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Administrative and legal conditions of running a business in the area of tourist services and related tourist services

Administracyjnoprawne uwarunkowania wykonywania działalności
gospodarczej w obszarze usług turystycznych i powiązanych
usług turystycznych

Abstract

Regulations in the tourism sector are intended to ensure the safety and protection of travelers' personal well-being, their financial interests and public order. Administrative and legal aspects of running a business in the tourism industry are visible both at the stage of its initiation and subsequent activity. This involves meeting the initial requirements specified by law and fulfilling cyclical obligations to continue operations. Regulatory measures include the registration of specialized activities, administrative supervision by authorized bodies, and the provision of formal safeguards to ensure the quality of services and compensation for costs incurred in the event of insolvency. Registration facilitates verification of the compliance and financial security of travel service providers, allowing for effective supervision and protection of travelers' rights. The registration process begins at the entrepreneur's request, which is subject to consideration and approval by the competent administrative authority – the Voivodeship Marshal. Failure to comply with the rules of running a business may result in deregistration and a temporary ban on running a business.

Keywords

administrative aspects in tourism law in Poland, tourist services in Poland, tourist regulated activity, tourism business administrative register, consumer protection in the tourism branch, starting and conducting business activities in the field of tourism in Poland, administrative law and EU administrative law

Streszczenie

Regulacje w sektorze turystyki mają na celu zapewnienie bezpieczeństwa i ochronę dobra osobistego podróżnych, ich interesów finansowych i porządku publicznego. Administracyjne i prawne aspekty prowadzenia działalności w branży turystycznej widoczne są zarówno na etapie jej inicjowania, jak i późniejszej działalności. Wiąże się to ze spełnieniem wymagań wstępnych określonych przepisami prawa oraz wywiązaniem się z cyklicznych obowiązków kontynuacji działalności. Środki regulacyjne obejmują rejestrację działalności specjalistycznej, nadzór administracyjny przez uprawnione organy oraz zapewnienie formalnych zabezpieczeń zapewniających

jakość usług i rekompensujących koszty poniesione w przypadku niewypłacalności. Rejestracja ułatwia weryfikację zgodności i bezpieczeństwa finansowego dostawców usług turystycznych, pozwalając na skuteczny nadzór i ochronę praw podróżnych. Proces rejestracji rozpoczyna się na wniosek przedsiębiorcy, który podlega rozpatrzeniu i zatwierdzeniu przez właściwy organ administracyjny – marszałka województwa. Nieprzestrzeganie zasad prowadzenia działalności gospodarczej może skutkować wyrejestrowaniem i czasowym zakazem prowadzenia działalności gospodarczej.

Słowa kluczowe

aspekty administracyjne w prawie turystycznym w Polsce, usługi turystyczne w Polsce, działalność regulowana turystyczna, administracyjny rejestr działalności turystycznej, ochrona konsumentów w branży turystycznej, rozpoczynanie i prowadzenie działalności gospodarczej w zakresie turystyki w Polsce, prawo administracyjne i europejskie prawo administracyjne

1. Introduction

The activity of offering, selling, and implementing tourist events and related tourist services does not take place in conditions of unrestricted freedom of business activity. According to the principle expressed directly in the Basic Law¹, freedom of economic activity is the basis of the economic system of the Republic of Poland. However, restrictions on the freedom of economic activity are permissible due to important public interest², as provided for in Art. 22 of the Constitution of the Republic of Poland³. This limitation results directly from the provisions of the Entrepreneurs' Law Act⁴ (hereinafter: UPP). The UPP specifies the rules for undertaking, conducting, and terminating economic activity, defined as organized gainful activity, performed on one's own behalf and on a continuous basis, in the territory of the Republic of Poland, including the rights and obligations of entrepreneurs

¹ Article 20, ustawa z dnia 2 kwietnia 1997 r. Konstytucja Rzeczypospolitej Polskiej, Journal of Laws No. 78, item 483, as amended.

² It is important that the indicated conditions are met cumulatively. More: M. Sługocka, *Wolność działalności gospodarczej jako norma-zasada*, „Acta Erasiana” 2012, p. 141.

³ The normative approach to the freedom of economic activity and its discussion is analyzed by, among others: D. Wojtczak. *Idem, Podejmowanie działalności gospodarczej w obszarze usług turystycznych w świetle wolności gospodarczej*, „Internetowy Kwartalnik Antymonopolowy i Regulacyjny” 2018, No. 4(7), pp. 8–22.

