislative work because of the ever-increasing tourist traffic and new threats and challenges experienced by entities responsible for nature conservation and other national park resources, as well as the safety of persons visiting national park areas.

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POLISH REGULATORY POLICY AIMED AT COUNTERACTING ALCOHOLISM AS AN ELEMENT OF ENSURING SAFETY IN TOURISM – THE CASE OF TRAVEL INSURANCE

Michał Koszowski*

Abstract

Purpose: The aim of the article is to assess whether the current legal framework on travel insurance contracts allows the regulations in question to be included in the legal instruments that both ensure safety in tourism and constitute an element of the regulatory policy aimed art counteracting alcoholism and the negative effects of alcohol consumption.
Method: The main method used in the submitted article is the legal dogmatic method, which, however, is not used in the strict sense. Additionally, analysis of the normative text is supplemented with the author's independent reference to judicial decisions and legal doctrine.
Findings: Analysis of legal regulations and judicial decisions allows to indicate that the structure of travel insurance makes it an element of the regulatory policy aimed at counteracting alcoholism. Accidents can often be classified as insurance events within the meaning of various types of insurance contracts, including travel insurance. Therefore, the structure of these agreements cannot assume the form of a specific sanction for alcohol consumption. However, to ensure the fullest possible safety in tourism, insurance events of this type should not be excluded from the liability of insurers without deeper reflection on the purpose of this kind of protection, also within the context of the policy aimed at counteracting addictions and their effects on health and life.
Research and conclusions limitations: The legal analysis is focused on the Polish legal regulation of the issue.
Practical implications: The conducted research may be an indication for the creation of mandatory regulations regarding travel insurance contracts, as well as the content of the contracts themselves and general insurance conditions.
Originality: Research on regulatory policy that is rarely of interest to legal scientists.
Type of paper: In the article, theoretical concepts are presented. This text is an overview in nature.

Keywords: regulatory policy; counteracting alcoholism; travel insurance; alcohol clause.

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Introduction

Policies aimed at counteracting addictions using legal methods are an important area of state activity. However, this is not accompanied by a proportional interest of legal doctrine with regard to this issue.

According to the current state of knowledge, it is undeniable that the repeated usage of a specific stimulant may lead to its abuse, i.e. using it in excessive amounts or for too long. This can affect an individual's body and have long-term effects of social as well as economic nature. The legislator cannot ignore the fact that substance abuse continuing over time, depending on the predispositions of a given individual, may eventually lead to addiction. Such addiction has serious consequences for the individual (man, citizen) and his/her environment, and indirectly, for the entire society and the state in which the individual lives and functions. For the above reasons, in most countries today, addiction to stimulants meets with a certain legal reaction from the state. The discussed juridical activity aimed at counteracting addictions is an element of regulatory policy. This concept is of key importance for further reasoning. The link between law and politics is obvious and results from the relationship existing between the legislator, its social legitimacy and the entities which act on behalf of the state as guarantors of implementing the policy adopted in a state at a given time. It should be noted that nowadays, even though this is already a long-lasting process, in political life, it is more and more difficult to draw a clear line between the policy maker and its implementer [Herbutt 1999, p. 38].

In this sense, politics means the use of specific legal rules and acts of their application in a manner oriented towards achieving a predetermined goal [Lang, Wróblewski, Zawadzki 1980, p. 383]. Regulatory policy is a qualified variant of the above-mentioned state action, which comes down to the selection of appropriate methods of regulation, i.e. the instrumental method of shaping social relations in a normative way, so as to achieve the intended regulatory goal. Social relations are instrumentally regulated by law. However, this does not mean instrumentalisation of the law, reducing it to a simple tool for achieving ad hoc and temporary goals defined by the public authority. Law plays a role in regulatory policy. As aptly noted by M. Borucka-Arctowa, law is an instrument in the sense of a means that is specifically prepared and designed in advance to achieve an intended goal [Borucka-Arctowa 1988, p. 70; similarly in Kazimierczyk 2000, p 11]. The goal of legal regulations aimed at counteracting addiction is not as obvious as it may seem at first glance.

Legal regulation aimed at counteracting alcoholism cannot be equated with a simple action aimed at reducing the consumption of alcoholic beverages. The goal itself is not to completely eliminate alcohol consumption, which is a sensitive product in European culture. Furthermore, this ob-

jective is not prohibition, i.e. a state-issued ban on socially undesirable or harmful activities, in particular, a ban on the production and sale of alcohol. At this point, it is necessary to indicate certain behaviours of the individual in relation to consuming alcoholic beverages, which may be legally relevant. It is undeniable that alcohol introduced into the body, is not indifferent to the individual.

We are discussing consumption of an alcoholic drink if a given product is ingested by a person. This includes occasional, one-time and experimental consumption. Such behaviour, of course, may be customary or even legally relevant. It may lead to certain material losses, e.g. a car accident occurring after the perpetrator has used a given substance, which prevented him/her from analysing the traffic situation thoroughly; as well as non-material ones, e.g. causing scandal by using a given substance in the presence of minors [Gaberle 1993, p. 263]. Repeated use of a particular stimulant may lead to abuse of a specific substance, i.e. using it in excessive amounts or for too long, which may have effects not only on the body of the individual (and the related consequences indicated above), but also long-term effects of both social and economic nature. Eventually, continued abuse of a stimulant may, sooner or later, depending on the predispositions of a specific individual, lead to addiction. This has the most significant consequences for an individual and his/her environment, and indirectly, for the entire society among which s/he lives. For this reason, in most countries today, addiction always meets with some legal reaction from the state. However, not only addiction causes reaction of the state. The counteraction begins at a much earlier stage and involves regulating states that may cause abuse of given stimulants, and the very use of these stimulants, as well as the supply of a specific stimulant.

Consuming or even abusing alcoholic beverages does not meet with a severe social or legal reaction. The legislator tolerates these behaviours as long as they do not threaten the safety of other people or broadly-understood public order [Jaworska-Dębska 2017, p. 371].

For these reasons, counteracting alcoholism has a moderating function. This regulation is aimed at counteracting the addiction itself, rather than any use of sensitive products by introducing prohibition on these products. As suitably noted by B. Jaworska-Dębska, counteracting comes down to building "a society of citizens in whose life and functioning alcohol has its place, but it does not play a fundamental role, it does not determine their actions" [Jaworska-Dębska, p. 160].

Therefore, it may be assumed that the very concept of counteracting alcoholism is a certain on-going process and not a goal to be achieved. It is an element of the regulatory policy which consists in shaping the model of consuming alcoholic beverages in such a way that assuming tolerance of their consumption, reduces the risk of an individual falling into a state of addiction, eliminating, to the greatest extent possible, potential damage – proprietary

and social – related to the consumption of alcoholic beverages. The measures applied by the legislator are rationing and control, not simple alcohol prohibition. They may consist of actions aimed at changing structure and habits related to the consumption of alcoholic beverages [Sawuła 1993, p. 32] or pro-sobriety measures, as well as removing the consequences of consuming alcoholic beverages [Sawuła 1997, p. 47].

Purpose of the article

The aim of the article is to assess whether the current shape of regulations on travel insurance allows them to be included in the legal instruments that both ensure safety in tourism and constitute an element of the regulatory policy aimed at counteracting alcoholism as well as the negative effects of alcohol consumption. This cannot be done without presenting the structure of travel insurance contracts.

Review of subject-literature

The very concept of travel insurance is not a statutory idea. It does not have a legal separation, nor is it a special type of insurance with a separate legal regulation. It is a kind of an insurance contract which is functionally related to broadly understood tourism [Kowalewski 2013, p. 162-163]. Reference should be made here to the general provisions concerning this type of contract.

According to Art. 805 § 1 and 2 of the Civil Code regarding insurance contracts, the insurer undertakes, within the scope of the activity of its enterprise, providing a specific benefit in the event of an accident provided for in the contract, and the policyholder undertakes paying the premium. The indicated benefit of the insurer is to consist in the payment of property insurance – specific compensation for damage resulting from the accident and provided that for in the contract, and in the case of personal insurance – payment of the agreed sum of money, annuity or another benefit in the event of an accident threatening the life of the insured party provided for in the contract. In both cases, the standard list of the insurer's benefits applies. The-above definition is supplemented by Art. 15 of the Act from September 11, 2015 on insurance and reinsurance activities, according to which the insurance company provides insurance coverage on the basis of an insurance contract concluded with the policyholder, which is voluntary, subject to the provisions on compulsory insurance. The same editorial unit in paragraph 3-5 indicates the rules of editing and interpreting contractual provisions in the insurance contract (the insurance contract, general insurance terms and conditions as well

as other contract templates are formulated unambiguously and in an understandable manner; the provisions of the insurance contract, general insurance conditions and other contract templates formulated ambiguously are interpreted in favour of the policyholder, of the insured party or the beneficiary under the insurance contract), and the requirement that the general terms and conditions of the insurance and other forms of the contract should be posted by the insurance company on its website.

A similar legal construction can be found in the German legal regulation contained in German Law on Insurance Contracts (Insurance Contract Act – VVG) – *Gesetz über den Versicherungsvertrag* (*Versicherungsvertragsgesetz* – VVG). In article 1, the Insurance Contracts is defined as follows: "With the insurance contract, the insurer undertakes covering a certain risk of the policyholder or a third party with a service that s/he has to provide when the agreed insured event occurs. The policyholder is obliged to make the agreed payment (premium) to the insurer".

Therefore, the essence of the insurance contract is the legal relationship between the entrepreneur – the insurer, and the other party to the contract – the policyholder who, on his/her own behalf and for his/her own or a third party's benefit, in exchange for the insurance premium, obtains some form of protection from the insurer against an insurance event – a condition which is a random event and which must occur for the insurer to provide the insurance benefit.

It should be noted that the parties to the legal relationship, resulting from the concluded insurance contract, are not economically equal and the scope of their autonomy of will greatly varies due to objective, economic conditions. On the one hand, we have an entrepreneur, an insurer, conducting business in the field of insurance, a professional entity. The policyholder may be both a professional entity and a natural person. This translates into the way in which an insurance contract is concluded. As a rule, it is the insurer that imposes the content of the insurance contract. This is done with the use of a standard contract and the contract itself is of adhesive nature.

The main argument in favour of using the adhesion model of insurance contracts, i.e. concluding them with the use of standard contracts, is [Orlicki 2011, p. 810]:

> significant differentiation of numerous insurance types relating to very different events, which means that the provisions of the Civil Code and the Act on insurance activity (necessarily of framework nature) cannot, in detail, regulate the rights and obligations of the parties to the contract in accordance with the existing types of insurance.

Such a situation is usually prevented by introducing mandatory provisions, sanctioned by the invalidity of contradictory contractual provisions,

securing the economically weaker party [Łętowska 1975, p. 221]. However, the law protects the policyholder against the use of standard contracts, general terms and conditions of insurance, which would threaten his/her rights. According to Art. 807 of the Civil Code, provisions of the general terms and conditions of insurance that are contrary to the provisions of Title XXVII of the Civil Code (Insurance contract) are void, unless the same regulations provide for exceptions. Moreover, the general terms and conditions of insurance cannot be inconsistent with any provision of applicable law and they cannot violate any mandatory legal norms. When discussing contractual provisions between the parties to the contract, it should be borne in mind that, in accordance with Art. 385 § 1 of the Civil Code, if the rights and obligations of the parties to the insurance contract have been defined in a manner that differs from the general terms and conditions of the insurance, the individual contract always has priority over the standard. Under the insurance contract, these guarantees are additionally strengthened by Art. 812 § 8 of the Civil Code, according to which the insurer is obliged to present the policy to the policyholder in writing prior to concluding the contract, as well as the differences between the content of the contract and the general terms and conditions of the insurance. In the event of failure to comply with this obligation, the insurer may not invoke the difference unfavourable to the policyholder. The provision does not apply to insurance contracts concluded by negotiation.

Summarising the-above, it should be assumed that when speaking of travel insurance, this term should be understood as a civil law contract concluded between the insurer and the policyholder, who is an entrepreneur operating in broadly-understood tourism, a natural person – a tourist or a third party concluding a contract for tourists, the essence of which is financial security against an insurance event related to tourism and recreation.

Travel insurance is not a homogeneous category. Since such contracts are concluded in connection with tourism and recreation, insurance events against which they protect may be of different nature. It is also important to note which entity is the policyholder. When analysing travel insurance contracts in terms of the implementation of the regulatory policy aimed at counteracting alcoholism, the subjective division of travel insurance is of particular significance.

Travel insurance may apply to economic entities operating in the tourism services sector: tour operators, intermediaries, travel services, hoteliers, organisers of mass events, hunting organisers, owners of agritourism farms, etc. [Gasińska 2013, p. 55]. In this case, however, it is difficult to talk about the implementation of the goals of the regulatory policy aimed at counteracting alcoholism, since – if it does not concern rationing of alcoholic beverages itself, it concerns behaviour of natural persons. Performing

economic activity, whether directly by the entrepreneur or via his/her employees who are under the influence of alcohol or after consuming alcoholic beverages, will always be qualified at least as a gross violation of the professional nature of economic activity. Therefore, it is difficult to analyse these behaviours in depth or to adopt any gradations in terms of implementing the regulatory policy aimed at counteracting alcoholism.

The second group of travel insurance contracts consists of those against accidents related to tourists themselves – this is insurance for medical expenses, accident insurance, insurance pertaining to the costs of cancellation due to random reasons such as non-participation in a tourist event or earlier return, and liability insurance for tourists [Gasińska 2013, p. 55].

Undeniably, one of the primary short-term effects of alcohol abuse is the increased risk of bodily harm. It is associated with reduced motor abilities when blood alcohol concentration is higher. Alcohol abuse can also lead to impaired perception. This may result in damage to property or damage to a third party, particularly, when a tourist uses motor vehicles or participates in a tourist event of sports nature (e.g. during a skiing trip).

Discussion

Accident insurance

Within the context of policies aimed at counteracting alcoholism, as well as the effects of alcohol abuse, it is necessary to analyse the possibility of protecting a policyholder against the risk of events indicated above by applying insurance coverage.

In the case of insurance coverage for the person who consumed the alcoholic beverages and thus, has suffered a loss while under the influence of alcohol, personal insurance will apply. First of all, this concerns accident insurance which is intended to award compensation to an injured person who has suffered permanent injury or death as a result of an insurance accident. Specifically, in the case of participation in tourist events abroad, it may also be important to insure medical expenses, ensuring coverage of healthcare costs in the event of sudden illness or injury of the insured party during a stay abroad.

It should be noted that it is a common practice to exclude the insurer's insurance liability in the general terms and conditions of insurance regarding the consumption of alcoholic beverages. Such a practice has not been accepted by common courts. In their decisions, they require insurers formulate premises for such an exclusion as precisely as possible.

Frequently, the GTC could contain contractual provisions which have been worded as follows: "The insurer is not liable for damages occurring

when the victim was under the influence of alcohol, drugs or other intoxicants". This practice was questioned by the judiciary. An example is the Judgment of the District Court in Warsaw – Court of Competition and Consumer Protection of October 11, 2007 regarding case No. XVII AmC 68/06 (Pub.: MSiG 2008/43/2772). In this ruling, the Court stated that such a decision was inconsistent with the content of Art. 385^1 § 1 of the Civil Code. As it was indicated in the grounds for the judgment, there was no clear connection between the insured event and the circumstances indicated in that contractual provision.

The challenged provision could lead to refusal to pay compensation in the case of an event, regardless of the existence of a causal link between the consumption of the indicated substances and the damage suffered. In the opinion of the Court, the scope of the exclusion should be structured in such a way as to enable the insured party obtaining compensation if the circumstances of the case indicated that the damage would have arisen anyway, regardless of whether the circumstances indicated in the exclusion existed or not.

It should also be noted that not only such wording of a contractual provision is questioned by the courts. Also, according to the courts, protection of the interests concerning persons who have suffered damage after consuming alcoholic beverages, often requires protection through the proper interpretation of the GTC provisions and payment of the compensation due. We are talking here about an appropriate interpretation of situations in which we can say that the insurance event was caused by a specific psychoactive substance, including an alcoholic drink. The Judgment of the District Court in Strzelin from December 15, 2016, IC 421/1, LEX No. 2251115 can be given here as an example of such interpretation in which it is enough to prove that the insured party was under the influence of alcohol at the time of the accident. The state of being under the influence of alcohol should also have impact on the person's behaviour, resulting in an accident. The liability in dispute may not be invoked only by a situation in which the insured party's state of intoxication had no influence on the event. If the GTC clearly indicate that the insurer's liability is excluded in the event that the accident is a consequence of an action taken by the insured party in a state of intoxication, the burden of proof that such circumstances occurred rests on the insurer. The insurer is the entity who derives legal effect in the form of his/her lack of liability from a specific fact (causing an accident by the insured party under the influence of alcohol).

In the same judgment, the court pointed out that with regard to the facts of the case (that concerned obtaining damages due to a random accident after the victim died as a result of being stabbed during a fight which took place while the parties were under the influence of alcohol), the behaviour resulting from alcohol consumption would be, e.g. irrational behaviour on the part of the insured party.