⁴ Ustawa z dnia 6 marca 2018 r. – Prawo przedsiębiorców, unified text – Journal of Laws of 2024, item 236. This Act was previously prepared as the Act on Free Economic Activity, due to, among other things, on the need to include into the implementing provisions two directives issued: 1) Dyrektywa 2006/123/WE Parlamentu Europejskiego i Rady z dnia 12 grudnia 2006 r. dotycząca usług na rynku wewnętrznym (Official Journal of the EU L 376, 27/12/2006, p. 36) and 2) Dyrektywa Parlamentu Europejskiego i Rady (UE) 2019/1158 z dnia 20 czerwca 2019 r. w sprawie równowagi między życiem zawodowym a prywatnym rodziców i opiekunów oraz uchylającą dyrektywę Rady 2010/18/UE (Official Journal of the EU L 188, 12/07/2019, p. 79).

and tasks of public authorities in this regard. The research goal of this study is to explore and analyze the administrative and legal conditions that govern the initiation and ongoing operation of businesses in the field of tourist services and related activities in Poland.

2. Registered business activity in the area of tourist services and related tourist matters

The legal definition of an entrepreneur is also included in the UPP⁵. According to the definition, the term “entrepreneur” should be understood as anyone conducting business activity⁶ in accordance with the principles of fair competition, respect for good practices, and the legitimate interests of other entrepreneurs and consumers, as well as respect for, and protection of, human rights and freedoms⁷. As a rule, business activity can be started on the day of submitting the application for entry in the Central Register and Information on Business Activity (hereinafter: CEIDG) or after making an entry in the register of entrepreneurs of the National Court Register (hereinafter: KRS) – depending on the legal status of the entrepreneur. However, for certain types of business activities of particular importance, the activity cannot be performed without obtaining a permit, authorization, concession, or license, *i.e.*, an appropriate administrative act issued by a public administration body authorized to do so. And so, the freedom of economic activity, due to the indicated higher needs – generally the security of the state, citizens, consumers, or important public interest – becomes rationed. The least restrictive form of regulation of business activity is regulated activity⁸. Its operation requires compliance with the conditions specified in the regulations imposed by the Act on Tourist Events and Related Tourist Services⁹ (hereinafter: UIT) on tour operators and tourism entrepreneurs¹⁰. The

⁵ UPP.

⁶ Article 4.1 and 2 UPP.

⁷ Article 9 UPP.

⁸ A. Pawłowski (ed.), *Ustawa o swobodzie działalności gospodarczej. Komentarz*, Warszawa 2009, pp. 245–246.

⁹ Ustawa z dnia 24 listopada 2017 r. o imprezach turystycznych i powiązanych usługach turystycznych, unified text – Journal of Laws of 2023, item 2211.

¹⁰ In the light of the provisions of the Act, a tourism organizer will be a “tourism entrepreneur who creates and sells or offers for sale tourist packages directly or through another travel entrepreneur or jointly with another travel entrepreneur [...]”, with the legislator defining a travel entrepreneur as “a tour operator, an entrepreneur facilitating the purchase of linked travel services, a travel agency or a service provider tourist [...]”, article 4 UIT.

obligations include, first of all, the need to obtain an entry in the appropriate register and to meet the appropriate requirements in relation to regulated activities¹¹, *i.e.*, obtaining an entry in the appropriate administrative register – a register that primarily performs an information and protection function¹² towards recipients – actual and potential – of tourist services and related travel services. Activities in the field of tourism¹³ are regulated due to the public interest related to the need to ensure the protection of safety, personal rights of travelers, their property interests, as well as public order, which could be threatened by non-compliance with the provisions on the principles of conducting business activities in the field of organizing tourist events by a specific group of entrepreneurs.

The administrative and legal sphere of running a business in the field of tourist services is manifested both in the process of its initiation and its subsequent operation¹⁴. In fact, it is related to the mandatory obligation to meet initial requirements specified by law and subsequent obligations, often of a cyclical nature, which must be met in order to continue operating in the tourism industry. This means that the administrative and legal area of regulation of services in the field of organizing tourist events and related tourist services will concern; firstly, the registration of activities of a special nature – regulated¹⁵; and secondly, it will require the existence of entities in the administrative sphere that will perform tasks resulting from above regulation and be responsible for, among other things: for entry into the register of entities operating in the tourism industry and verification of the necessary formal requirements specified by law, the requirements of which entrepreneurs wishing to

¹¹ S. Liżewski, *Działalność regulowana*, LEX Wolters Kluwer, access: 12.05.2024.

¹² As M. Szydło points out, “the functions of the register of entrepreneurs are specific goals or positive, desired states of affairs that the legislator intends to achieve (implement) with the help of this institution. The basic functions of the register include: registration, information and protection, legislative and tax”. *Idem*, *Ewidencja działalności gospodarczej w nowej ustawie o swobodzie działalności gospodarczej*, „Kwartalnik Prawa Publicznego” 2006, No. 6 (3), p. 71.

¹³ “Tourism is a social, cultural and economic phenomenon which entails the movement of people to countries or places outside their usual environment for personal or business/professional purposes. These people are called visitors (which may be either tourists or excursionists; residents or non-residents) and tourism has to do with their activities, some of which involve tourism expenditure”. Quote for World Tourism Organization, <https://www.unwto.org/glossary-tourism-terms>, access: 10/05/2024.

UN Tourism is the most important international government organization operating today in the field of tourism, covering the whole world. More: J. Barcik, *Elementy międzynarodowego prawa publicznego w turystyce*, Warszawa 2011, pp. 146 et seq.

¹⁴ More: A. Żywicka, *Regulowana działalność gospodarcza w dziedzinie usług turystycznych – uwarunkowania administracyjnoprawne*, „Roczniki Nauk Prawnych” 2013, vol. XXIII, No. 2, pp. 143–162.

¹⁵ J. Gospodarek, *Prawo w turystyce i rekreacji*, Warszawa 2007, pp. 62 et seq.

conduct business in a given economic sector will have to meet; thirdly, the possibility of using authoritative forms of action and settling matters by authorized bodies in administrative and legal form; fourthly, providing formal security and guarantees as to the certainty of implementation and quality of service provision and possible compensation for costs incurred in the event of insolvency of the entity organizing the tourist event or related tourist service.

3. Starting business in the area of tourist services and related tourist activities

An entry in the register of regulated activities, generally specified in the UIT, confirms the fulfillment of the conditions¹⁶ that enable the entrepreneur to initiate and conduct a given type of activity, defined in specific provisions, here in the UIT. This means that the action of an authorized public administration body does not have any authority over the entrepreneur and does not regulate the sphere of his rights and obligations, but only confirms a given event. Making an entry does not result in issuing an administrative decision¹⁷. However, the authority of the public administration body to register an organizer or tourist entrepreneur has been limited. Its role, in fact, comes down to performing activities of a material and technical nature, consisting of in actually making an entry in the register of regulated activities¹⁸. The authoritative action of a public administration body will be visible in a situation where this body either expresses opposition to entering the entrepreneur in the register of entities providing tourist services, or is obliged to make an entry to remove the entrepreneur from the register as a result of deciding, in the form of an administrative decision, on an administrative matter. In reality, this only means that only negative effects for the entrepreneur are visible in the form of an administrative act – in the form of an administrative decision.

¹⁶ Article 43 UPP.

¹⁷ “Examples of such activities include, in particular, the provisions governing administrative enforcement, regarding the methods of applying individual enforcement measures (collection of goods). Activities related to road traffic (locking wheels, testing drivers’ sobriety) and other areas of administration where there is an element of direct coercion (mandatory vaccinations, evacuation, dispersing illegal gatherings, etc.) are of similar importance. In all these situations, activities performed by public administration, *i.e.*, by authorized persons, produce legal effects through facts or events [...]. We are dealing with a similar, although less clear, example of substantive and technical activities in relation to various types of registration acts. [...]”. J. Zimmermann, *Prawo administracyjne*, Warszawa 2020, p. 467; see also: M. Krawczyk, *Podstawy władztwa administracyjnego*, Warszawa 2016, pp. 353 et seq.

¹⁸ Article 43 UPP.

The Register of the Central Register of Tour Operators and Entrepreneurs Facilitating the Purchase of Linked Tourist Services (hereinafter referred to as: RCE)¹⁹ is kept by the marshal of the voivodeship competent for the registered office of the tourist entrepreneur or the address of residence in the case when the entrepreneur is a natural/legal person. The rules regarding the organization and method of maintaining the register are specified in the Regulation on the Central Register of Tour Operators and Entrepreneurs Facilitating the Purchase of Linked Tourist Services²⁰. The voivodeship marshal enters the data into the records kept in the IT system in which the data is collected and presented in the form of record books, separate for each entrepreneur, consisting of three sections. They contain, respectively, the first one, data about the entrepreneur, and the second, information about financial security-insurance/guarantee and settlements with customers, and the third – information on decisions and initiated proceedings to remove the entrepreneur from the register. The register is public, which means that anyone interested will have access to it. On its basis, it is possible to verify whether the entry is valid and current for entrepreneurs facilitating the purchase of linked travel services and whether they have current financial security in the event of insolvency – in the form of a guarantee or insurance.