Concluding, with regard to accident insurance and medical expenses (similarly to luggage insurance), the insurer may effectively evade liability only for insurance accidents that occur as a result of consuming alcoholic beverages. It is not enough to just identify alcohol consumption or abuse. The premise exempting from liability is only proving that a specific insurance event was objectively caused by alcohol, which further had impact on the mobility or perception of the injured person. Therefore, it can be concluded that the judicial decisions affect the interpretation of contractual provisions, in particular, GTC, ensuring the broadest possible protection against the negative effects of consuming alcoholic beverages, such as loss of health or life of a person who has consumed alcohol.

Incidentally, it should be noted that insurers more and more often offer extend insurance coverage in the area of accident insurance and insurance of medical expenses in the form of so-called alcohol clause. Most frequently, this option is additionally payable. It is often the case that the GTC also introduce a limit of the permissible concentration of alcohol in the injured party's blood during an insurance event. However, it should be noted that in practice, this extension does not cover travel third party liability insurance.

Liability insurance

Liability insurance dedicated to tourists provides protection in the event of damage that the insured party has caused to a third party and which the insured party is obliged to cover. The right to insurance benefit arises in the event of damage to health, life or property (damage, loss, destruction). It is especially important for sports trips (e.g. skiing).

In terms of the policy aimed at counteracting alcoholism, the insurer's boundaries in the field of liability insurance are important. According to Art. 827 of the Civil Code, the insurer is free from liability if the policyholder caused the damage intentionally; in case of gross negligence, compensation shall not be due, unless the contract or the general terms and conditions of insurance provide otherwise or the payment of the compensation corresponds in certain circumstances to the considerations of equity. In third party liability insurance, rules of the insurer's liability, other than those specified above, may be established. This regulation is an expression of the basic and, at the same time, absolute prerequisite for exempting an insurer from liability. This prerequisites the fact that the policyholder caused the damage intentionally (*dolus directus*) or with the awareness and acceptance of the possibility of causing the damage (*dolus eventualis*). A person causing damage to another through wilful misconduct must be responsible for it, and when s/he caused it to him/herself, s/he cannot claim damages (*dolus semper praestatur*). If the damage is caused by gross negligence, the policyholder is also not entitled to compensation. However, with

regard to the latter circumstances allowing to determine whether the insurer is held liable, the parties may include provisions in the contract or general terms and conditions of insurance which enable the payment of compensation, even if the damage was caused due to gross negligence of the policyholder. Thus, this damage is – unlike the first – relative.

It should be noted that if it results from the contract or the general terms and conditions of the insurance, the insurer may be liable for damages caused by an event arising from the willful misconduct of the perpetrator. This is related to the purpose of liability insurance. As a matter of fact, this insurance is not intended to protect the property interest of the insured party against tort claims. This insurance is to provide the fullest possible compensation for damage caused to property or to the third party itself. The principle of absolute liability for damage caused by willful misconduct, expressed in art. 415 of the Civil Code, has no limitation here. Satisfying the claims of a third party by the insurer is not limited to pursuing, from the perpetrator of such an insurance event, the reimbursement of funds incurred for this in the form of recourse.

From the point of view of policy aimed at counteracting alcoholism, the construction of the exoneration of guilt for harming a person with limited awareness is relevant. According to Art. 425 § 1 of the Civil Code, a person who, for whatever reasons, is in a state that excludes conscious or free decision and expression of will, is not responsible for the damage caused in this state. Due to practical reasons – pursuant to Art. 425 § 2 of the Civil Code – the fault of the perpetrator of the damage in causing the state of disturbance of mental functions as a result of using intoxicating beverages or other similar means, makes it impossible to release him/her from liability. Therefore, a legal presumption of guilt occurs regarding a perpetrator who has suffered mental disturbance as a result of the use of intoxicating beverages or other similar substances. Release from liability may only take place in the event that the perpetrator demonstrates it was not the mere committing of the act, but inducing the state of disturbance of mental functions that was faultless. This can happen in very specific cases, such as in a state of pathological intoxication, limiting the perpetrator's consciousness without his/her knowledge and/or consent.

Insurance of cancellation costs

The specific relationship between the policy aimed at counteracting alcoholism and travel insurance is based on the regulation of insuring the costs of cancellation for random reasons, such as non-participation in a tourist event or an earlier return from it. It is a type of insurance aimed at ensuring the reimbursement of costs incurred by the insured party in the event of a serious failure to travel. It may also include a situation where the in-

sured party had to return from the trip for significant reasons before the date specified in the package travel contract. In the GTC of this type of insurance, sudden behaviour appears as an insurance event and is usually defined as a sudden and unexpected medical condition that threatens the life or health of the insured party, requiring immediate medical assistance. It should be considered whether the aggravation of alcoholism or complications arising directly from alcoholism that occur during a tourist event may be qualified as a sudden illness justifying the benefit under this type of contract.

In Germany, this issue was resolved on the basis of the German insurance law – the District Court in Mannheim, in the judgment from November 9, 2011 – file ref. 10 C 322/11 (open Jur 2013, 15584) indicated that relapse due to alcoholism is not an unexpected serious disease, as its onset and consequences can be expected at any time. The court accepted the fact that an alcoholic who had undergone drug addiction treatment at the time of booking the trip, but consumes alcohol, is at risk of experiencing an unexpected relapse. In the case of alcoholism, the affected person – even if they have been abstinent for many years – is at risk of relapse if they consume even the smallest amount of alcohol.

Conclusions

Analysis of legal regulations and judicial decisions shows that the structure of travel insurance makes them an element of the regulatory policy aimed at counteracting alcoholism. The consumption of alcoholic beverages is not irrelevant to the scope of insurance coverage. Currently, it is a common practice among insurers to increase the costs of obtaining insurance coverage for damage to health, life or property of the insured party him-herself, when the insured event occurred after consumption or abuse of alcoholic beverages. However, in the case of third party liability insurance, the loss arising in the above-mentioned circumstances is not covered by the insurer. It should be remembered, however, that in European culture, lack of social norms and certainly legal norms, which would make the consumption or even abuse of alcoholic beverages generally forbidden, as long as this condition does not lead to addiction, does not contribute to the violation of public order or demoralisation of minors. Therefore, alcohol policy is mainly about counteracting the negative effects of consuming alcoholic beverages – both for the individual and his/her environment. Such negative effects can often be classified as insurance events within the meaning of various types of insurance contracts, including travel insurance contracts. Therefore, the structure of these agreements cannot take on the form of a specific sanction for alcohol consumption. To ensure the fullest possible extent of liquidation

for damages caused by possible alcohol abuse, these contracts should also cover, to the fullest extent possible, insurance events related to the consumption of alcoholic beverages. At the same time, there are no obstacles to claiming the sum of compensation in the form of recourse from the perpetrator with the extension of the scope of claims, whether these are the above-mentioned ones or in the case of third party liability insurance in the event of damage to the health and life of a third party. However, to ensure the fullest possible safety in tourism, insurance events of this type should not be excluded from the liability of insurers without deeper reflection on the purpose of this type of protection, also in the context of the policy aimed at counteracting addictions and their effects on human health and life.

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THE ISSUES OF EVIDENCE FACILITATION IN THE REGULATION OF PACKAGE TRAVEL AND HOTEL SERVICES IN THE CONTEXT OF PROTECTING TRAVELLERS AND TOURISTS

Małgorzata Szymszon*

Abstract

Purpose: The aim of the article is to show the significance and diversity of legal constructions concerning the facilitations of proof in provisions regulating package travel and hotel services in the context of protecting travellers and tourists.
Method: Analysis regarding the regulation of package travel and hotel services including the facilitations of proof are carried out using the formal-dogmatic and legal comparison method. The comparative method has a significant meaning for the proper interpretation of provisions regulating package travel and hotel services due to the interpenetration of national and international regulations. In the process of recreating norms from legal provisions, it is therefore helpful to analyse their similarities and differences.
Findings: The provisions regulating package travel and hotel services include the facilitations of proof which improve the legal situation of travellers and tourists, as well as ensuring their protection.
Research and conclusions limitations: There is no comprehensive study on facilitations of proof in the regulation of package travel and hotel services in literature on the subject.
Practical implications: Conclusions resulting from the article will allow to determine the proper nature of the provisions referring to the facilitations of proof in the regulation of package travel and hotel services, which will enable their proper application in practice.
Originality: The issue of the facilitations of proof in the regulation of package travel and hotel services has not been comprehensively researched so far.
Type of work: Problem article.

Keywords: facilitations of proof; protection of the travellers and tourists; the Act on Package Travel and Linked Travel Arrangements; the Act on Hotel Services and Services of Tour Managers and Tour Guides; regulations related to COVID-19.

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Introduction

Facilitations of proof are legal constructions that shift the burden of proof or otherwise make it easier to prove a given fact. Among facilitations of proof there are presumption, plausibility, legal fiction and *prima facie* evidence. The legislator refers to them in order to strengthen the evidentiary situation of one or other party to the legal relationship. On the basis of the regulation of package travel, this legal relationship is a package travel contract.

Provisions containing the facilitations of proof in the regulation of package travel are contained in the Act from 24 November 2017 on Package Travel and Linked Travel Arrangements (Journal of Laws of 2019, item 548, as amended) (hereinafter: the Act on Package Travel). This Act is an implementation of Directive (EU) 2015/2302 of the European Parliament and of the Council from 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No. 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC (OJ EU L of 2015 No. 326, p. 1) (hereinafter: Directive 2015/2302). The structure of the facilitations of proof is used to regulate the most important issues related to package travel (contractual liability of the tour operator, asserting claims). Facilitations of proof in the regulation of package travel, to a significant extent, concern broadly understood liability which, in turn, is the legislator's response to the existing risks associated with dangers to the protection of travellers. The provisions containing the facilitations of proof are also included in the regulation of hotel services in the Act of 29 August 1997 on Hotel Services and Services of Tour Managers and Tour Guides (Journal of Laws from 2019, item 238, as amended) (hereinafter: the Act on Hotel Services). These provisions are the implementation of EU directives regulating tourist services. Whereas, the Polish legislator has implemented the solutions contained therein in domestic law, often in a manner contrary to the EU regulations.

For the time being, no comprehensive research has been conducted on what legal constructions are contained in the individual provisions of the Act on Package Travel and Act on Hotel Services relating to the facilitations of proof. The subject of this study is analysing the provisions of the above-mentioned acts containing legal constructions, concerning facilitations of proof in terms of assessment regarding what legal constructions are contained in them, as well as protection of travellers and tourists.

Presumption, plausibility, legal fiction and *prima facie* evidence in general

In literature on the subject, it is indicated that the concept of presumption is ambiguous [Bogucki 2000, p. 55]. In general, it means conjecture or guess [Andrych-Brzezińska 2015, pp. 242-243]. There are different divisions of presumptions in law science. Both the provisions of civil procedure and legal doctrine divide presumptions into two fundamental types: factual presumptions (article 231 of the Code of Civil Procedure, *praesumptiones facti*) and legal presumptions (article 234 of the Code of Civil Procedure, *praesumptiones iuris*) [Piasecki 2010, p. 89 et seq., 92 et seq.; Andrych-Brzezińska 2015, p. 244 et seq., 287 et seq.]. Moreover, legal presumptions are divided, among others, into material and formal, rebuttable (*praesumptiones iuris tantum*) and irrebuttable (*praesumptiones iuris ac de iure*). The presumption consists of the premise (base) and the conclusion drawn from it. The rebuttal of the legal presumption consists in questioning its conclusion by proving that it is not consistent with reality [Michta 2018, p. 10]. According to the provision of Article 232, sentence 1 of the Code of Civil Procedure, *the parties are obliged to indicate evidence for establishing facts from which they derive legal effects*. The legal presumption makes it easier to carry out the evidence because it changes the subject of the evidence (*thema probandi*). The subject matter of the proof is no longer the fact described in the presumption conclusion, but an easier to prove fact described in its basis [Andrych-Brzezińska 2015, pp. 276, 278].

Pursuant to the provision of Article 243 of the Code of Civil Procedure, *it is not necessary to maintain detailed provisions on the procedure for evidence whenever the act provides for a plausibility instead of evidence*. This means that plausibility is only admissible in cases indicated in the Code [Siedlecki 2003, p. 231]. The essence of such a method for establishing facts is that a statement of facts does not have to provide certainty but only a high degree of probability. The doctrine and jurisprudence of the Supreme Administrative Court define plausibility as a substitute for proof in the strict sense, not giving certainty but only the credibility (probability) of a statement concerning a given fact. This measure is not subject to strict evidentiary formalities and allows for the acceleration of proceedings [Siedlecki 2003, p. 231], (judgment of the Supreme Administrative Court from 7 February 2012, file No. I GSK 799/10). The Supreme Court, in turn, stated that the court may consider a statement to be plausible only if it comes to the conclusion that it probably was or is. The parties may use both measures appropriate for ordinary evidentiary proceedings (e.g. documents, witness testimonies or expert opinions) and measures not considered by the Code of Civil Procedure as evidence (e.g. written statements of third parties, surrogate documents or so-called private opinions) to substantiate plausibility (Supreme Court decision of 21 February 2013, file No. III CNP 2/13).

The terms legal fiction (*fictio iuris*) and presumption are ambiguous [Podleśny 2019, p. 133]. It is not defined in provisions. In general, it can be pointed out that it is a legal construction that requires counterfactual recognition of a fact that has not actually occurred, as existing [Polish PWN Dictionary]. In a broader sense, the term also refers to accepting the existing state as non-existent. This refers to attributing to persons' or objects' features that do not exist in reality [Drewniak 2011, cited after: Zwoliński 2013, p. 219]. In literature on the subject, there are two meanings of legal fiction. In the first one, the legislator consciously accepts certain statements as true regardless of whether they are consistent with reality, including obvious untruth. According to the second meaning, these statements do not contradict reality in an obvious way [Dąbrowa 1962, pp. 5-6, cited after: Podleśny 2019, p. 133]. In another sense, the term legal fiction is associated with the term presumption [Wróblewski 1973, p. 33, cited after: Podleśny 2019, p. 133]. The difference between legal fiction and presumption lies in the fact that the circumstances established as a result of legal fiction are not subject to verification, but must be accepted as existing [Poloczek 1989, p. 195, cited after: Wyrwiński 2013, p. 1490]. The findings made as a result of legal fiction cannot be challenged [Wyrwiński 2013, p. 1501].

The term *prima facie* evidence has no legal definition. In literature on the subject, it is emphasized that this construction originates from Anglo-Saxon law. The *prima facie* evidence plausibly establishes the hypothesis made at the beginning of the evidence procedure, which is then verified in its course on the basis of conclusive evidence [Dolecki 1998, p. 162 et seq.; Piasecki 2010, p. 97 et seq.]. There is no consensus in the doctrine as to the proper concept of *prima facie* evidence - whether it leads to a shift in the burden of proof or if it is only a facilitation of proof [Andrych-Brzezińska 2015, p. 196 et seq.]. The Supreme Court stated that *prima facie* evidence is used primarily in situations when the act allows to limit evidence to the demonstration of the probability of a specific event (Supreme Court judgment from 23 March 2007, file No. V CSK 477/06). It is a measure for making factual findings, similar to a presumption of fact. This evidence has been developed by the court practice, and is particularly applicable in cases where proving the factual circumstances is extremely difficult (e.g. shortfall, communication or medical damage) (Supreme Court judgment from 15 April 2005, file No. I CK 653/04).

Evidence facilitation related to the responsibility of the tour operator

The traveller is entitled to a claim for price reduction and compensation for damage, as well as reparation in the case of lack of conformity regarding the travel service with the contract. According to the Act on Package Travel, *the*

traveller shall be entitled to a price reduction for every period in which the lack of conformity was found, unless that lack of conformity was caused exclusively by an action or an omission on the part of the traveller (Article 50, Paragraph 1). *The traveller shall be entitled to compensation or indemnity for damages or injuries suffered because of the lack of conformity. The tour operator shall pay the compensation or indemnity immediately* (Article 50, Paragraph 2). *The traveller shall not be entitled to compensation or indemnity for the lack of conformity if the tour operator proves that: 1) the lack of conformity is attributable to the traveller; 2) the lack of conformity is attributable to a third party not linked to the performance of travel services covered by the package travel contract and that lack of conformity could not be foreseen or avoided; 3) the lack of conformity arose due to unavoidable and extraordinary circumstances* (Article 50, Paragraph 3). Unavoidable and extraordinary circumstances shall be understood as a situation beyond the control of the party who invokes such a situation and the consequences of which could not have been avoided even if all reasonable measures had been taken (Article 4 point 15).

According to recital 31 of directive 2015/2302, which deals with the possibility for the traveller to terminate the travel contract, unavoidable and extraordinary circumstances may cover, for example, *warfare, other serious security problems such as terrorism, significant risks to human health such as the outbreak of a serious disease at the travel destination, or natural disasters such as floods, earthquakes or weather conditions which make it impossible to travel safely to the destination as agreed in the package travel contract*. The COVID-19 pandemic exhausts the prerequisites of the provision of Article 50, Paragraph 3, Item 3 (unavoidable and extraordinary circumstances), so that the traveller in such a situation is not entitled to compensation or reparation for the lack of conformity.