According to the UPP, the body keeping the register of regulated activities makes an entry at the request of the entrepreneur, after the entrepreneur submits to the body keeping the register of regulated activities a declaration on meeting the conditions required by law to perform this activity. However, this does not apply to a case where the authority has requested the entrepreneur to complete the application for entry no later than within 7 days from the date of its receipt. In such a situation, the above-mentioned seven-day period runs from the date of completing the application for entry²¹. If an entry is made, the authority should

¹⁹ By virtue of art. 27. 1 UIT. The Insurance Guarantee Fund creates and maintains an IT system supporting the Central Register of Tour Operators and Entrepreneurs Facilitating the Purchase of Linked Tourist Services. The records consist of entries in the Registers kept by voivodeship marshals. The voivodeship marshal enters data into the Register, modifies them and removes them from the Register on the basis of an entry in the Register or a change to this entry and the documents specified in the Act, broadly: Centralna Ewidencja Organizatorów Turystyki i Przedsiębiorców Ułatwiających Nabywanie Powiązanych Usług Turystycznych, <https://www.gov.pl/web/rozwoj-technologie/centralna-ewidencja-organizatorow-turystyki-i-przedsiębiorcow-ulatwiających-nabywanie-powiązanych-usług-turystycznych> [access: 11.05.2024].

²⁰ Rozporządzenie Ministra Sportu i Turystyki z dnia 1 marca 2018 r. w sprawie Centralnej Ewidencji Organizatorów Turystyki i Przedsiębiorców Ułatwiających Nabywanie Powiązanych Usług Turystycznych, Journal of Laws, item 518.

²¹ Article 48 UPP.

issue a certificate confirming the entry²². The issuance of certificates itself, regulated in the general administrative procedure – the Code of Administrative Procedure²³ (hereinafter referred to as KPA), constitutes official confirmation of specific facts or legal status. It should be issued without undue delay, within no longer than 7 days, in the form of a certificate.

The authority maintaining the register of regulated activities is obliged to enter the entrepreneur in this register within 7 days from the date of receipt of the application for entry together with the above-mentioned information to this authority statement. However, if it happens that the competent authority does not make the entry within this period, and 14 days have passed since the application was received by this authority, then the entrepreneur may start business after notifying the authority that did not make the entry in writing. In this situation, we are dealing with the authority's tacit consent to undertake a specific type of business activity. The very institution of silently settling a case results directly from the provisions of general administrative proceedings. The legislator indicates that the matter may be resolved in this way in the event of consent – statutory delegation – resulting from a specific provision. This means that if the legislator allows for a tacit settlement of a matter, it must be “expressed in” and “result from” such a provision. The matter will be silently settled if, within the time limit specified in a specific provision, the authority does not express any objection by issuing an appropriate decision²⁴. Information about this way of handling the case by the public administration body must be included in the case files. Moreover, if the matter is silently resolved, the entity intending to start business in the regulated tourism industry will not receive any confirmation from the authority making the entry. A certificate of entry by the locally competent voivodeship marshal will be issued to the entrepreneur only at his or her request²⁵. The described situation is quite controversial, because an entrepreneur who receives confirmation of an entry in the register can present it to his client practically from the moment of physical possession of it and start conducting commercial activity within 7 days from the date of submitting a completed application for entry. In the case of tacit consent to start a commercial activity in the tourism industry, the time to start it, already at the initiation stage, is twice as

²² Article 218 § 1 in connection with 217 § 2 UPP.

²³ Ustawa z dnia 14 czerwca 1960 r. – Kodeks postępowania administracyjnego, unified text – Journal of Laws of 2024, item 572.

²⁴ Article 122a KPA.

²⁵ Article 122f KPA.

long – precisely because of the waiting period for the matter to be tacitly resolved by the authority. Moreover, in order to be able to obtain a certificate of registration, an entrepreneur must apply for it. And the time for its issuance, also specified in the provisions of the Code of Administrative Procedure (KPA), is a maximum of 7 days²⁶. At this point, it should be stated that the position of an entrepreneur starting a business based on the entry made and the entrepreneur using the institution of tacit consent is not equivalent, because the date of actual commencement of gainful activity, the aim of which is to maximize profit while minimizing risk, is different in both cases, with a loss to the other entrepreneur²⁷.