In literature on the subject, a view is presented that in light of the provision of Article 50, Paragraph 1, which concerns the right of the traveller to a price reduction, it is presumed that the lack of conformity was not caused by an exclusive act or omission of the traveller. In accordance with the distribution of the burden of proof, the traveller will have to prove the lack of conformity, and the opposing party will have to prove the lack of conformity caused by the traveller's exclusive act or omission (Article 6 of the Civil Code in connection with Article 232 of the Code of Civil Procedure) [Borek, Zawistowska 2020, pp. 441-442]. In the above provision, the structure "unless" was used to introduce the facilitation of proof. Both the doctrine and the jurisprudence assume that this term expresses the legal presumption. A different view is also presented, according to which the term "unless" only affects the distribution of the burden of proof [Janiszewska 2005, p. 194], derogating from the principle of Article 6 of the Civil Code, while the legal presumption leads to the establishment of the facts described in its

conclusion. The mechanism of operation of the legal presumption is different from the construction "unless" in which it cannot be indicated that *ipso iure* comes to the establishment of certain facts in connection with the establishment of other facts [Andrych-Brzezińska 2015, p. 282 et seq.]. Such constructions are called "doubtful" legal presumptions in the literature [Dolecki 1998, p. 154 et seq.]. In view of the-above, it can be assumed that in the provision of Article 50, Paragraph 1, the position of the traveller is facilitated to the extent that the legislator has released him from the obligation to prove that the lack of conformity was not caused by his/her exclusive act or omission. The phrase "unless" in such a case causes the opposing party to be allowed to produce favourable legal effects from proving the circumstances described after this term that the lack of conformity was caused by the exclusive act or omission of the traveller. The burden of proof here lies on part of the tour operator [Kryla-Cudna 2019, p. 1646]. In order to settle the case for the benefit of the traveller, it is sufficient that the organiser will not meet the burden of proof and will not prove that the lack of conformity was caused by the traveller's exclusive act or omission. The presumption that the lack of conformity was not caused by the traveller's exclusive act or omission is not necessary. The mere determination of a different distribution regarding the burden of proof may be considered sufficient to protect the traveller. The court, determining the outcome of the evidence proceedings, shall conclude that the tour operator has not proved that the lack of conformity was caused by the traveller's exclusive act or omission.

According to literature on the subject matter, in the case a traveller proves the damage and causal relationship, it is presumed that the non-performance or improper performance of the obligation is a consequence of circumstances for which the tour operator is responsible. The organiser shall bear the burden of proof to the contrary. He would have to prove that the damage was caused by reasons for which s/he is not responsible [Nesterowicz 2018, p. 1179-1180].

The provision of Article 50, Paragraph 3, concerns the right of the traveller to compensation or reparation. The editors of the provision indicate that it contains a rule of burden of proof distribution, according to which the burden of proof in the scope of the traveller's or third party's liability for the lack of conformity or that it was caused by unavoidable and extraordinary circumstances rests with the tour operator.

The above regulations include facilitations of proof which strengthen the legal situation and protection of the traveller. These provisions implement Article 14, Paragraphs 1-3 of Directive 2015/2302, which regulates price reduction and compensation for damages. It provides that *Member States shall ensure that the traveller is entitled to an appropriate price reduction for any period during which there was lack of conformity, unless the organiser proves that the lack of conformity is attributable to the travel-*

ler. The traveller shall be entitled to receive appropriate compensation from the organiser for any damage which the traveller sustains as a result of any lack of conformity. Compensation shall be made without undue delay. The traveller shall not be entitled to compensation for damages if the organiser proves that the lack of conformity is: a) attributable to the traveller; b) attributable to a third party unconnected with the provision of the travel services included in the package travel contract and is unforeseeable or unavoidable; or c) due to unavoidable and extraordinary circumstances. The provisions of Article 50, Paragraph 3, Items 1 and 2 shall be deemed to be inconsistent with Directive 2015/2302 [Cybula 2018]. The provisions of the Act, contrary to Directive 2015/2302 providing for a maximum degree of harmonisation, more favourably to the travellers narrow the scope of cases that justify a refusal to pay compensation or reparation for the lack of conformity [Ambrożuk 2019, p. 146]. Therefore, it is not enough for the tour operator to prove the circumstance that is the cause of the damage objectively results from the act or omission of the traveller or a third party, and it is necessary to prove the subjective premise in the form of the fault of these persons. In the case of proof of fault, it is necessary to prove the unlawfulness of the act or omission, because the unlawfulness is the basic premise of fault (cf. judgment of the Supreme Court from 8 February 2018, file No. II CSK 165/17). In Directive 2015/2302, the possibility for the tour operator to discharge its liability is not conditional on proving the fault of the traveller or the third party, which may prove difficult in practice. The tour operator only has to prove that the lack of conformity can be attributed to the traveller or the third party. Therefore, in the subject-literature, it is postulated to change the above regulations [Cybula 2020, pp. 1082-1083].

Evidence facilitation related to the increase of liability of the travel entrepreneur and travel agent

In accordance with the provision of Article 32, Paragraph 3 of the Act on package travel, *a travel entrepreneur who is not entered in the register, or acting as a travel agent in relation to travellers is deficient in ways referred to in Paragraph (1), shall be regarded as a tour operator operating without being entered in the register as required.* In the literature on the subject, it is indicated that this provision contains three prerequisites for the responsibility of the travel entrepreneur: lack of entry in the register, act towards travellers as a travel agent, commit the infringements referred to in Paragraph 1 [Borek, Zawistowska 2020, p. 279]. The travel entrepreneur's infringements referred to in Paragraph 1 of the aforementioned article are as follows: 1) failure to clearly indicate the appropriate tour operator the entrepreneur represents in the contracts concluded with travellers; 2) con-

cluding package travel contracts for a travel entrepreneur who, despite being required to do so, has not been entered in the register or has no financial security against insolvency; or 3) operating without a valid agency agreement or acts beyond its scope; or 4) fails to comply with the information obligations in respect of travellers, as referred to in chapter 6 of the Act. The cumulative fulfilment of the aforementioned three prerequisites allows the travel entrepreneur to be recognised as the tour operator performing the activity without the required entry in the register. This regulation increases the responsibility of a travel entrepreneur, because it makes it equal with the responsibility of a tour operator, which is stricter than the responsibility under the general rules, and moreover, it refers to the situation of conducting business activity without the required entry in the register.

Paragraph 4 of the above article provides that *a travel agent selling or offering (for sale) packages created by a tour operator without a registered office in the territory of the European Economic Area or of a state referred to in Article 8(2), shall be subject to obligations referred to in Article 7(1)(1)-(4) and Article 7(2), Article 13(1) and Articles 48-52, unless the agent proves that the tour operator meets the conditions laid down in those provisions. A travel agent who fails to meet those obligations shall be regarded as a tour operator operating without being entered in the register as required*. In accordance with this regulation, a travel agent shall be liable to the traveller by virtue of concluding the package travel contract under the liability regime provided for the tour operator.

Facilitations of proof contained in these provisions consist in adoption of a legal fiction by the legislator, which is the fact that if the conditions specified therein (prerequisites for liability of the travel entrepreneur) are complied with and the travel agent evades the performance of the obligations specified in the provision, the travel entrepreneur and the travel agent should be deemed as the tour operator performing the activity without the required entry in the register, with all the consequences arising there-from.

The province marshal is obliged to issue to such a travel entrepreneur and travel agent an administrative decision stating that the business activity has been conducted without the required entry in the register and banning it for 3 years [Borek, Zawistowska 2020, p. 280-281]. The province marshal shall enter data in the Central Records of Tour Operators and Entrepreneurs Facilitating Linked Travel Arrangements (hereinafter: Records) and modify as well as remove entries from the Records based on an administrative decision ascertaining that a tour operator or entrepreneur facilitating linked travel arrangements conducts activities without being entered in the register as required, and prohibiting the conduct of the activities of a tour operator or entrepreneur facilitating linked travel arrangements for three years (Article 27, Paragraph 7, Item 9). The Records catalogues shall be maintained of travel entrepreneurs who were found to perform activities

without being entered in the register as required and prohibited from conducting the activities of a tour operator or entrepreneur facilitating linked travel arrangements for three years (Article 28, Paragraph 1, Item 2). The grounds for inclusion in the above-mentioned catalogue shall be an effectively served administrative decision by the province marshal ascertaining that the entrepreneur conducts activities without the required entry in the register and prohibiting the entrepreneur from performing activities that are subject to entry in the register (Article 28, Paragraph 2, Item 2). With the pressure of administrative sanctions and elimination of entities that do not provide adequate protection to travellers, the above provisions are intended to ensure the safety of travellers on the tourism services market, as the latter are in a weaker position than the entrepreneurs operating in that market (Gnela 2018). In addition, the Act provides for criminal sanctions for a person who conducts the economic activities of providing packages or facilitating linked travel arrangements, without the required register entry. It shall be liable to a fine, restriction of liberty or up to three years of imprisonment (Article 59, Paragraph 2). The object of protection in the above provision is public order. A threat to public order in this respect may consist in failure to comply with provisions governing the principles of conducting the economic activities of providing packages or facilitating linked travel arrangements (Kurzępa 2020).

Evidence facilitation related to the submission of requests and complaints

According to the provisions of Article 51, Paragraphs 1-3: *The traveller may address messages, requests or complaints in relation to the performance of the package directly to the travel agent through which it was purchased. The travel agent shall promptly deliver the messages, requests or complaints referred to in Paragraph (1) from the traveller to the tour operator. A message, request or complaint submitted on a given day to the travel agent shall be considered as submitted on that day to the tour operator*. These provisions implements in national law Article 15 of directive 2015/2302, under which *Member States shall ensure that the traveller may address messages, requests or complaints in relation to the performance of the package directly to the retailer through which it was purchased. The retailer shall forward those messages, requests or complaints to the organiser without undue delay. For the purpose of compliance with time-limits or limitation periods, receipt of the messages, requests or complaints referred to in the first subparagraph by the retailer shall be considered as receipt by the organiser*. The provision of Article 51, Paragraph 3 contains a legal fiction which strengthens the legal protection of the traveller by considering that the request or complaint

made to the travel agent was made to the tour operator. The deadline for the tour operator to consider the applications indicated in this provision should be counted from the date of their submission by the traveller to the travel agent [Borek, Zawistowska 2020, p. 465]. This solution is of a guarantee character and provides certainty of turnover to determine whether the deadline for making applications has been complied with [Osajda 2020].

Evidence facilitation related to the recognition of a complaint as justified – prior legal status

On the basis of the previously binding Act from 29 August 1997 on tourist services, the provision of Article 16b, Paragraph 5 was in force, according to which, if the tour operator did not respond to the complaint in writing within 30 days from the date of its submission, and if the complaint was submitted during the tour within 30 days from the date of the end of the tour, it is considered that the complaint was justified. This provision contained a favourable rebuttable presumption for the traveller that the complaint was considered justified in the case of lack of response from the tour operator within the period specified in this provision.

It is pointed out that there is no uniform doctrinal opinion on the nature of such complaint proceedings and consequences of failure to consider a customer complaint by its addressee within the statutory period. It is assumed that such regulations construct an irrebuttable legal fiction of recognising a complaint, or a rebuttable legal presumption complaint recognition by an entity, or a factual presumption of recognition of a complaint, or improper recognition of a demand included in a complaint that has not been considered. The Supreme Court, on the grounds of the analogous Article 8 of the Act from 5 August 2015 on the handling of complaints by financial market entities and the Financial Ombudsman, adopted a line of interpretation in which a construction such as that in this provision results in a departure from the general rules of proof (Article 6 of the Civil Code), which should be regarded as beneficial to the claimant client. A customer asserting a claim covered by a complaint that was not investigated within the time limit will only be required to prove that s/he filed a complaint within the meaning of the Act that was not investigated within the statutory time limit. In contrast, the burden of proving the non-existence of grounds for granting the customer's claim is on the defendant. It is unreasonable to assume that if a complaint is not resolved within the statutory period and a dispute arises there-from, the court proceedings would be reduced to an "automatic" granting by the court of the customer's demand contained in the complaint. Depriving the entity of the possibility to present factual claims, allegations and evidence aimed at establishing the material truth constitutes a violation of

the constitutional principle of equality of parties in court proceedings and limitation of the entity's constitutional right to a court. In fact, it excludes the common court's control of the legitimacy of the clients' claims, including the non-consumer client, regardless of their factual and legal basis and in isolation from the civil-law relationship between the parties (cf. the resolution of the Supreme Court from 13 June 2018, file No. III CZP 113/17).

The new statutory regulation lacks the-above provision, which is because its retention would be inconsistent with Directive 2015/2302, which adopts the method of maximum harmonisation. It could seem that this regulation has been replaced by the presumption of acceptance of the complaint, which is binding under consumer law. Nevertheless, Article 7a, Paragraph 2 of the Act from 30 May 2014 on Consumer Rights (if the trader has not responded to the complaint within 30 days from the date of its receipt, s/he is deemed to have acknowledged the complaint) does not apply to the package travel contract due to the exemption contained in Article 3, Paragraph 1, Item 8 of the Act. This change has been negatively assessed in the literature because it worsens the legal situation of the traveller [cf. Cybula 2018, p. 142]. However, given the nature of the omitted provision, it must be emphasized that in light of the interpretation adopted by the Supreme Court, which one must agree with, this change is not of fundamental importance for the traveller.

Evidence facilitation related to the setting of a reasonable time limit for the submission of the notice regarding the transfer of rights and assumption of duties

Without the consent of the tour operator, the traveller may transfer all the rights the traveller has under the package travel contract to a person meeting the conditions for participation in package travel if, at the same time, that person assumes all the obligations arising out of that contract (Article 43, Paragraph 1). *The transfer of rights and obligations referred to in Paragraph (1) shall be effective in relation to the tour operator if the traveller gives the tour operator reasonable notice thereof on a durable medium. Notice given at the latest, seven days before the start of the package, shall in any event, be deemed reasonable* (Article 43, Paragraph 2). The above provisions implement in Polish law Article 9, Paragraph 1 of Directive 2015/2302, according to which *Member States shall ensure that a traveller may, after giving the organiser reasonable notice on a durable medium, before the start of the package, transfer the package travel contract to a person who satisfies all the conditions applicable to that contract. Notice given, at the latest, seven days before the start of the package shall in any event be deemed reasonable.* In view of the regulation presented above, the traveller shall notify the tour operator of the transfer of rights and obligations under the contract within

a reasonable period of time before the start of the tour. Phrase "reasonable term" has no legal definition [Borek, Zawistowska 2020, p. 372]. In accordance with the view expressed in literature on the subject, the assessment of the reasonable term should be made taking into account the circumstances of a given case, in particular, the scope of changes and organisational activities that involve changing the traveller [Osajda 2020]. The statutory regulation contains legal fiction, according to which in each case, and thus, regardless of other circumstances, a notification submitted no later than seven days before the start of the package, is made within a reasonable time. This solution is also of guarantee nature and provides legal protection for the travellers against the operator questioning the possibility of transferring the rights and obligations from the package travel contract by any interpretation of an undefined term.

Evidence facilitation in the Act on Hotel Services

In accordance with the provision of Article 35, Paragraph 4 of the Act on Hotel Services, *it is presumed that in facilities where hotel services are provided without prior notification to the appropriate records referred to in Article 38, the sanitary requirements referred to in Paragraph 1, Item 2 are not complied with*. The provision of Article 35, Paragraph 4 of the Act on Hotel Services was supplemented by Article 18 of the Act from March 2nd 2020 on special solutions connected with prevention, counteraction and combating COVID-19, other infectious diseases and crisis situations caused by them (Journal of Laws of 2020, Item 374), amending the Act on Hotel Services as of March 8th 2020, and then, amended by Article 19 of the Act from March 31st 2020, on the amendment of the Act on special solutions connected with prevention, counteraction and combating COVID-19, other infectious diseases and crisis situations caused by them and some other acts (Journal of Laws 2020, Item 568), amending the Act on Hotel Services as of March 31st 2020.

In its original wording, this provision was of the following verbal form: "*it is considered that in the facilities where hotel services are provided, without prior notification to the appropriate records referred to in Article 38, the sanitary requirements referred to in Paragraph 1, Item 2, are not complied with*". The amendment replaced the phrase "*it is considered*" with the phrase "*it is presumed*". This change, in accordance with the explanatory memorandum to the Act (print No. 299), concerned the legal presumption existing in the previous version of the Act and comprised a linguistic correction amounting to the "literal" expression of the legal presumption.

In accordance with the intentions of the legislator, this provision was intended to introduce a presumption that in facilities where hotel services are

provided, and which were not reported to the relevant register the sanitary requirements, are not complied with. As indicated in the explanatory memorandum to the Act, the introduction of such a presumption was to "enable the immediate reaction of the sanitary services in the event of a suspicion that a person infected with the virus may be present in the facility and facilitate immediate remedial action". This presumption allows for the assumption that the sanitary conditions for the provision of hotel services in an unregistered facility are not complied with, which enables a quick reaction of the relevant services. If the hotel facility, despite not being registered in the appropriate records, complies with the sanitary requirement, this fact should be proved by rebutting the legal presumption. Until then, the relevant public authorities may treat a given hotel facility that has not been entered in the register as not meeting the sanitary requirements [Krej 2020].