The situation of silent settlement of the matter may become even more complicated. A question should be asked of what if the entrepreneur starts a business activity after 14 days from the date of submitting the application for entry, and the authority will ultimately refuse to make an entry? In such a situation, despite the violation of statutory deadlines, the entrepreneur will be able to conduct business until the decision of the refusal to make an entry is made and becomes final. After this fact, the entrepreneur will have to immediately cease the economic activity of organizing tourist events and related tourist services, and if this is the only type of activity performed by the entrepreneur, discontinue it as a result²⁸.

The registration procedure itself is an application procedure. Therefore, it requires the party to submit an application to the appropriate authority for making an appropriate entry in the administrative register – RCE, the rules of which are regulated by the UIT. The provisions of this Act specify the conditions that must be met by tour operators and entrepreneurs facilitating the purchase of linked travel services in order to be able to legally operate in the tourism services market. These conditions include, in particular, the obligations to: have financial security in the forms provided for by the Act (bank or insurance guarantee, insurance contract for travelers, tourist trust account), providing the voivodeship marshal with the necessary information about the financial security held, keeping documentation, including a list of contracts, and fulfilling the information obligation towards travelers. They not only provide a minimum, uniform standard for every tourist entrepreneur, specifying his or her basic obligations, but also determine the necessary level of protection for travelers. The entry into the administrative register itself, by “entering” specific content into the register, serves to fulfill the recording, information,

²⁶ As to the principle “without undue delay”, Article 217 § 3 KPA.

²⁷ Widely: M. Wajgner, R. Tylińska, *Ekonomia i prawo w turystyce*, Warszawa 2009, pp. 92 et seq.

²⁸ Compare: A. Żywicka, *op. cit.*, p. 148.

and protection functions²⁹, which is in line with one from the doctrinal definitions of the administrative register³⁰.

The authority maintaining the register is obliged to enter the travel entrepreneur in the register within 7 days from the date of receipt of the application together with attachments. Confirmation of the entry is a certificate or printout of current information about entrepreneurs entered in the Register. If the voivodeship marshal does not make the entry within 7 days and 14 days have passed since the application was received, the tourist entrepreneur may start his business. This does not apply to the case when the voivodeship marshal called on the tourist entrepreneur to complete the application for entry no later than within 7 days from the date of its receipt. In such a situation, the deadline runs accordingly from the date of receipt of the supplemented entry application.

4. Conducting business in the area of tourist services and related tourist services

When submitting an application for entry into the RCE, it must be accompanied by the required documents, including: a statement on the completeness and truthfulness of the application and on knowledge and fulfillment of conditions in the field of organizing tourist services³¹, and, most importantly, confirmation, certified as a true copy of the original by a lawyer or legal advisor, of having the legally required financial security. The first guarantee should be granted before the tourist entrepreneur is entered in the register³². The guarantor may also request that, after making the entry, the travel entrepreneur submits to him a copy of the certificate of entry in the register in paper or electronic form. As a rule, the guarantee is granted for a travel entrepreneur who intends to submit an application for entry in the register of tour operators and travel intermediaries or is already entered in such a register and applies for another guarantee. He must also be the principal³³. Therefore, it is unacceptable

²⁹ Widely: T. Stawecki, *Rejestry publiczne. Funkcje instytucji*, Warszawa 2005; see also: D. Tykwińska-Rutkowska, *Rejestry i ewidencje administracyjne*, [in:] E. Bojanowski, K. Żukowski (ed.), *Leksykon prawa administracyjnego*, Warszawa 2009, pp. 324 et seq.

³⁰ The administrative register – public, is a collection of information about persons, things, or rights, created in accordance with the provisions of applicable law. It is kept by a public registration authority – in this case included in the executive power. Information specified by law requiring the registration authority to make a decision regarding specific facts or persons disclosed is entered into the register. Widely: T. Stawecki, *op. cit.*, pp. 28–30.

³¹ Article 24.2 UIT.

³² Requirement resulting from section article 24.2 UIT.

³³ Widely: B. Andrzejuk, I. Heropolitańska, *Gwarancje bankowe i ubezpieczeniowe*, Warszawa 2007.

to grant a guarantee on behalf of a third party. The beneficiary of the guarantee is the voivodeship marshal competent for the registered office of the entrepreneur, but also any traveler who has concluded a contract for a tourist event or a related tourist service. Further guarantees are provided while the tourist entrepreneur conducts business.

The required financial security is primarily intended to protect the safety of purchasers of travel services in terms of the possibility of returning from the place of the tourist event to their place of residence in the event of the insolvency of the tour operator or entrepreneur facilitating the purchase of linked travel services and allow, among other things, for the refund of payments made for a tourist event or related tourist services, covering the costs of continuing the tourist event or the costs of returning to the country, including in particular transport costs and accommodation, including reasonable costs incurred by travelers, where the tour operator or entrepreneur facilitating linked travel arrangements fails to ensure this return, contrary to the obligation³⁴. The minimum amount of the guaranteed sum is specified by law³⁵.

³⁴ Widely: Sejm Rzeczypospolitej Polskiej, Prace sejmu, Druki sejmowe, Rządowy projekt ustawy o imprezach turystycznych i powiązanych usługach turystycznych. Druk nr 1784—uzasadnienie, <https://www.sejm.gov.pl/sejm8.nsf/druk.xsp?nr=1784>, [access: 12.05.2024].

³⁵ The minimum amount of the guarantee was defined as a percentage of the annual revenue for the activity performed for the past year, but not less than the clearly defined value in Euros. Rozporządzenie Ministra Rozwoju i Finansów z dnia 27 grudnia 2017 r. w sprawie minimalnej wysokości sumy gwarancji bankowej i ubezpieczeniowej wymaganej w związku z działalnością wykonywaną przez organizatorów turystyki i przedsiębiorców ułatwiających nabywanie powiązanych usług turystycznych (unified text – Journal of Laws of 2021 item 1357). The tourism industry market, including activities related to the organization of tourist events, is one of the areas most affected by the COVID-19 pandemic. Travel restrictions, border closures, sanitary and epidemiological restrictions, and health concerns have resulted in a significant decline in demand for tourism services and created serious challenges for companies operating in this industry. The regulation of the Minister of Health introduced in March 2020 resulted in restrictions on conducting business activities in the tourism industry in the scope of operating tourist facilities in the field of accommodation and overnight stays. The introduced administrative and legal restrictions, including those regarding freedom of movement, the order to undergo mandatory quarantine after crossing the border, or isolation in the event of infection with the COVID-19 virus, resulted in the tourism industry, including the area of tour operators and tourism services, being one of the those that were most affected by the restrictions introduced in connection with the COVID-19 pandemic. The effects of the introduced restrictions were mitigated by various government aid programs addressed to entrepreneurs operating in the tourism industry, including: reducing the costs of concluding a guarantee agreement. The cost reduction consisted in modifying the method of calculating and determining the annual revenue, which was the basis for calculating the minimum amount of bank or insurance guarantee for contracts concluded by the end of 2020. The declared annual income may refer to currently incurred financial losses. More: *Obniżenie kosztów zawarcia umowy gwarancji w roku 2020*, gov.pl, 10.04.2020, <https://www.gov.pl/web/gov/obnizenie-kosztow-zawarcia-umowy-gwarancji-w-roku-2020> [access: 10.05.2024] and *Obniżenie kosztów zawarcia umowy ubezpieczenia na rzecz podróżnych w roku 2020*, <https://www.gov.pl/web/gov/obnizenie-kosztow-zawarcia-umowy-ubezpieczenia-na-rzecz-podroznych-w-roku-2020>, [access: 10.05.2024].

In the course of conducting a regulated business activity, a travel entrepreneur may be subject to inspection. Pursuant to the Act, tour operators and entrepreneurs facilitating the purchase of linked travel services are subject, under the Act, to control to which the competent voivodeship marshal and the minister responsible for tourism are entitled³⁶. The subject of the inspection³⁷ is the accuracy of the data provided when submitting an application for entry into the RCE and the fulfillment of the conditions arising from the provisions of the Act. The deletion from the register is made by the locally competent voivodeship marshal who originally made the entry in the register. The reason for deletion is either the entrepreneur's voluntary resignation from providing services and submitting an application for deletion from the register, or the entrepreneur's failure to comply with the scope of services offered. Among the shortcomings that result in deletion, the legislator pointed out the lack of a clear definition of the relevant tour operator in the contract concluded with the client, circumvention of statutory requirements related to the need for the entrepreneur to be included in the administrative register in question or to have financial security – insurance or a bank guarantee – in the event of insolvency, lack of an agency agreement in the event of an obligation to have one, and failure to adequately inform clients about the details of the agreement before its conclusion and in its content³⁸.