The change of the wording in the amended provision should be assessed as unnecessary. In legal science, the nature of presumptions is also attributed to provisions of law, which do not use the term "*it is presumed*" but phrases of similar meaning, e.g., "*it is considered*", "*is deemed*". An example of such a presumption is the provision establishing the presumption of innocence, i.e., Article 5, Paragraph 1 of the Criminal Procedure Code, according to which the accused is deemed innocent until proven guilty and which is established by a final judgment. In this provision, the functor-creating presumption is not expressed by the term "*it is presumed*". It is not necessary for a presumption to be accepted that the redaction of the provision contains a classical construction of the legal presumption, in which the basis of the presumption is linked to its conclusion by means of this functor. In this regard, the content of the provision is decisive, and not its form [Dolecki 1998, p. 159]. A different view has also been expressed in legal literature, according to which the term used in the original wording of the provision is not applied to introduce a solution appropriate to the legal presumption, thus, this change being desirable [Krej 2020].

It is important from the point of view of analysing the above provision to distinguish between a legal provision and a legal norm [Ziembiński 1960, p. 105 et seq.; Ziembiński 1980, p. 149 et seq.], and to state that legal presumptions are legal norms [Dolecki 1998, p. 137]. Legal norms have the same structure (syntactic structure), which is justified, *inter alia*, by the need to maintain the uniformity of the legal system, which is a set of monogenic elements [Bogucki, Choduń 2013, p. 72]. The elements of the legal norm structure are: addressee, circumstances, injunction or prohibition and behaviour (A, C, i/p, B). In order to determine the sense of a legal norm expressed in a provision, it is necessary to read the provision at a level of disposition by recreating a norm-shaped expression from it. In the legal text – at the descriptive level - the provision is in the form of a grammatical declarative sentence [Zieliński 2012, p. 372]. If one were to translate the verbal

shape of the analysed provisions into a normative expression, it would be in the following form: "*Public authorities, in the circumstances of failure to notify the facility, at which the hotel services are provided, as referred to in Article 38, are ordered to consider that the sanitary requirements from Paragraph 1, Item 2, are not complied with at that facility*". Thus, regardless of whether the provision would contain the term "*it is considered*" or "*it is presumed*", the recreated normative expression would contain an order for "*consideration*". The legal presumption introduced by the above provision is a formal presumption, which constitutes an order for a particular statement to be considered. The provisions that establish formal presumptions order the consideration of a certain fact until a different fact is proved [Ziembiński 2006, p. 221]. These presumptions belong to the claims that do not require any evidence-based activities [Morawski 1981, p. 49, cited after: Andrych-Brzezińska 2015, p. 259].

Conclusions

In the regulation of package travel, there are legal presumptions and legal fictions that strengthen the legal protection of travellers. These provisions contain substantive and procedural solutions that facilitate the assertion of claims (cf. Szot 2017). In the case of evidence facilitation related to the responsibility of the tour operator, the procedural protection of the traveller is ensured by determination of distributing the burden of proof in favour of the traveller (the obligation of the tour operator to prove that the lack of compliance was caused by the exclusive act or omission of the traveller), as well as the introduction of a presumption of non-performance or improper performance of the obligation resulting from circumstances for which the tour operator is liable. Evidence facilitation related to increase the liability of travel entrepreneur and travel agent (legal fiction of recognising a travel entrepreneur and travel agent as a tour operator conducting activity without the required registration) is to ensure the safety of travellers in the travel services market by eliminating entities that do not provide travellers with proper protection. On the other hand, evidence facilitation related to the submission of requests and complaints directly to the travel agent, through which the package was purchased, strengthens legal protection of the traveller by introducing a guarantee concerning the addressee of such requests (legal fiction consisting in considering that the request or complaint submitted to the travel agent be submitted to the tour operator). In principle, these regulations should be evaluated positively. However, the implementation is not always in line with EU law (Article 50, Paragraph 3, Items 1 and 2). Evidence facilitation related to the setting of a reasonable time limit for the submission regarding the notice of rights' transfer and as-

sumption of duties from the package travel contract protects travellers by providing a guarantee of transfer of rights and obligations by the traveller within a specified period of time (legal fiction concerning the recognition of a reasonable time period). The regulation of hotel services contains a legal presumption to protect tourists from COVID-19 (assumption that a hotel facility which has not been entered into the registry does not meet sanitary requirements, allowing appropriate services to react). For the introduction of the legal presumption, the legislator uses not only the expression "*it is presumed*" but also phrases with similar meaning, such as "*it is considered*", "*is deemed*". The content of the provision is decisive here.

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THE POLISH SAFETY MODEL FOR CHILD AND YOUTH TOURISM – LEGAL ASPECTS

Krzysztof Sondel*

Abstract

Purpose: Analysis of the legal solutions adopted in Poland relating to the ensuring safe practice of various forms of tourism during the school year when the school acts as a tour operator and in the period free from classes, when recreation is organised by entities conducting economic activity.
Method: The implemented methods is critical analysis of legal acts and literature on the subject.
Findings: In the study, the necessity is shown to modify the adopted legal solutions in order to clarify the responsibilities of the school headmaster, in terms of ensuring the safety of school trip participants by teachers, depending on the type of tourist activity, especially in relation to active tourism. On the other hand, the recreation of children and adolescents is based on the provision of appropriate staff with the appropriate authorisation, and on the control activities of state bodies and relevant services.
Research and conclusion limitations: Analysis of specific legal regulations and selected general regulations, which indirectly relate to the safety of organizing activities when it comes to children and youth tourism.
Practical implications: In the research, it has been shown that the school principal, as the entity responsible for ensuring the safety of students during events and excursions organised by the school, has to rely on too general provisions of the legislation, especially with reference to the number of teachers in relation to the number of students under their direct care, without taking into account the particular form of excursion within the framework of active tourism.
Originality: The article is an attempt to synthesize the problem of the model of safety adopted in Poland for school tourism and recreation of children and adolescents in the period free from classes.
Type of work: In the article, the results of theoretical research are presented.

Keywords: law, children and youth tourism, safety, organisers of school trips, organisers of leisure activities.

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Introduction

Tourism plays a very important role in shaping the personality of young people. This is especially true for active tourism [see Merski, Warecka 2009, pp. 11-39][1], which stimulates interests and teaches how to actively spend free time. In Poland, it has always been treated as an important factor supporting the didactic and educational process [Sadoń-Osowiecka 2010, pp. 159-160]. Unfortunately, the SARS-Cov-2 pandemic caused the closure of schools, lack of contact with peers through the introduction of distance learning, including physical education classes, lack of opportunities to use other forms of physical activity in extra-curricular classes, and a ban on travelling not only within organised trips, but even individual trips. As a consequence, this has led to very serious social and health consequences, especially for the younger generation.

There is no doubt that in the current situation, active tourism will also be a serious instrument in reintroducing the young generation to the pre-pandemic state. During the school year, schools and their teachers will play a special role in this respect. They will have to restart school special-interest groups, the task of which is to popularise active leisure time. This challenge will also have to be met by school authorities, above all, by local government units (*gminas* and *poviats* running public primary and secondary schools) and entities running non-public schools (associations, foundations, etc.). They are directly responsible for ensuring safe and hygienic conditions of learning, upbringing and care[2]. Before the pandemic, the activities of local authorities included a number of initiatives aimed at tourist activation among students of schools located in their area, regardless of their status (public and non-public) through the financial support provided by various programmes concerning the activities of school special-interest circles, including those active in the field of active tourism [Sondel 2017, pp. 72-76].

The aim of this article is to analyse the Polish model of safety in the tourism of children and adolescents in light of existing legal solutions. The Constitution of the Republic of Poland states that the Republic of Poland (...) provides (...) security to citizens... (Article 5)[3]. The issue of security can

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[1] The concept of "active tourism" has been adopted for the purpose of this article, as including "qualified tourism", "sport tourism" and "sport" in its scope. The Act from 25 June 2010 on sport (consolidated text i.e. Dz. U. [Journal of Laws] 2020, item 1133) defines sport as: all forms of physical activity which, through ad hoc or organised participation, affect the development or improvement of physical and mental fitness, the development of social relations or the achievement of sporting results at all levels – Article 2(1).

[2] Article 10(1)(1) of the Act from 14 December 2016 Education Law (i.e. Dz. U. 2021, item 910, as amended). Hereafter referred to as: A.P.C.

[3] Dz. U. 1997, No. 78, item 483, as amended.

be considered on many levels, among others, as prevention against threats to goods protected by law, at the time of the violation of a given good or *post factum*, i.e. in the situation of its violation and as a consequence of repairing the damage [Czapska 2004, pp. 7-9]. In the context of the following considerations, the preventive function of safety comes to the fore, namely special provisions relating to:

1. tourist activities organised in various forms by schools during the school year, as part of supporting the didactic and educational process[4];
2. recreation for children and youth in the time free from classes - during winter vacations (2 weeks), summer vacations (2 months), as well as spring and winter holiday breaks[5].

The adopted legal system clearly distinguishes the above issues and regulates them in separate executive acts, which is why, in this article, they will be discussed in separate chapters.

In turn, the last chapter is devoted to general regulations related to ensuring the safety of tourism for children and young people, which relate only indirectly to the topic of this article. This particularly applies to the organisation of school field trips, recreation or practicing various forms of active tourism in the mountains, water, going hiking and cycling, and including the movement of minors on the roads.

In turn, the final chapter is devoted to general regulations related to ensuring the safety of tourism for children and young people, which relate only indirectly to the topic of this article. In particular, this applies to the organisation of school trips, recreation or practice of various forms of active tourism in the mountains, water, going hiking and cycling, and including the movement of minors on the roads.

Organisation of school field trips

The educational system aims to provide conditions for the development of pupils' interests and talents through the organisation of extracurricular and out-of-school activities, as well as shaping social activity and the ability to spend leisure time in a productive manner (Article 1(20) of the Act on Education). Thus, schools are obliged to undertake activities in the area of

[4] The organisers can be not only schools but also tourism organisers, sports clubs, scout organisations, etc.

[5] As stipulated in the Regulation of the Minister of National Education from 12 August 2017 amending the Regulation on the organisation of the school year (Dz. U. 2017, item 1603, as amended), the start of classes begins on 1 September (or the first weekday thereafter) of a given year and ends on the first Friday after 20 June of the following year. Summer vacation ends on August 31.

extracurricular activities (e.g. outings off the school premises or field trips as part of supplementing the educational process), but also to support the activities of school special-interest groups and organise tourist as well as sightseeing events. As it has been emphasized many times in the literature that a trip is superior to the class-room system due to the fact that, in addition to its cognitive and educational values, it also has health aspects, especially when it is organised in a natural environment (mountainous areas or located by the water) [Kugiejko 2019, pp. 33-34].

As it follows from the provisions of the aforementioned Act, the school headmaster is responsible for ensuring the safety of students and teachers during classes organised by the school (Article 68 (1)(6) of the A.P.C.) and creates conditions for the activity of associations and other organisations at school, in particular, scouting (Article 68(1)(9) of the A.P.C.). His/Her duties include facilitating the activity of special-interest groups and other entities, the statutory purpose of which is to promote active forms of tourism and sightseeing[6].

In accordance with the provisions of the Regulation of the Minister of National Education and Sport from 31 December 2002 on safety and hygiene in public and non-public schools and institutions[7], the principal is obliged to ensure safe and hygienic conditions for the time spent at school, as well as participation in classes organised by the school outside the premises belonging to this unit. In this case, we are taking about students going outside the school premises during or after the lessons and not about trips organised by the school. This is clear from the provisions of the regulation in question[8]. This is related to their physical, social and cultural activation, e.g. participation in state ceremonies, cultivation of local customs and traditions, cleaning up the land or implementation of educational programmes (learning about the history or nature of the nearest area), promotion of physical culture in the form of participation in sports competitions, etc. It may also be an organised class field trip supervised by a teacher, e.g. to a cinema, theatre or museum in another locality. It is the duty of the headmaster or the person authorised by him/her to keep a register of group outings of pupils, which includes the date, place and time of outing or assembly of pupils, purpose or programme of the outing, place and time of return, names and surnames of minders, the number of pupils signed by minders and headmaster. This form of supporting the teaching and educational process should be considered the simplest to organise, as it does not require compliance with

[6] It should be noted that the indication by the legislator of associations and other organisations, in particular, scouting organisations, refers to organisations operating on a non-profit basis, thus, this does not concern tour operators who conduct business activities.

[7] I.e. Dz. U. 2020, item 1166. Hereinafter referred to as: Regulation 2002.

[8] This is clearly stated in § 2a of Regulation 2002, which states that it does not apply to tours referred to in the regulations issued pursuant to Article 47(1)(8) of the A.P.C.

a number of formal requirements which are necessary in the case of organising events or field trips (§2 of Regulation 2002).

Critical evaluation should be given to the provisions of the regulation relating to the practice of sports and tourism by children and youth. When organising classes, events or trips outside the school, the number of supervisors and the manner of organising the care should be determined in accordance with the age, psychophysical development, health condition and possible disability of the persons entrusted to the care of the school or centre, as well as the specific nature of the classes, events and trips and the conditions in which they will take place. The above criteria are also taken into account when establishing the programme of activities (§32(1-2) of Regulation 2002). The content of this provision is very general and certainly insufficient to ensure an adequate level of safety. This puts the headmaster in a very difficult position, because when giving his/her consent for a given event or excursion, s/he approves the number of supervisors per group of pupils without the possibility of basing himself/herself on clear criteria[9]. This also has significant implications in terms of his/her liability for accidents during the event or trip. Previous legal solutions clearly defined the maximum number of participants for which there could be one guardian, depending on the specific form of the trip. It seems fully justified to postulate to the Minister of Education to clarify these issues in an amendment to the discussed regulation or in a new act on organising sightseeing and tourism by public kindergartens, schools and institutions.

According to further provisions of the regulation, it is unacceptable to organise trips during thunderstorms, snowstorms or ice-cold weather (§33(2) of Regulation 2002) and to use boats or canoes during strong winds (§36 of Regulation 2002). Furthermore, floating equipment (boats, canoes) that have to be equipped with rescue equipment may only be used by persons who have been trained in their use and in the use of the rescue equipment (§35(1-2) of Regulation 2002). It follows that prior to the commencement of a school event or excursion, all participants should be trained by a person having appropriate instructor or trainer qualifications. If the specifics of the trip require it, the participants should be made aware of the rules of a safe stay by water. Persons under the supervision of the school may swim and bathe only in bathing and swimming pools as defined in

[9] See Ordinance of the Minister of Education and Higher Education and the President of the Central Committee of Physical Culture and Tourism from 12 July 1969 on tourism and sightseeing trips for school pupils (Dz. Urz. [Official Journal] MOiSW 1969 r. No. B-9, item 78), which in Annex 1, is regulated in great detail regarding, among others, the types of trips organised by schools, the possibility of pupils' participation in trips depending on their age and prior fitness, and above all, the required number of guardians per pupil group. In turn, the Ordinance of the Minister of Education from 12 May 1983 on school sightseeing trips (Dz. U. 1983, No. 5, item. 30) was less detailed, but nevertheless, retained the provisions on the minimum number of supervisors for participants, depending on the type of trip.

the regulations concerning the safety of persons staying at water areas[10]. Swimming lessons may only take place in specially-designated and equipped swimming areas and under the constant supervision of a lifeguard and a supervisor from the school or centre (§34(1-3) of Regulation 2002). This provision should be regarded as correct, as at least two persons (a lifeguard and an attendant) are required to supervise children and youth. It is the guardian's responsibility to provide a lifeguard to supervise the group.

However, detailed provisions on the organisation of sightseeing and tourism by schools in the form of excursions are contained in the Regulation of the Minister of National Education from 25 May 2018[11], which was issued on the basis of Article 47(1)(8) of the A.P.C. Schools may organise sightseeing and tourism for pupils during the school year as part of didactic and educational or caring activities (§1(1-2) and §3 of Regulation 2018). To this end, they may co-operate with other entities that, in the scope of their statutory activities, aim to popularise sightseeing and tourism. Such organisations are primarily the Polish Tourist and Sightseeing Society (PTTK), scouting organisations, e.g. the Polish Scouting Association (ZHP) and the Scouting Association of the Republic of Poland (ZHR)[12] and student sports clubs, created under the Act on sports.

The purpose of organising sightseeing and tourism by schools is, in particular: to promote a healthy lifestyle and physical activity, and to increase physical fitness, improve the health of students coming from environmentally-vulnerable areas, to counteract risky behaviours (among others, as part of universal prevention) and to learn the principles of safe behaviour in various situations (§2 of Regulation 2018).

Sightseeing and tourism are carried out as part of school, extracurricular and out-of-school activities. The provisions of the regulation provide for three types of trips organised in the country or abroad, namely:

1. field trips – initiated and implemented by teachers in order to complement the kindergarten education programme or the curriculum in one or more subjects;
2. sightseeing and tourist excursions of interdisciplinary nature, the participation in which does not require the pupils to be physically prepared or to have the ability to use specialised equipment. The trips are organised in order to acquire knowledge of the surrounding environment and the acquire the skills to apply this knowledge in practice;
3. specialised sightseeing and tourist excursions, the participation in which requires students to be physically prepared have the ability to

[10] These are discussed below.

[11] Dz. U. 2018, item. 1055. Hereinafter referred to as: Regulation 2018.