5. Mandatory termination of business activity in the area of tourist services and related tourist services

The obligation of tour operators and entrepreneurs facilitating the purchase of linked travel services is to have a valid bank guarantee or insurance guarantee or travel insurance contract for the entire period of conducting business activity in the tourism industry³⁹. The Act obliges tourist entrepreneurs to submit proof of financial security to the voivodeship marshal no later than 14 days before the expiry of the previous contract or guarantee. It is important that the legislator quite fundamentally defined the fact that it is impossible to extend the deadline. If the entity operating in the field of organizing tourist events and related tourist services fails to document the possession of appropriate financial security, the voivodeship marshal performs its obligation, *i.e.*, issuing a decision to remove the entrepreneur with the

³⁶ By virtue of UPP.

³⁷ Article 30 UIT.

³⁸ Article 32 UIT.

³⁹ Article 7.1.1, 7.1.2 and 7.2.5 of UIT.

RCE and a ban on performing activities covered by entry in the register for a period of 3 years⁴⁰. At the same time, the restrictiveness resulting from the provisions of the discussed normative act seems to be mitigated by the actual activities performed by the voivodeship marshal, including: on informing the organizer of tourist events and related travel services that are a party to the proceedings, among others: on the initiation of deletion proceedings. Often, however, as evidenced by the factual justifications for judgments of administrative courts regarding the removal of a given entrepreneur from the register, the authority – before taking the decision to remove – requesting the party to the proceedings either to provide appropriate explanations in the case⁴¹, or to submit a document confirming that it has financial security in the event of insolvency⁴². Due to the result, the guarantee covering claims for liability for the obligations of the travel agency as a tour operator is non-transferable.

In the event of deletion from the RCE for the above reasons, the entrepreneur's sanction is the inability to be re-entered into the register before the expiry of 3 years from the date on which the administrative decision deletion from the register and prohibition to perform the activities covered by the entry were effectively delivered to the party. The voivodeship marshal issues a decision to remove an entity organizing tourist events or related tourist services from the register. However, it should be emphasized at this point that an entrepreneur running only one type of activity in the field of tourism should stop running it. If the tourist activity is one of many that the entrepreneur undertakes, he is obliged to stop performing only a specific type of activity with the possibility of continuing to operate in other areas.

A similar situation occurs when the organizer of tourist services and related travel services wishes to temporarily suspend its operations. If he conducts it together with additional types of business activity, in order to benefit from the institution of suspending the activity in the field of tourist services, he must, in practice, suspend it in its entirety. This suspension is possible under the conditions specified in the Act, specifying, among other things: that it is not possible to suspend only part of the activity or one of the forms of business activity. The entity running the business should notify the voivodeship marshal about the suspension of business activity in the field of tourist services alone or with the coexistence of other types of services.

⁴⁰ Article 32.2. UIT.

⁴¹ Judgment of the Provincial Administrative Court in Warsaw of 11.04.2022 r., VI SA/Wa 2629/21, LEX No. 3422024.

⁴² Judgment of the Provincial Administrative Court in Warsaw of 27.10.2022 r., VI SA/Wa 2058/22, LEX No. 3503351.

The notice of suspension of business activity is declaratory in nature and confirms the suspension of business activity, reported by the entrepreneur to CEIDG or KRS⁴³.

The appeal body for decisions issued by the voivodeship marshal regarding the records is the Minister of Tourism, the so-called departmental minister, currently Minister of Sport and Tourism. The appellate body, acting pursuant to the Code of Administrative Procedure (KPA), may make one of the three procedures specified in Art. 138 of the Code of Administrative Procedure (KPA). It may uphold the contested decision, repeal it in whole or in part, or discontinue the appeal proceedings. Importantly, the Minister of Sport and Tourism may also repeal the contested decision in its entirety and refer the case for reconsideration to the voivodeship marshal who made the decision in the administrative case in the first instance and when this decision was issued in violation of the provisions of the procedure, and the scope of the case needed to be clarified has a significant impact on its resolution. It is important that when transferring the case to the voivodeship marshal, the competent minister should indicate what circumstances should be taken into account when reconsidering the case⁴⁴.