[12] It is worth noting here that scouting instructors are treated as people with appropriate rights to conduct activities and care for recreation participants.

use specialised equipment, and the programme of the excursion provides for vigorous tourist activity, physically-demanding or long-distance tourist trails (§4(1,2) of Regulation 2018).

The decision to approve the organisation of an excursion is made by the principal, via approving the excursion charter[13] and appointing the excursion leader and chaperones from among the pedagogical staff of the school (§6 of the Regulation 2018)[14] [see Zawistowska 2017, pp. 84-89].

If it is justified, s/he may appoint a person who is not a pedagogical employee as a chaperone (§9(1-2) of Regulation 2018). Both the organisation and the programme of the excursion must be adapted to the age, interests and needs of the pupils, their health, fitness level, physical condition and skills (§5 of Regulation 2018). This provision should be assessed as critically as the §32(1-2) provision of the Regulation 2002. In connection with the-above, schools have developed regulations on the organisation of events or excursions, which include detailed provisions related to the participation of students, e.g. with disabilities and medical contraindications [Haberko 2017, pp. 178-181], the number of guardians per participants, additional qualifications required from the manager and guardians, depending on the type of event or excursion and forms of sports or active tourism. In view of the-above, it should be stated that, mainly on the basis of the internal regulations in force at a given school, it is the headmaster's responsibility to make the final decision on whether a given trip meets certain requirements in terms of achieving the objectives and whether the number of supervisors and their qualifications are sufficient to ensure the safety of the participants. As mentioned above, it is the responsibility of the principal to decide to give permission for a particular excursion after analysing submitted documentation [Lewandowski 2018][15].

For the participation of students in a trip organised by the school, parents or guardians provide their written consent (§8 of Regulation 2018).

The person directly responsible for ensuring the safety of the participants of a trip is the trip leader who draws up the trip programme and regulations, and determines the tasks of trip leaders in the area of implementing the trip programme, as well as providing care and safety for the stu-

[13] A model excursion card is attached as an appendix to Regulation 2018. It includes a statement by the tour leader and chaperones that they agree to obey safety regulations during the excursion.

[14] Within the meaning of the provisions of Article 4(18) A.P.C., a teaching employee of a school is a teacher, tutor or other pedagogical employee. Qualification requirements for teachers defined by Article 9(1)(1-3) of the Act from 26 January 1982 - Teacher's Charter (i.e. Dz. U. 2019, item 2215, as amended) and the Regulation of the Minister of National Education from 1 August 2017 on detailed qualifications required from teachers (i.e. Dz. U. 2020, item 1289).

[15] Online: www.monitorszkolny.pl (5.05.2021).

dents (§10(1,5) of Regulation 2018). Other duties of the trip leader include: familiarising students, parents and trip supervisors with the programme and the rules of the trip, informing them about the purpose and the route of the trip, supervising in terms of ensuring conditions for full implementation of the trip and compliance with the rules, familiarising students and trip supervisors with the safety rules and ensuring conditions for their observance, supervising the provision of adequate equipment, accessories (including a first-aid kit) for students and trip supervisors, as well as organising and supervising transport, meals and accommodation for trip participants (§10(2-10) of Regulation 2018)[16].

In turn, the tour leader is responsible for supervising the students entrusted to him/her[17]. To this end, the trip leader shall co-operate with the tour leader, with respect to the implementation of the trip programme and observance of the trip regulations. In addition, s/he directly supervises its observance by students, with particular emphasis on safety rules, supervises the performance of tasks assigned to students, and performs other tasks ordered by the tour leader (§8 of Regulation 2018).

School field trips may also be organised outside the country. In such a case, it is the school headmaster's duty to inform the leading authority and the authority in charge of pedagogical supervision of its organisation by providing them with a trip card. On the other hand, the school is obliged to conclude an insurance contract for personal accident insurance (NNW) and medical expenses (KL), and the trip leader or at least one guardian must know a foreign language at a level that allows communication in the destination country or transit countries (§7(1-3) of Regulation 2018). However, if the organisation of a foreign school trip has been entrusted to a tour operator, then the obligation to insure rests with the tour operator. It arises from the provisions of the Act from 24 November 2017 on tourist events and related tourist services (Article 42(7) of the A.P.T.)[18]. In turn, the provisions of the Act from 29 August 1997 on hotel services and services of tour operators and tour guides[19] impose an obligation on the tour operator to provide the client - participant of the event – with care of a person representing the organiser. The scope of such care should be specified in the concluded agreement (Article 30(1)). If a tourist event takes place abroad, it is the tour operator's duty to ensure care by a tour leader who has knowledge of the language commonly spoken in the visited country or the language agreed with

[16] This last task is related to the involvement of students in the organisation and implementation of a given trip.

[17] Pursuant to the provisions of the regulation in question, it is permissible to combine the functions of tour leader and tour leader, provided that the school principal agrees (§12 of Regulation 2018).

[18] I.e. Dz. U. 2020, item 2139. Hereinafter referred to as: A.P.T.

[19] I.e. Dz. U. 2020, item 2211.

the foreign contracting party (Article 31(1)). It should be stated that these provisions do not exempt the tour leader or one of the tour managers from the obligation to know a foreign language. Furthermore, it is clear that the conduct of a given event by a tour leader does not exempt the school from appointing a tour leader and chaperones who provide direct care for the participants (§7(3) of the 2018 Regulations).

The organisation of sightseeing and tourism by schools is related to the Regulation of the Minister of National Education from 29 June 2017 on permissible forms of implementing compulsory physical education classes (P.E.)[20]. This concerns forms of conducting compulsory physical education classes for students of grades 4-8 (4 hours) and secondary schools (3 hours), if it is impossible or significantly hindered due to the existing premises in a given school, e.g. limited capacity of a gymnasium, in relation to the existing needs. The regulation provides for four forms of activities to be chosen by pupils, namely sports, recreational and health activities, dance or active tourism[21]. They may be conducted in division, inter-division and inter-class groups, as well as inter-school groups in the case of school complexes (§2 of Regulation 2017).

The school principal is obliged to prepare a proposal for classes to be chosen by students, which requires agreement with the leading authority and an opinion of the pedagogical council as well as the PTA. It should take into account the students' health needs, interests, achievements in a given sport or physical activity, local conditions, place of residence (advantages of the area enabling the practice of various sport disciplines or given forms of active tourism in the nearest area – mountainous areas, seaside areas, lake districts, etc)[22], sport traditions of the school and staff capabilities (§4(1)(1-5) of Regulation 2017).

With regard to the latter requirement, it should be noted that such classes may be conducted by a physical education teacher other than the one who conducts class-room classes (§1 of Regulation 2017). This limits the headmaster's possibilities in selecting personnel only to teachers of this subject, despite the fact that the school employs teachers teaching other subjects, who are also certified, for example, as mountain guides, scout instructors, instructors of a given sport discipline or who have completed other specialist courses. If the school organises specialised sightseeing and tourist trips as part of existing special-interest groups or student sports clubs (e.g. mountain hiking, canoeing, skiing, cycling, etc.), they can be conducted by teachers with the necessary qualifications referred to in the rules of excur-

[20] Dz. U. 2017, item 1322. Hereinafter referred to as: Regulation 2017.

[21] In the case of underage students, the students' choice of individual activities requires parental consent (§4(2-3) of Regulation 2017).

[22] This primarily applies to specialised sightseeing and tourist trips organised by school special-interest groups.

sions. However, if this is a form of mandatory physical education classes as part of active tourism, then they should be conducted by a P.E. teacher. Such a provision in the regulations is difficult to be considered appropriate because the activities of active tourism are not exclusively within the competence of a P.E. teacher. Many teachers are passionate about various forms of active tourism and are supervisors of various interest groups related to active tourism. In many cases, they are authorised to organise specialised sightseeing and tourist trips. This should be considered a serious limitation of the school headmaster's possibilities within the framework of proposing pupils' participation in active tourism due to staffing problems.

Holidays for children and young people

The right to rest during free time results from the provisions of Convention on the Rights of the Child dated November 20th, 1989[23]. The Constitution of the Republic of Poland stipulates that the Republic of Poland shall ensure the protection of the rights of the child (Article 72(1)) and that public authorities shall promote the development of physical culture, especially among children and youth (Article 68(5)).

Recreation of children and youth is regulated by the Act from 7 September 1991 on the educational system[24] and the Regulation of the Minister of National Education from 30 March, 2016 on the recreation of children and youth[25]. The organisers of recreation can be schools or institutions, tourism organisers, natural persons, legal persons and organisational units without legal personality[26]. The Act specifies that the holiday is aimed at recreation or regeneration of physical and mental strength[27], combined with training or deepening knowledge, developing interests, talents or social skills of children and young people. Among the forms of recreation, the legislator lists camps, half-schools, winter camps, camps or bivouacs (Article 92a(1) and Article 92c(1) of the A.E.S.). As follows from the above-mentioned provisions, recreation may be located in facilities (e.g. summer camps, holiday camps, winter camps) or in the field (e.g. scout camps), and may be ei-

[23] Dz. U. 1991. No. 16, item 71, as amended.

[24] I.e. Dz. U. 2020, item 1327, as amended. Hereafter referred to as: the A.E.S.

[25] Dz. U. 2016 item. 452. Hereafter referred to as: Regulation 2016. It was issued on the basis of the legitimation contained in Article 92t of the A.E.S.

[26] If the recreation is organised for commercial purposes, regardless of the name, it constitutes a tourist event, and its organiser must be entered in the register of tour operators and entrepreneurs facilitating the purchase of related tourist services (Article 22(2) of the A.P.T.).

[27] The recreation lasts a minimum of 2 days. The exception is recreation organised by a school or institution up to 3 days. Then, it is not subject to notification to the school superintendent (Article 92e(1) of the A.E.S.).

ther stationary or based on moving along a certain route (e.g. hiking camps, bushcraft or survival-type events).

In terms of safety, the law obliges the organiser to, first of all, locate the recreation in a hotel facility[28] or an area that meets the requirements for safe and hygienic conditions[29] of recreation, to provide care to participants by persons who have the necessary qualifications to perform specific functions[30] [Piskozub, pp. 100-103], access to medical care[31], adjustment of the recreation programme and activities to the age, interests and needs of the participants, their health condition, physical fitness and skills, safety in the use of water areas and staying in the mountains (Article 92c(2)(1-7) of the A.E.S.).

The basic obligation of the holiday organiser, without which the trip cannot take place, is to report the intention of its organisation to the school superintendent competent for the seat or residence of the organiser[32]. After analysing the submitted documentation, the authority places it in the recreation database[33] or refuses, in the case of irregularities – at the same, time calling for their removal or supplementation (Article 92d(1,3-7) of the A.E.S.)[34]. First of all, it is necessary to obtain a positive opinion from the locally competent district (city) fire-chief of the State Fire Service, confirming that the facility or area meets the requirements of fire safety. Furthermore, the organiser is obliged to ensure proper hygienic and sanitary conditions in hotel facilities (or other facilities where hotel services can be provided) and

[28] Or in another establishment where hotel services may be provided (Article 35 of the A.P.T.). Such a facility may be used only occasionally to provide overnight accommodation, e.g. pilgrim houses, etc. This is especially true for trekking camps, where the accommodation of participants is provided in various facilities and conditions.

[29] The facility or area must meet the fire protection, environmental protection, and hygiene as well as sanitary conditions specified in the regulations on fire and environmental protection, and the State Sanitary Inspection (Article 92c(2)(1) of the A.E.S.).

[30] Recreation staff consists of: recreation managers, tutors and, depending on the type of recreation: coaches and instructors of sports, recreation, cultural and educational animation, language teachers and other people conducting classes during the period of recreation.

[31] In the case of holidays organised on the territory of the Republic of Poland, the participants are guaranteed the right to healthcare services financed from public funds and to assistance in the event of an emergency health issues, in accordance with the Act from 27 August 2004 on Health Care Services (i.e. Dz. U. 2020, item 1398, as amended); and the Act from 8 September 2006 on State Medical Rescue Service (i.e. Dz. U. 2020, item 882, as amended). If the holiday is organised abroad, the organiser is obliged to insure the participants against accidents (NNW) and medical costs (KL), unless s/he is a tour operator who is obliged to do so.

[32] A recreation organiser who has not been placed in the recreation database is subject to a fine (Article 96a of the A.E.S.).

[33] The database of recreation is maintained by the minister responsible for education and upbringing by means of an ICT system (Article 92h(1) of the A.E.S.).

[34] If the holiday organiser does not have a registered office on the territory of the Republic of Poland, the intention of organising the holiday is reported to the superintendent in charge of the location of the holiday (Article 92d(2) of the A.E.S.).

in the area where the recreation is organised. In case of organising recreation in the form of bivouac, and thus, in an area without permanent municipal infrastructure, it is obliged to provide a sketch of the development of the area intended for recreation, in particular, the distribution of its individual parts: housing, eating, health care and sanitary facilities. If the recreation is to be if travelling-type, the organiser attaches a map of the route indicating the date and place of accommodation. Detailed regulations on sanitary safety of outdoor recreation are included in the instruction of the Chief Sanitary Inspector from 24 June 2010 on hygienic and sanitary requirements for tent camps[35]. The above-quoted regulations are very detailed, nonetheless, they should be considered as fully justified. They allow the relevant services to inspect the premises where the recreation is to take place in order to ensure safety for the participants.

The second of the above-mentioned requirements concerns the provision of appropriate staff, i.e. people with appropriate qualifications to act as holiday managers and tutors (Article 92c(2)(2) of the A.E.S.).

According to the Act, a holiday manager can only be an adult who has not been punished for committing an intentional crime, has secondary (or secondary school) education, completed a course for holiday managers[36] and has at least three years of experience in teaching and education, or care and educational tasks[37], gained within the last 15 years (Article 92p(1)(1-5) of the A.E.S.). The duties of the manager include, among others, ensuring proper care for the participants of the holiday from the moment of taking them over from their parents until the time of return to their parents again, supervising and observing safe and hygienic conditions, as well as the use of only designated water areas the participants in the presence of a lifeguard and an educator (§5(1)(5-7) of Regulation 2016).

In turn, the recreation supervisor can be a person of legal age, not convicted of an intentional crime, with secondary (or secondary school) education and a completed course for recreation supervisors (Article 92(2)(1,2) of the A.E.S.)[38]. The educator is obliged to take care of the participants organised in a group in terms of hygiene, health, nutrition and other care activities, to ensure their safety and, if the participants use designated water areas, to ensure care in co-operation with a lifeguard (§ 5(2)(7-9) of Regulation 2016).

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[35] The instruction also applies to trekking camps or similar events in which participants spend the night in tents (updated May 2020 and Addendum dated June 3, 2020 due to the COVID-19 outbreak). Online: www.gov.gis.pl (30.03.2021).

[36] This does not apply to persons holding managerial positions in schools and scouting instructors having the rank of at least assistant scoutmaster (Article 92p(4) of the A.E.S.).

[37] The curriculum of the course for the recreation manager is defined in Appendix No. 7 to Regulation 2016 and concerns, among others, the safety and health of participants (including applicable legislation) as well as practical classes related to the administration of medical first-aid with the use of equipment for basic resuscitation procedures.

[38] The criminal record and education requirements are the same as for a recreation director.

In addition to the above-mentioned persons, the recreation staff of the Act includes coaches and instructors of sports, recreation, cultural and educational animation, foreign language teachers and other persons conducting activities depending on the recreation programme and the carried out activities. It is required here to be at least 18 years of age, have at least secondary education (or secondary vocational education), as well as and the knowledge, experience and skills necessary to carry out these activities (Article 92(1)(2a,b) of the A.E.S.).

The organiser of the holiday is therefore obliged to provide care to the participants of the holiday by persons who have the required qualifications and to ensure an appropriate number of tutors in relation to the number of participants. The teacher can take care of a group of participants that does not exceed 20 people. In the case of a group of children under 10 years of age and a mixed group, in which there are children under 10 years of age, the number of participants under the care of one recreation educator cannot exceed 15 people (§4(1,2) of Regulation 2016)[39].

A very important document is the qualification card of the leisure participant, referred to in Appendix No. 6 of Regulation 2016. It contains information about the contact with parents or guardians of the leisure participant, information about his/her special educational needs, in particular, resulting from his/her disability, social maladjustment or threat of social maladjustment and data about his/her health condition, including mandatory immunizations, psychophysical development and diet used, what the participant is allergic to, how s/he tolerates driving, whether s/he takes medication constantly and at what doses, whether s/he wears braces or glasses [Haberko 2017, pp. 170-175]. On this basis, the organiser decides whether to qualify the person for participation in the holiday or to refuse admission due to the impossibility of ensuring their health safety.

If an accident occurs during the holiday, then each person who becomes aware of the incident is obliged to immediately give first-aid to the injured and provide care, and in the case of a health risk – to notify the appropriate emergency services (Article 92L(l) of the A.E.S.). In such a situation, the holiday leader (or an authorised teacher) is obliged to immediately notify the parents of the injured participant (or a person indicated by an adult participant in the qualification card), the organiser of the holiday, the school superintendent (competent for the seat of the organiser or the location of the holiday), the organiser of the holiday, the school superintendent (competent due to the seat of the organiser or the place of location of the holiday),

[39] The provisions of the Regulation allow no more than two disabled or chronically ill persons to participate in a given holiday in a group under the care of one educator (§3 of the Regulation 2016). With regard to the organisation of holidays for children and young people with disabilities, specific provisions apply here, namely Article 60(2) of the A.E.S. and § 4(3) of the Regulation 2016.

the body in charge of the school, the headmaster and the parents council (in case the organiser of the holiday is a school) and in the event of fatal, serious or group accidents - the prosecutor, the state sanitary inspector – in the case of food poisoning, which occurred in the country (Article 92L(2)(1-6) of the A.E.S.). The accident site should be secured until an accident report is drawn up, while the holiday manager is obliged to carry out an accident investigation and to draw up an accident report, which should contain the data of the participant who had an accident (name, surname, home address), the circumstances of the accident, the actions taken in connection with the accident and its consequences, as well as the place and date of drawing up the report and the signature of the person drawing it up (Article 92L(3,4) of the A.E.S.).

The body that is primarily appointed to supervise the recreation organisers in terms of compliance with all legal requirements is the school superintendent, responsible for the location of the recreation. As part of his supervisory duties, s/he has the right to collect and analyse information about the state and conditions of the recreation and to inspect the place of recreation after notifying the organiser. S/he undertakes inspection activities without notice in situations justified by an immediate threat to the health or life of the participants or due to received complaints (Article 92m(1,2) of the A.E.S.). According to the provisions of the Act, recreation may also be controlled by the State Sanitary Inspection (PIS) and the State Fire Service (PSP). These services can apply to the appropriate school superintendent in order to take action in connection with the deficiencies found during the inspection of the recreation area. The school superintendent, ex officio or at the request of the above-mentioned services, orders the organiser to remove the deficiencies within a specified period of time or to immediately relocate the participants to another facility if the deficiencies pose a direct threat to the health or life of the participants, under pain of termination of the recreation. If this is impossible, the superintendent issues an administrative decision on immediate termination of the holiday and orders the organiser to arrange for immediate return of the participants to their place of residence (Article 92n(1,2) of the A.E.S.).

At this point, it is necessary to draw attention to very serious problems related to ensuring the safety of children and youth, namely, counteracting various pathologies (thefts, property destruction) and the use of forbidden narcotic substances (alcohol, drugs, other intoxicants), which are becoming widely available and pose a significant threat to health or even life. This phenomenon occurs in primary and secondary schools not only during the school year, but also during school trips and organised recreation. As mentioned above, the aspect of safety should be understood as preventive actions aimed at limiting the negative effects associated with a given physical activity of the participants of trips or recreation, their stay in a given envi-

ronment and the possibility of taking specific actions on the part of those responsible for their safety. Therefore, the question arises as to within what limits of the applicable law can the tour or recreation leaders and persons directly supervising the participants act in the execution of these duties. If the legislator has imposed an obligation on the above-mentioned persons to ensure the safety of participants, the legal provisions should provide them with appropriate instruments for its practical implementation [Cora 2017, pp. 268-269]. Unfortunately, it should be stated that the adopted legal solutions do not allow them to take specific actions, related to counteracting this type of phenomena [Cora 2017, pp. 270-271][40]. Even in the case of justified suspicion that a participant of a trip or recreational activity possesses drugs or other intoxicating substances and, at the same time, is distributing them to other participants, persons in charge of care do not have the right to search his/her belongings. This removes the possibility of taking immediate action to prevent the other participants of the trip or holiday from coming into possession of such drugs. The question that arises here of whether the guardian of the trip or holiday, who fails to take appropriate action and, as a consequence, the other participants come into possession of such substances, will be held liable. Applying the purposive interpretation, one should agree with the view that in a situation of danger to the life or health of participants, the search of a person's belongings does not constitute an abuse of the law [Cora 2017, p. 272]. A last is to notify the police, whose officers will be able to take appropriate action, while the guardians will not be exposed to the charge of violating the provisions of the Polish Constitution in the form of violation of a participant's personal integrity (Article 41(1)) [Cora 2017, p. 273].

General regulations

As it follows from the above considerations, the main assumptions for the organisation of school field trips and the recreation of children and young people are primarily aimed at contact with cultural and natural values, and, in particular, the possibilities of their use to support the teaching and educational process, the development of interests by students and practicing active forms of tourism. In relation to the implementation of field trips carried out during the school year, it can be noted that cultural and natural values are treated similarly, while the recreation of children and young people is usually organised in the most attractive areas, namely, in the mountains and areas located by water.

[40] The educational law relating to the tourism of children and young people leaves this problem outside the scope of its regulation. In turn, the provisions of criminal law (the Criminal Code and the Criminal Procedure Code), despite granting the teacher the status of a public functionary, do not allow him or her to act in this way.

Therefore, the following Acts apply here:

1. from 28 August 2011 on safety and rescue in the mountains and on organised ski areas[41];
2. from 28 August 2011 on safety in water areas[42].

Safety in the mountains

The first of the mentioned acts imposes an obligation to ensure the safety of persons in the mountains on the minister responsible for internal affairs[43], bodies of local government units on whose territory mountain rescue services are conducted[see more extensively Sondel 2012, pp.142-146], directorates of national and landscape parks located in the area of mountains [see extensively Wolski 2010, pp.77-79], as well as natural persons, legal persons and organisational units without a legal personality conducting organised activity in the mountains in the areas of sport, recreation or tourism.

This obligation particularly consists in marking the areas, objects and devices used for sport, recreation or tourism, establishing the rules of using the given area, object or device, providing entities authorised to perform mountain rescue services with conditions to organise help and rescue people who have had an accident or are the risk of losing their life or health, and in the case of announcing avalanche warnings (Article 3(1,2) of the A.S.M.).

With respect to persons arriving in the mountains, the provisions of the act oblige them to exercise due care in order to protect their own life and health, as well as that of other persons and, in particular, to observe the rules of using the given terrain, facility or equipment, complying with the order and prohibition signs. A very important provision is the obligation to adjust one's activity plans to one's abilities, current weather conditions, weather forecasts, avalanche announcements for a given area and to follow the recommendations and limitations resulting from the announced avalanche danger level and current and forecast weather conditions as well as to use equipment appropriate to the type of undertaken activity, technically fit and in accordance with its purpose and rules of use (Article 4(1-4) of the A.S.M.). Unfortunately, in relation to the mass tourist traffic in the mountains, the above-mentioned regulations are repeatedly violated. The act does not provide any sanctions for non-compliance with its provisions and rescue actions are financed from the state budget (Article 17(2) of the

[41] I.e. Dz. U. 2019, item 1084. Hereinafter referred to as: A.S.M.

[42] I.e. Dz. U. 2020, item 350, as amended. Hereinafter referred to as: A.S.W.

[43] The Minister entrusts mountain rescue tasks to rescue organisations, namely the Mountain Volunteer Rescue Service (GOPR) and the Tatra Mountains Volunteer Rescue Service (TOPR) (Article 17(2) of the A.S.M.).

A.S.M.). Despite the fact that these are very general regulations that do not refer to specific issues related to mountain tourism by children and young people [see in more detail Wolski 2017, pp. 118-122], managers and guardians of trips or recreation are absolutely obliged to observe them. Otherwise, they may be charged with exposing persons under their care to direct danger to life or health (Article 160, §2 Act of 6 June 1997 the Criminal Code)[44].

In view of the-above, it is appropriate to refer to the provisions of the regulations discussed above, concerning the adaptation of the programme of the event to the age and abilities of the participants, their possession of appropriate equipment and the observance of the provisions of Article 4(1-4) of the A.S.M., in order to limit the risks associated with the mountain expedition [see in more detail Wolski 2017, pp. 114-123]. Therefore, there is no doubt that it is the duty of the manager and chaperones to ensure that each participant has the appropriate equipment and gear for moving in the mountains (Article 4(1-4) of the A.S.M.) and to adapt the implemented programme of the mountain excursion to independent factors, including the prevailing weather situation. In practice, it boils down to changing the planned excursion route or even abandoning the departure to the mountains in order not to expose the participants to danger [Górowski 2017, pp. 282-284].

According to the Act from 16 April 2002 on Nature Protection[45], the director of the national park issues regulations in which s/he defines the rules of using and moving in its area. On the basis of analysis of national park mountain regulations in Poland, it has to be stated that organised groups (including children and youth) have to be led by a mountain tourist guide. On the other hand, school field trips that are organised in other mountain areas can be led by a mountain tourist guide, but the final decision remains with the school headmaster or recreation manager.

It should be noted here that the problem of tourist trails still has not been comprehensively resolved by law. Previous laws regulating this issue have been repealed, so there is a legal loophole causing a number of difficulties related to the use of hiking trails. In relation to trails located in national parks or nature reserves, we should dispense no criticism, but in other areas, the situation leaves much to be desired. On the one hand, national cycling routes are being created, allowing to cross the whole territory of the country, and their maintenance has been imposed on local self-governments, which fulfil these tasks in different ways. On the other hand, practically any entity can create a given trail, which does not necessarily have anything in common with a tourist trail in the full sense of the word [see in more detail Sondel 2012, pp. 139-141].

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[44] I.e. Dz. U. 2020, item 1444, as amended.

[45] I.e. Dz. U. 2021, item 1098, as amended.

The discussed act also concerns the issue of recreation organisation at the time of winter holidays, during which ski sports are practiced. The manager of an organised skiing area is responsible for the safety of the persons practising skiing or snowboarding (Article 19(1,2) of the A.S.M.) [see in more detail Sondel 2018, pp. 477-486]. On the other hand, tour or recreation organisers are responsible for the proper development of the rules and regulations and for ensuring their observance by participants. As mentioned above, it is about familiarising them with the rules of safe skiing, their use of technically efficient equipment, and in the case of persons under 16 years of age, a protective helmet, structurally designed for this purpose (Article 29 of the A.S.M.)[46]. In the case of teaching skiing sports, especially downhill skiing or snowboarding, the organiser is obliged to ensure that such classes are conducted by a person who has the appropriate instructor qualifications. If this person is not a member of the recreation staff, then the organiser should use the services of an instructor from the Polish Ski Association (PZN). This is due to its responsibility for the subcontractors (contractors) it entrusts to provide services for the tour or event[47]. In case of an accident, information as to who caused the accident and whether the accident is due to the risk of practicing the given sport or the lack of due diligence of a particular person, will be crucial.

Safety in water areas

The second of the above-mentioned acts concerns the organisation of excursions and recreation in water areas[48]. According to the provisions of the Act, persons staying at these areas are obliged to exercise due care in order to protect the health and life of themselves and others, and, in particular, to observe the rules of using the given area, object or device, comply with the order and prohibition signs, familiarise themselves with and adapt their activity plans to their skills and current weather conditions, use equipment that is appropriate to the type of activity undertaken, is technically operational and in accordance with its purpose as well as rules of use, and imme-

[46] Whoever, having the duty of care or supervision over a person under the age of 16 years, allows this person to practice downhill skiing or snowboarding in an organised skiing area without a helmet designed for this purpose, shall be subject to a fine (Article 45(2) of the A.S.M.).

[47] Act from 23 April 1963 the Civil Code (i.e. Dz. U. 2020, item 1740, as amended) expressly provides here for liability regarding the acts or omissions of subcontractors ("contractors"), unless they are entities professionally engaged in a given activity (Article 429 of the Civil Code).

[48] These include inland waters, coastal waters (up to 1 nm from the shore), bathing waters, places occasionally used for bathing, swimming pools and other objects with an area exceeding 100 m^2 and a depth exceeding 1.2 m (Article 2 of the A.S.W.).

diately inform relevant rescue services of any accident or missing person as well as of any other extraordinary events that may affect the safety of persons (Article 3(1-5) of the A.S.W.).

Those responsible for ensuring safety are the land managers, namely, the director of the national park or landscape park, the director of the area where sport or recreation activities are carried out - a natural person, a legal person or an organisational unit who is not a legal personality conducting activities in this respect. In the remaining areas, the mayor is responsible for safety (Article 4(2)(1-3) of the A.S.W.).

In co-operation with the police and other entities operating in the area, the mayor is obliged to conduct a hazard analysis, identifying places that pose a threat to the safety of persons using the water area for swimming, bathing, sports or recreation. They should be marked and secured. Noteworthy is the necessity of conducting preventative and educational activities on the safety in water areas, which comes down to the awareness of hazards as part of educational activities among children and school children (Article 4(1)(1-4) of the A.S.W.).

The water area manager is obliged to place, in a generally accessible location, information on the rules of using the designated water area, limitations on its use and the manner of notification in the case of accidents, including emergency numbers (Article 5(1)(1-3) of the A.S.W.). In addition, in the case of bathing beaches, swimming pools and other facilities, it is the owner's responsibility to designate an area for those who can and cannot swim, to mark out a paddling pool for children, to ensure permanent monitoring of the designated water area by lifeguards, to create a station for observation of the designated water area, providing rescue and auxiliary equipment as well as signalling and warning devices (visual and auditory), cleaning the surface of the bottom of the area intended for swimming or bathing from any objects that could cause injury or another accident, disseminating the rules of using the designated water area, ensuring the transmission of information on the permissibility or prohibition of using the designated water area (Article 5(2)(1-7) of the A.S.W.).

As mentioned in the previous chapter, the responsibilities of the leisure manager include ensuring that participants use only designated water areas under the supervision of a lifeguard and an educator (§5(1)(4) of Regulation 2016), while the educator is obliged to provide care in co-operation with a lifeguard (§5(2)(3) of Regulation 2016). Therefore, the discussed regulations imply the necessity to inform the lifeguard about the group of children or young people using a given bathing site and to establish rules of co-operation in terms of supervising their safety. Despite the fact that in the ordinance from 2018 on the conditions and manner of organising sightseeing and tourism by public kindergartens, schools and institutions, the legislator does not mention the use of water areas during a school trip, there is

no doubt that both the trip leader and the guardians are obliged to perform analogous actions in terms of ensuring the safety of participants that apply to the recreation staff. This follows from the wording of provisions §10(4) and §11(1-3) of Regulation 2018.

Road safety

Another area of legislation related to the safety of children and young people on school field trips and carrying out recreational activities is the Act from 20 June 1997 the Road Traffic Law[49]. This, in particular, concerns regulations on the transport of children and young people, participation in road traffic as part of bicycle trips and moving on foot in columns.

Pursuant to the provisions of the act, a vehicle carrying an organised group of children or youth under the age of 18 should be clearly marked at the front and rear with yellow square plates having a black symbol with a child. In conditions of insufficient visibility, the plates should be illuminated, unless they are made of reflective material. The driver of such a vehicle is obliged to turn on the emergency lights when children or young people are getting on or off the vehicle in order to signal this fact to other traffic participants who, while avoiding such a vehicle, are obliged to be very careful and, if necessary, stop (Article 57(1,2) of the A.R.T.). The right of the school bus driver to give instructions or signals to other traffic participants at places designated for stopping, associated with the boarding or disembarking of children, must be considered a valid solution (Article 6(1)(7) of the A.R.T.).

It should be noted that the state of safety, in relation to the transport of children and young people, has significantly improved in recent years. This is primarily the result of police action, which during the winter and summer holidays not only conducts increased checks of vehicles transporting children, but also by sending a patrol at every request of parents to inspect the driver (eligibility, sobriety, working time) and the technical condition of the vehicle used to transport children and young people to the place of recreation[50].

The provisions of this law introduce special provisions for children under 10 years of age. If they ride a bicycle, they are treated as pedestrians (Article 2(18) of the A.R.T.). In addition, a person riding a bicycle, caring for a child on a bicycle, has the right to do so on the sidewalk (Article 33(5)(1) of the A.R.T.). On the other hand, the general rules on pedestrian traffic

[49] I.e. Dz. U. 2021, item 450, as amended. Hereinafter referred to as: A.R.T.

[50] It often ended with the vehicle being taken out of service and having to provide replacement transportation.

apply to the movement of pedestrian columns of children at this age, namely the obligation to move on the sidewalk or pedestrian way, and in the absence thereof, a column of children under the age of 10 may move only on the left side of the roadway and only in pairs, but under the supervision of an adult (Article 12(1,2,4) of the A.R.T.). In conditions of insufficient visibility, the movement of such a column on the road is forbidden (Article 12(7)(2) of the A.R.T.).

However, in the case of cycling tours for children above 10 years of age and young people, the number of cycles riding in an organised column cannot exceed 15, and if there are several columns, the distance between them must not be less than 200 m (Article 32(1,2) of the A.R.T.). The law does not specify the number of persons moving in a pedestrian column, but introduces its maximum length, which may not be greater than 50 m and it must move on the right side of the road, with persons allowed to walk in fours, provided they do not exceed half the width of the roadway (Article 12(1,3) of the A.R.T.). The distance between columns must be no less than 100 m (Article 12(5) of the A.R.T.). If a column of pedestrians is marching in conditions of poor visibility, the first and last person on the left must carry a flashlight (the first - with a white light facing forward, the last - with a red light facing backward). In a column with a length exceeding 20 m, the people walking on the left in the front and at the end are obliged to use reflective elements meeting appropriate technical conditions, and in addition, those walking on the left are obliged to carry additional flashlights with white light, spaced in such a way that the distance between them does not exceed 10 m (Article 12(6)(1,2) of the A.R.T.). Moving of a pedestrian column during fog is strictly prohibited (Article 12(7)(1) of the A.R.T.).

Conclusions

The Polish model of safety regarding tourism for children and young people is primarily based on the appropriate selection of managerial and supervisory staff. As far as the organisation of sightseeing and tourism by schools is concerned, these are teachers with pedagogical education and often additional qualifications guaranteeing an appropriate level not only of the content of activities but also the safety of participants. The school headmaster and the tour leader are directly responsible for the latter.

It should be emphasized that some provisions raise serious doubts. This concerns, in particular, the realisation of compulsory physical education classes in forms other than class-room ones, i.e.. active tourism. As mentioned above, nothing stands in the way of such classes being conducted by a teacher with the appropriate qualifications of an instructor in a given field, and this can be done not only by a physical education teacher.

The most serious shortcoming of the adopted safety model is the lack of a precise definition concerning the maximum number of participants of a given form of event or recreation that a teacher can supervise. The adopted criteria in the 2018 Regulations are too general. It seems that this should be clarified in new executive acts or their amendment. This is a postulate to the minister responsible for education. In the current state of the law, one can get the impression that all responsibility for the safety of children and young people during outings or school trips is on the school principal, who cannot rely on precise provisions regulating, among others, the number of teachers taking care of a group of students within the framework of a given form of tourist activity organised by the school. Therefore, the question arises as to whether the earlier legal solutions dating back, for example, to 1969 may not be reintroduced into the legal system and constitute a clear guideline in developing school regulations for events or trips. The teaching community is completely unanimous about this postulate. At the conference organised by the Department of Law and Cultural Heritage Protection of the University of Physical Education in Kraków, in co-operation with the Polish Tourist Country-Lovers' Association (PTTK) entitled "Legal Aspects of Tourism for Children and Youth", such proposals were repeatedly put forward. It is worth emphasizing the fact that in the case of accidents, especially during school excursions, in the course of court proceedings, in their opinions, appointed experts often refer to earlier regulations which clearly specify this issue.

The situation is different when organising holidays for children and youth in the period free from school. The organisers are not only schools but also commercial entities obliged to provide staff with appropriate permissions – holiday managers and supervisors. The adopted system makes it impossible to carry out the recreation in a situation when the accommodation facility or the employed staff do not meet the required legal requirements. In addition, the state authorities have a number of instruments that allow them to take specific actions in case of a threat to the safety of the participants, including its interruption. It seems that the introducing a system for registering the recreation of children and youth and the possibility to carry out inspections by authorised bodies would guarantee a high level of safety for children and youth using this form of organised leisure.

The aforementioned provisions of the Acts on safety in the mountains and in waters impose an obligation on persons staying in these areas to exercise due care in order to protect the health and life of themselves and others. Unfortunately there are no sanctions for not obeying them. In the case of children and youth tourism, the school headmaster and the recreation manager find themselves in a very difficult position, as they cannot rely on specific provisions that would at least regulate the number of guardians for a group of children and youth depending on the type of trip, which should be assessed critically.

On the other hand, if school excursions take place in the area of a national park, then in accordance with the applicable rules of movement in its area introduced by its director, they require such group to be led by a mountain tourist guide. This undoubtedly increases the level of safety of the trip participants, as these persons are well-trained and have knowledge about the dangers that can occur in the mountains.

As indicated above, the regulations on safe transport of children and young people should be regarded as accurate. However, the improvement of safety in this area is mainly due to the effective actions of the police.

The last issue, about which *de lege ferenda* comments can be made, is counteracting pathological phenomena that may occur during school trips or recreation. This concerns the possession and distribution of prohibited substances by a given participant of a school or recreational trip. As indicated above, the possibilities of the staff are severely limited by law. It is therefore necessary to place another demand on the legislator, i.e. that by imposing the obligation to ensure the safety of the participants of a trip or holiday on the guardians, s/he should give them the appropriate legal instruments that would allow them to effectively carry out this obligation.

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REVIEWS, COMMENTS, SCIENTIFIC CONTROVERSY, MEMORIES

IN MEMORY OF PROFESSOR WŁODZIMIERZ WŁADYSŁAW GAWORECKI (1933-2020)

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On September 19, 2020, Prof. Dr. Władysław Włodzimierz Gaworecki, Ph.D., passed away – an economist and scientist, whose contribution to the development of tourism economics is known and appreciated by the entire community of tourism researchers, starting from the end of the 70s of the last century. In 1958, he graduated from the Maritime Department of the High-

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er School of Economics in Sopot, where he started working in 1965 (from 1970 – the University of Gdańsk). In 1973, he obtained the academic degree of habilitated doctor and in 1985 – the title of professor. Already in the early years of employment at the University of Gdańsk, he organised new structures that were to form the future foundations for studies in tourism. i In 1971, he established the Department of Economics of Services, and in 1981 – the Department of Tourism and Services, which he ran until his retirement in 2000.

Due to the publication framework of this memoir about the Professor, we will only focus on his contribution to the development of economics, organisation of tourism and staff training for this sector of the economy, although his contribution to other issues in the field of economic sciences was marked in his earlier years of scientific activity.

In the period from 1975 to 1990, Professor was president of the Provincial Board of the Polish Tourist and Sightseeing Society. In 1996, he founded the Higher School of Tourism and Hotel Management and served as its rector until 2017. Between 2000–2001, he was a member of the Tourism Council at the Ministry of Economy of the Republic of Poland. He is the author of various books, including: *Factors Shaping the Gdańsk-Gdynia Port-City Complex (1974) Gdańsk Agglomeration. Genesis and Functions (1976), Economics and Organisation of Tourism (1978, 2 editions), Tourism (1993, 5 editions), Elements of International Tourism (1993)*. In the above publications, tourism is analysed and described by the author as a multifaceted space of processes taking place, to a significant extent, by the global environment. In the 6th edition of *Tourism*, the author presents the problems of new forms of tourism: sports and space tourism; he also published an extended interpretation of the concept of health tourism, taking into account contemporary threats to tourism, e.g. terrorism, natural disasters, ecological disasters. He emphasized the importance of political and general market factors in stimulating tourism. He also drew attention to the role of tourism organisation in Poland in the process of its development, emphasizing the significance of the ethical aspects regarding this phenomenon. The issue of tourism evolution in Poland until 2015 has been outlined in a broader context – its opportunities included in the politics of the European Union.

In 1994, Professor dealt with the role of tourism in the local economy, while referring to the main goals of the state towards tourism in the period of socio-economic transformation in Poland. Among them, the author's approach to this problem should be considered innovative, as he emphasized "Development and strengthening of democracy as a form of statehood and social market economy as a form of economic order" as the first goal (Gaworecki, 1994, p. 35). He also recognised the importance of research in the area of tourism and its role in social policy – this approach may have become the ba-

sis for later concepts of the country's tourism policy. The above-mentioned items are proof of the great contribution Professor W. W. Gaworecki has made to the development of economic sciences – both in terms of creating knowledge about tourism and, in relation to maritime economy, its impact on the economy of the Tri-City or the region. Professor analysed the problem "... to what extent the maritime economy – compared to other factors – had decisive influence on shaping the Polish port conurbation: Gdańsk-Gdynia" [1974, p. 8], pointing to the city-forming role of the maritime economy. New challenges faced by science and economy in the period of systemic transformation were reflected in the above-mentioned items published in 1993 and 1994. They reveal profound knowledge on the phenomena and processes taking place in the economy in the 1990s and the role of tourism in shaping them.

My first meeting with Professor took place in 1996 and it concerned our planned cooperation. As a matter of fact, I remember that during this conversation, Professor focused on well-understood mutual interests, looking for optimal solutions. The cooperation actually started only after 2000, when we met at conferences devoted to broadly understood tourism, organized by various universities and the Higher School of Tourism and Hotel Management in Gdańsk, of which the Professor was the rector at the time. The most significant projects for me in which I collaborated with Professor W.W. Gaworecki were those initiated and implemented by the Marshal's Office of the Pomorskie Voivodeship: Pomorskie Voivodeship Tourism Development Strategy (the first one), and subsequent projects developed in the process of implementing the assumptions of this document. In working discussions, as well as at seminars or symposia, my attention was drawn to Professor's concentration on specific problems, which he discussed with particular care, but without using too many unnecessary words. He also expected us to make clear statements that would unambiguously contribute to solving the research problems posed by the team. Despite the clearly defined autonomy of the subgroup within the integrated project, I always tried to listen to the Professor's research suggestions, as they were usually broadly justified by examples from the socio-economic reality surrounding the tourism sector.

Professor's publications from the 90s of the previous century as well as those following the millennium, are a testimony to multidirectional thinking about the development of tourism as a sector of the economy and human activity of special social importance. The author outlined the prospects for the development of individual tourism forms based on dynamically changing conditions - on an international, national or regional scale.

Also noteworthy are the multi-author monographs edited by Professor (often based on reviewed materials of conferences organised by the Warsaw School of Economics), the subjects of which were topical and responded to

social needs (*Tourism and Sport for All in the Promotion of a Healthy Lifestyle*, 2008) or economic (*The Role of Tourism in the Strategy and Policy of Regional Economic Development*, 2006). The subject of analysis was tourism, its types within the context of civilisation conditions as well as development trends and socio-economic consequences for various areas of modern life. The author showed the stimulating role of tourism in the socio-economic development of countries, paying attention to both the benefits and negative social and cultural effects. In Professor's speeches and publications from the second decade of the 21st century, a multifaceted approach regarding the analysis of the relationship between tourism and culture was visible, in which humanism was emphasized – in theoretical terms – reflected in the humanistic foundations of tourism (Gaworecki, 2013, p. 11).

Textbooks and study materials (*The Aforementioned Tourism or Study Guide for the Major Subject of Domestic and International Tourism, 2002*) played an important role in Professor's publication.

Before there were any opportunities for direct cooperation with Professor, I came int contact with his textbook, published in 1978 – *Economics and Organisation of Tourism*, which in the second half of the 1980s, I used in teaching students from the faculty of "Tourism and Recreation". It was one of the first academic textbooks on the Polish publishing market, which attempted to provide students with comprehensive knowledge about tourism and its role in economy and society. In this handbook, we find both a description of the factors shaping the development of tourism [Gaworecki, 1982, pp. 5-51] and a broad reference to the place and role of services in the Polish economy [Gaworecki, pp. 121-204], then characterised as an industrial civilization.

Training staff for tourism and the hotel industry, especially in symbiosis with practice – is the Professor's special area of interest. He was the author or co-author of most of the concepts and programmes of tourist education for students – first at the University of Gdańsk, and then at the Higher School of Tourism and Hotel Management in Gdańsk. The publications devoted to the issues of management in the sphere of tourism and the hotel industry allow us to notice the specificity of didactics viewed by Professor and undertaken at the university he created. They confirm that their author was not only a scientist, but also an excellent teacher of many generations of students from tourism, recreation and hospitality specialisations.

Professor Gaworecki's contribution to the development of the economy and organisation of tourism is significant and exceeds the possibility of its assessment by one person. Taking this into account, I asked the Professor's former academic associates – Dr. Mariola Łuczak and Dr. Tomasz Studzieniecki – to share their memories of working with him – in relation to the most important aspects.

Doctor, how long did you work with Professor W.W. Gaworecki? (report from an interview with Dr. M. Łuczak)

I worked with Professor first as a student, still at the present Faculty of Management at the University of Gdańsk, where I was a student of his lectures and a seminar student since 1993. Under his supervision, I wrote a very extensive, 253-page, M.A. thesis *The Role of ORBIS Travel Agency in Gdańsk in Servicing Incoming Tourism to the Gdańsk Voivodeship*. Thanks to the excellent, very substantive co-operation with my supervisor, I defended my thesis in June 1995 with a 'very good' mark. After this defence, I planned to take a longer vacation, then the Professor's secretary called to ask for a meeting and during the conversation that took place the next day, I was offered a job as an assistant at the Department of Tourism. I started working on October 1st, 1995. I never thought about becoming an employee of the University, but this first year, made teaching a very interesting job. I had the opportunity to observe the lectures given by Professor from the perspective of the person who, in a moment, will also be passing on this knowledge to following generations. Professor always meticulously prepared for his lectures, searched for a lot of press and book information, because he always carefully followed the press and new publications.

This was the case for the 24 years of this part of his professional carrier that I had the opportunity to observe. He always conducted his classes with great passion and commitment, he was a great expert in tourism, and was extremely interested in the issues of tourism policy. After retiring from the University of Gdańsk, in 1996, he established a private university – the Higher School of Tourism and Hotel Management in Gdańsk, thus, fulfilling the dream of professionally preparing staff for the needs of tourism in the region. The school was very successful. Professor offered me a job at this University, which he created and in which he was the Rector for many years. I started my second job in 2001. In 2004 I defended my doctoral thesis entitled *Marketing Concepts for Shaping the Tourist Product of Sopot*, which was also promoted by Professor. The work won the President of Sopot award and we had the opportunity to participate in the award ceremony together.

In 2013, Professor offered me the position of Dean of the Faculty at WSTiH in Gdańsk, and in 2016, the position of Vice-Rector, and then the University became my primary place of work. At that time, we co-operated very closely on new directions of the University's development. The Professor always had many ideas about what the University's offer should be like, he focused on co-operation with economic practice in the field of tourism and with the best lecturers. I think that all this contributed to the success of the school from the very beginning of its operation. Co-operation with the Professor was sometimes difficult, because it was extremely challenging to convince him to change his already formulated opinion. However, it was a very important

and inspiring time for me. Our co-operation ended in 2017, when Professor Gaworecki withdrew from active life at the University. I think that the collaborations with Professor, the theoretical and practical knowledge that he passed on to me over the years, allowed me to take the position of the University Rector, which I have known since the second year of its operation.

Doctor, what kind of man was Professor W. W. Gaworecki? (report from an interview with Dr. Mariola Łuczak)

Professor was a very supportive person for the people he worked with and this was true for both students and employees. He willingly shared his knowledge and ideas. He was a man of science, not only a teacher. His book *Tourism*, published by PWE, was certainly a textbook from which entire generations of students have benefited. He was very meticulous, always prepared for classes. He polished his public appearances for a very long time. Each word of the speech was thought out and the text was always refined with every detail. I often saw him nervous before such speeches, which he carefully hid behind a smile. In private, he often liked to discuss the political situation in Poland and in the world. He liked to joke in the company of his friends. He also appreciated good food. I most remember the herring in cream, which he always ordered at '*Papuga'* restaurant, which was located near the University, and where he was a frequent guest. It is worth noting that until the last year of his work, he gave lectures for students on the subject of tourism, and invariably searched for interesting press releases for them. He always read a lot. He had a grudge against us when we did not do a press review, because he thought it was extremely important, so it happened that he would have us photocopied the news at the secretary's office and asked to be passed on to us so that the students had the latest knowledge in the field of tourism. I will always remember Professor Włodzimierz Władysław Gaworecki as a good, kind, though a bit lonely man, despite the many people around him.

The experience of working with Professor W. W. Gaworecki was shared as part of this memoir by Dr. Tomasz Studzieniecki.

Doctor, how do you recall the professor as the founder and then the long-term Rector of one of the first private universities with a tourism profile?

In the early nineties, a discussion began in the tourism industry on the need to change the model of educating tourist staff. At the Tri-City universities, there were courses in which students acquired theoretical knowledge, but

there was no university that would be typically practical in nature. At that time, I was a trainee assistant at the Department of Tourism, University of Gdańsk. I remember conversations with Professor Gaworecki during which there were various concepts of establishing a private university. We were looking for a new formula, absent at the time on the educational market. Let me remind you that these were the times of reorganisation of the entire tourism system in Poland. Private travel agencies, hotels and restaurants were established. New communication links were opening up rapidly. These were very promising times for the economy in the region. One day, Professor Gaworecki went to Poznań to meet with Professor Gałecki from the University of Economics, who also saw the need to change the orientation of training staff in tourism. The visit to Poznań, followed by numerous discussion with representatives of the tourism industry and local administration, strengthened the Professor's belief that it is worth taking the risk and creating a university from scratch.

I remember the first meetings devoted to working out the formula of the university and the disbelief of many people that such a university would be created. Pursuant to the applicable law, it was first necessary to establish an entity that would be the founder, and this is how the 'Uczelnia' [Eng. University] company was established. In a short time, significant funds had to be raised to start the new institution. Initially, the school was to be based in Sopot, but was eventually established in Gdańsk Wrzeszcz. The university was quite successful. The number of students grew dynamically from year to year. Professor Gaworecki became the Rector. He managed to assemble a very good research and teaching team. Working conditions at the University of Tourism and Hotel Management were very good. Classes with internships were a strong point of the university. The classes were conducted by many presidents and directors of various tourism and hotel companies. As an employee of this school, I have always been impressed that professor Gaworecki did not regret splurging for research, he financed trips for to national and foreign conferences his employees. He himself also initiated many conferences attended by scientists from Poland and abroad. The University in Gdańsk quickly gained a good reputation and obtained high positions in national and foreign rankings.

What role did Professor Gaworecki play in the development of tourism in the region?

It seems to me that such a breakthrough moment was the establishment of the Tourist Council of the Gdańsk Region. It was at the beginning of the 1990s. Please, bear in mind that self-government structures were only just emerging. There were no tourist chambers, associations or foundations

yet. It was necessary to develop a new organisational concept for tourism. Experts from the European Economic Community visited Poland at that time, advising the Polish authorities on how to transform the tourism system. A group of people associated with tourism established the 'Tourist Minor-Seym'. It was headed by Prof. Gaworecki. During the meetings of the regional council, ideas were born on how to develop tourism in a free market economy. One of the postulates of the tourism industry was the creation of a university educating tourist staff. The 'Tourist Minor-Seym' pointed out problems and suggested ways of solving them. The development of tourism in the region required cardinal reforms that went well-beyond tourism itself. Professor Gaworecki suggested many new solutions. It became clear that the informal institution led by Professor – the 'Tourist Minor-Seym' – would not solve these problems. At that time, I was in charge of the Department of Tourism Development at the Regional Development Agency in Gdańsk. I had the opportunity to consult with Professor on the concepts of reforming tourism management structures. Professor played an important role in the work to establish a regional tourist organisation. When such an institution was established, the mission of the 'Minor-Seym' came to an end. The University of Tourism and Hotel Management, headed by Rector Gaworecki, became a founding member of the Pomeranian Regional Tourist Organisation. Professor undertook an active role in many actions of this organisation. He actively co-operated with the regional and local self-government administration. He supported projects and initiatives with his knowledge and experience. Personally, I owe Professor for the organisational support and content-related matter of the *Forum Europa Nostra* cyclical event, which I coordinate. Almost every year, I met Professor at the World Tourism Day celebrations. At one of the last meetings, the Marshal of the Pomeranian Province presented the Professor with a special award for his life-time achievements... Professor will be greatly missed.

Yes – this is a fact. The contribution of Professor W.W. Gaworecki in the development of tourism and academic education for this industry is significant. It is worth noting that Professor appreciated the importance of this area of the economy, even in the era of the non-market economy in Poland. The political conditions of the time made it difficult to perceive tourism as a significant economic sector, and yet it was reflected in the Professor's publications, which undoubtedly formed the basis of knowledge in the field of tourism economics in Poland. We hope that the Professor's successors will benefit not only from his practical achievements, but also from knowledge about tourism. Professor's contribution to its development is very large. His biography is inextricably linked with broadly-understood studies on tourism, although many issues are still open and waiting for the solutions he was looking for, those which the Professor did not have time to find.

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Gaworecki W.W. (2013), *Wstęp* [Introduction], [in:] M. Boruszczak (ed.*), Zamki i twierdze w rozwoju współczesnej turystyki* [*Castles and Fortresses in the Development of Modern Tourism*], WSTiH. Gdańsk, pp. 9-14.

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INFORMATION AND INSTRUCTIONS FOR AUTHORS

GENERAL INFORMATION FOR AUTHORS PREPARING ACADEMIC ARTICLES

1. The Editorial Office accepts for publication only original empirical and review papers that address tourism from interdisciplinary points of view, such as theory of tourism, cultural anthropology, philosophy, sociology, geography, law, psychology, history, economics, management, and marketing.
2. Submitting a paper for publication is construed as transferring the copyright to the Editorial Office. This means that neither the paper nor a part of it can be published in other journals or digital media without the Editorial Office's written permission.
3. The article should be prepared according to the **"Instructions for authors preparing academic articles"**, found below. Otherwise, the article will be sent back to the Author(s) for correction.
4. Do not provide personal data or any other information that could enable identifying the Author(s). Instead, provide personal data in a separate **Author Form**, available on the Journal's website, and submit it together with the article.
5. The paper, together with a filled Author Form, should be submitted to the Editorial Office's e-mail address: **folia.turistica@awf.krakow.pl**.
6. The Editorial Office will not accept papers that show signs of scientific dishonesty, such as *ghostwriting and honorary (guest) authorship*, for publication. The Editorial Office will disclose any recognized cases of dishonesty; this includes informing institutions employing authors, scientific associations, etc.
7. All papers are reviewed by at least two independent reviewers (the review form is available on the Journal's website) and maintaining full anonymity. In other words, a double-blind review process will be implemented; otherwise, the reviewers are obliged to sign a declaration that there exists no conflict of interests between them and the authors of the paper. The Editorial Board will accept the paper for publication or reject it based on the reviewers' opinion. This procedure is in accordance with guidelines provided by the Ministry of Science and Higher Education.
8. The Editorial Office reserves the right to modify the style makeup of submitted papers.
9. The author of the paper will receive an electronic version of the Journal issue in which the article was published, free of charge.

Instruction for Authors Preparing Academic Articles

I. PREPARING TEXT

1. The volume of submitted papers should not exceed 20 pages of normalized manuscript, i.e., 40,000 characters (one author's sheet).
2. Text files should be created in the Word 6.0–XP editor in DOC format.
3. Page setup:
   - paper size: A4;
   - margins: all margins 2.5 cm;
   - line spacing: 1.5.
4. Title: use 14-point Times New Roman font, bold. Capitalize the entire title. Insert a 14-point line of space following the title.
5. Abstract in English: between 1500 and 2000 characters (including spaces); use 10-point Times New Roman font.
6. The abstract should comprise the following, clearly separated (presented in the form of a list) parts:
   - Purpose.
   - Method.
   - Findings.
   - Research and conclusions limitations: comment on the representativeness of your research and its potential limitations due to cultural, environmental, geographical, or other conditions.
   - Practical implications.
   - Originality: describe how your research (results and opinions) differs from other publications on the subject.
   - Type of paper: specify whether your article presents empirical research or theoretical concepts or whether it is a review, a case study, etc.
7. Key words: 3-6. Insert a 12-point line of space following the key words.
8. The paper should include elements listed below. Titles of elements may be changed if justified by content. Furthermore, especially in the case of review articles, the paper may have a more complex structure, i.e., it may comprise more elements or have a given element subdivided further (such as the Literature Review section).

   A) For empirical papers:
   - **Introduction** (subject of research, aim of the article, and justification of the aim),
   - **Literature review** (a review of Polish and foreign publications presenting the aim of the article and describing current knowledge on the subject matter),
   - **Method** (aim of empirical research, research hypotheses and questions, and a description of methodology and how the research was conducted)
   - **Results** (research results, including the answers to the research hypotheses and questions),
   - **Discussion** (a discussion of the study results in view of results obtained by other authors in Polish and foreign publications on the subject matter),
   - **Conclusions** (conclusions from the study results and their discussion, including practical implications and suggested directions for further research on the subject),
   - **References**.

   B) For review papers:
   - **Introduction** (subject of research, aim of the article, and justification of the aim),
   - **Literature review** (a review of Polish and foreign publications related to the aim of the article describing current knowledge on the subject matter),
   - **Discussion** (a discussion of current knowledge on the subject matter, including critical analysis based on Polish and foreign publications),
   - **Conclusions** (conclusions from the discussion, including its practical implications and suggested directions for further research on the subject),
   - **References**.

9. Headings of each part of the paper: use 12-point Times New Roman font, bold, centered. Number the parts with Arabic numerals. Insert a 12-point line of space following each heading.
10. Running text: use 12-point Times New Roman font and 1.5 line spacing. First line indent: 1 cm. Use tools available in the editor to format the text rather than the space bar, as using space bar makes markup and typesetting difficult.
11. Do not use the bold face, capitals, and underlining in the text. Italics should only be used for titles listed in the footnotes and the References section and for letter symbols in the running text. Insert a space after punctuation marks, not before them.
12. Use an en dash (–) to indicate breaks in a sentence and between numbers that denote close values not provided precisely (such as time periods); do not use a hyphen (-) or an em dash (—). Examples of use:
    - "Secondly – as tradition dictates – every student should wear formal attire tomorrow".
    - "The years 1914–1918, or the times of World War I, is an extremely important period in the history of Europe".
    - "Relevant information can found on pages 12–24 of the aforementioned publication".
    - Most waters in the area of Wysowa belong to the sodium-bicarbonate type and have a high concentration of carbon dioxide.
13. Footnotes can be used (sparingly) to complement the running text: use 10-point Times New Roman font with 1.0 line spacing.
14. References in the running text should be formatted according to the Harvard System (i.e., provide the last name of the author of the quoted or referenced publication, the year of publication, and the page or pages you refer to in square brackets within the running text). Do not place a comma between the name and the year. If two or more publications are referenced in the same parentheses, separate them with a semicolon.
15. The References section, located at the end of the article, should only include texts that are quoted or referred to in the article. References should be given in an alphabetical order with full bibliographic descriptions. Guidelines for and examples of bibliographic descriptions can be found in Part III of these instructions.

II. PREPARING TABLES AND ILLUSTRATIONS

1. Tables and illustrations (figures, charts, and photographs) should be included in separate files and described in detail. Mark their locations in the running text through centered titles, as in the example below:

Tab. 1. Tourist activity inhibitors
Tabela 1. Inhibitory aktywności turystycznej

2. The entire article should use the division into tables and figures (i.e., everything that is not a table, e.g. charts, diagrams, or photographs, is considered a figure). Refer to figures in the abbreviated form ("Fig.").
3. Place titles of tables above tables, and titles of figures below figures.
4. Write the titles of tables and figures in 10-point Times New Roman font.
5. Under each table/figure provide its source (using 10-point Times New Roman font).
6. Figures should be scanned at a resolution no lower than 300 DPI (optimal resolution is 600 DPI) and saved as line art files in TIFF format.
7. Charts should be created in black. Gray tints or textures are allowed.
8. Digital photographs should be saved in TIFF or JPEG format at full resolution. Do not use compression.
9. If the article includes figures, tables, etc. taken from other academic papers, the author is obliged to obtain a reprinting permission. The permission should be sent to the Editorial Office together with the article and other attachments.

III. PREPARING THE REFERENCES SECTION

1. The References section, located at the end of the article, should only include texts that are quoted or referred to in the article. References should be given in an alphabetical order with full bibliographic descriptions.
2. References to papers of different types should be prepared to according to the guidelines below. Note that all references should be provided in a single list (the division into types, found below, is meant only to provide examples of referencing different sources).
3. For two or more papers written by the same author and published in the same year, add subsequent lowercase letters to the year, as in: (2014a), (2014b), etc.
4. List Internet sources (webpages) for which the appropriate elements of a full bibliographic description cannot be provided in a separate Internet Sources section. The list should provide URL addresses of the referenced webpages in alphabetical order, described as in the following sample:
   – http://www.unwto.org/facts/eng/vision.htm (08.09.2014).
5. For articles to be published in the English issues of the Journal, provide English translations of the titles of non-English publications (in square brackets), as in the following sample:
   – Winiarski, R., Zdebski, J. (2008), *Psychologia turystyki* [*Psychology of Tourism*], Wydawnictwa Akademickie i Profesjonalne, Warszawa.

Sample references to different types of papers in the References section

A. Books:

Urry J. (2001), *The tourist gaze*, Sage, London.
McIntosh R.W., Goeldner Ch.R. (1986), *Tourism. Principles, Practices, Philosophies*, John Wiley & Sons, New York.

B. Edited books and joint publications:

Ryan C., ed., (2003), *The Tourist Experience*, Continuum, London.
Alejziak W., Winiarski R., eds. (2005), *Tourism in Scientific Research*, AWF Krakow, WSIZ Rzeszow, Krakow-Rzeszow.

C. Chapters in edited books and joint publications:

Dann G.M.S. (2002), *Theoretical issues for tourism's future development*, [in:] Pearce D.G., Butler R.W., eds., *Contemporary Issues in Tourism Development*, Routledge Advances in Tourism, International Academy for the Study of Tourism, London, New York, pp. 13-30.

D. Articles in scientific journals:

Cohen E. (1979), *A Phenomenology of Tourism Experiences*, „Sociology", Vol. 13, pp. 179–201.
Szczechowicz B. (2012), *The importance of attributes related to physical activity for the tourism product's utility*, „Journal of Sport & Tourism", Vol. 18 (3), pp. 225–249.

E. Articles in trade magazines and trade newspapers:

Benefits tourism not OK (2014), [in:] „The Economist", Nov 15th.

F. Papers without a stated authorship, including research reports and statistical yearbooks:

Tourism Trends for Europe (2006), European Travel Commission.
Tourism Highlights. 2010 Edition (2011), UNWTO.

G. Legal acts:

Act on Tourism Services, of 29 August 1997, Dz.U. of 2004, No. 223, item 2268, as amended.

H. Publications available on the Internet:

International tourism on track to end 2014 with record numbers, http://media.unwto.org/press-release/2014-12-18/international-tourism-track-end-2014-record-numbers (20.12.2014).

GENERAL INFORMATION FOR AUTHORS PREPARING ACADEMIC REVIEWS AND POLEMICS

1. Only original reviews of Polish and foreign monographs, academic articles, and handbooks, as well as other types of academic and didactic papers, such as research reports, doctoral theses, and habilitation theses, will be accepted for publication.
2. The Journal publishes reviews of papers on the theory of tourism, as well as papers that address tourism from the viewpoint of cultural anthropology, philosophy, sociology, geography, law, psychology, economics, management, marketing, and other academic fields and disciplines.
3. Submitting a paper for publication is construed as transferring the copyright to the Editorial Office. This means that neither the review nor a part of it can be published in other journals or digital media without the Editorial Office's written permission.
4. The article should be prepared according to the **"Instructions for authors preparing academic reviews and polemics"**, found below. Otherwise, the article will be sent back to the Author(s) for correction.
5. The review should be submitted to the Editorial Office's e-mail address: folia.turistica@awf.krakow.pl.
6. The Editorial Team reserves the right to modify the style makeup of submitted reviews.
7. The Author of the review will receive an electronic version of the Journal issue in which the review was published, free of charge.

Instruction for Authors Preparing Academic Reviews and Polemics

1. Text files should be created in the Word 6.0–XP editor in DOC format.
2. Page setup:
   - paper size: A4;
   - margins: all margins 2.5 cm;
   - line spacing: 1.5.
3. Name of each Author: use 12-point Times New Roman font, bold. Insert a 12-point line of space following the name(s).
4. Provide each Author's academic degree or title, affiliation (i.e. name of the institution represented by the Author, in this order: university, faculty, department, etc.), phone number, and e-mail in a footnote. Footnote formatting: use 10-point Times New Roman font and 1.0 line spacing.
5. Samples of title formatting:
   1. REVIEW OF "INTERNATIONAL TOURIST ORGANIZATIONS" BY WIESŁAW ALEJZIAK AND TOMASZ MARCINIEC.
   2. AN OPINION ABOUT "POLAND'S MARKETING STRATEGY IN THE TOURISM SECTOR FOR 2012–2020".
   3. RESPONSE TO THE OPINION…

   etc.
6. Title: use 14-point Times New Roman font, bold. Capitalize the entire title. Below the title, provide a full bibliographic reference for your article, including ISBN and the date of submission to the Editorial Board.
7. Format the titles of responses to reviews or other forms of academic polemics according to the guidelines above (e.g. Response to the Opinion…).
8. Insert a 14-point line of space following the title.
9. Headings of each part of the review (if appropriate): use 12-point Times New Roman font, bold, centered. Number the parts with Arabic numerals. Insert a 12-point line of space following each heading.

10. Running text: use 12-point Times New Roman font and 1.5 line spacing. First line indent: 1 cm. Use tools available in the editor to format the text rather than the space bar, as using space bar makes markup and typesetting difficult.
11. Do not use the bold face, capitals, and underlining in the text. Italics should only be used for titles listed in the footnotes and the References section and for letter symbols in the running text. Insert a space after punctuation marks, not before them.
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    - "The years 1914–1918, or the times of World War I, is an extremely important period
    - in the history of Europe".
    - "Relevant information can found on pages 12–24 of the aforementioned publication".
    - "Most waters in the area of Wysowa belong to the sodium-bicarbonate type and have a high concentration of carbon dioxide".
13. Footnotes can be used (sparingly) to complement the running text: use 10-point Times New Roman font with 1.0 line spacing.
14. Illustrative materials (tables and figures) should be formatted according to the same guidelines as academic articles (see **"Instructions for authors preparing academic articles"**).
15. References in the running text should be formatted according to the Harvard System (i.e., provide the last name of the quoted or referenced publication, the year of publication, and the page or pages you refer to in square brackets within the running text. Do not place a comma between the name and the year. If two or more publications are referenced in the same parentheses, separate them with a semicolon.
16. The References section, located at the end of the article, should only include texts that are quoted or referred to in the review. References should be given in an alphabetical order with full bibliographic descriptions, prepared according to the same guidelines as for academic articles (see **"Instructions for authors preparing academic articles"**).

Folia Turistica is a specialist forum for exchanging academic views on tourism and its environment, in its broadest definition. It is one of Poland's leading academic periodicals, published continuously since 1990. The magazine publishes articles in the field of tourism studies, from a broad interdisciplinary perspective (humanist, economic, geographical/spatial, organizational, and legal issues etc.). Apart from articles presenting the results of empirical research, the journal includes original theoretical, overview, and discursive pieces. The separate headings contain research reports, announcements, and bulletins, reviews of academic works, information on conferences and symposia, and discussions and polemics.

Folia Turistica **is indexed in the ERIH Plus (European References Index for the Humanities and Social Sciences), Information Metrix for the Analysis of Journals (ICDS for 2021 = 4,5), and Index Copernicus International (ICV for 2020 = 98,76). It is also indexed on the Polish Ministry of Education and Science List of point-earing academic publications. In the parametric system of evaluating academic work, authors and the institutions they represent receive 40 points for publishing works in the journal.**

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