Due to the above regulation resulting in the issuance of a de facto decision banning the temporary pursuit of business activity in the field of tourist services, it should be presumed that the primary cause of deletion is either the action of a public administration body or the recipient of tourist services – the customer, or another person who is aware of the fact violation of statutory requirements regarding activities in the tourism industry. In the case of the former, the reason is an inspection of the entrepreneur's activities carried out by an authorized body, actual or in absentia; in the second case, a complaint submitted by the recipient of the services offered by the travel entrepreneur. However, as a result, the secondary reason for sanctioning is the initiation of administrative proceedings as a result of finding the deficiencies specified in Art. 32 UIT, resulting in the issuance of a decision on the prohibition of conducting business activity in the field of tourist services by an entrepreneur for a specified period. It is important that the legislator in the Entrepreneurs' Law provided for the possibility of refusing to make an entry in the register in a situation where a final judgment has been issued prohibiting the entrepreneur

⁴³ Ustawa z dnia 6 marca 2018 r. o Centralnej Ewidencji i Informacji o Działalności Gospodarczej i Punkcie Informacji dla Przedsiębiorcy (unified text – Journal of Laws of 2022, item 541) and Ustawa z dnia 20 sierpnia 1997 r. o Krajowym Rejestrze Sądowym (unified text – Journal of Laws of 2023, item 685 as amended).

⁴⁴ Article 138 KPA.

from conducting the business activity covered by the entry or if the entrepreneur has been removed from the register of this regulated activity as a result of the authority keeping the register issuing a decision prohibiting the entrepreneur from conducting the business activities covered by the entry in the period of 3 years preceding the submission of the application. A particular problem may be a situation in which a new legal entity is created, which has previously been subject to a penalty in the form of inability to run a business to a specific extent, and, for example, partners of a previously operating company in the tourism industry establish a new legal entity in the form of a new company.

6. Summary and conclusion

To sum up, the administrative and legal area of regulation in relation to tourist services is related to the need to make an entry in the register – an appropriate administrative register kept by the locally competent voivodeship marshal. This entry is of a declaratory, purely formal, nature, performed as a material and technical activity and only confirms the fulfillment of formal conditions enabling tourist activity. However, it does not allow the public administration body to verify the accuracy of the information presented, on the basis of which the entry will be made. It is presumed that it is consistent with the ethical principles of the entrepreneur's activities, *i.e.*, activities based on fair competition and good practices. Such verification, carried out during a possible inspection procedure of a given entrepreneur's activity, in fact takes place after the entrepreneur has started operating in the discussed area. The provision regarding the possibility of starting a business after the so-called waiting period, and tacit consent to this fact by the public administration body, which, in relation to the actual commencement of commercial activity by the entrepreneur, treats him differently in the case of making an entry and tacit consent to start the business due to the longer waiting period for entering the market of tourist services. Also, the need to apply for an appropriate certificate in the event of starting a business as a result of tacit consent seems inappropriate. In such case, the period of confirming the entrepreneur's credibility through an appropriate certificate also requires a time commitment. It is important because not every consumer has knowledge of where and how to actually verify the entity providing tourist services. Finally, the question of the possibility of circumventing a temporary ban on conducting business activity by a specific entity does not seem to be relevant. It seems that this prohibition should not only apply to natural/legal persons running a sole proprietorship, or legal enti-

ties, and be correlated with the data of a company operating in the tourism industry, but also to natural/legal persons. In my opinion, this prohibition should have the characteristics of an administrative restriction imposed on a natural/legal person, identified by name and PESEL personal registration number.

At the end of the considerations presented in this study, it would be worth referring to the issues related to the europeanization of law, which also included the regulation of the organization and performance of activities in the tourism industry. In addition to the administrative and legal sanction consisting in a ban on temporary activities in the tourism industry, the legislator also allowed for the possibility of imposing financial penalties on entrepreneurs who violate the conditions for the performance of obligations arising from the content of EU regulations⁴⁵. This is where the influence of European regulation on national administrative law is highlighted. Thus, a tour operator or an entrepreneur facilitating the purchase of linked travel services who operates in breach of the obligations or conditions arising from the content of specific regulations of the EU institutions is subject to an administrative penalty, the imposition and enforcement of which will be the responsibility of the national public administration body. Thus, fines on tour operators⁴⁶ are imposed administratively by the locally competent voivodeship marshal. The legislator also in the content of a specific act, and not in the general administrative procedure, indicated, firstly, the possibility of appealing against a decision issued by an authorized body, and secondly, the Local Government Appeals Court, as the body with competence to consider an appeal decision on imposing a penalty⁴⁷ which is consistent with the provisions of the general administrative procedure⁴⁸.

⁴⁵ Rozporządzenie Parlamentu Europejskiego i Rady (UE) nr 1177/2010 z dnia 24 listopada 2010 r. o prawach pasażerów podróżujących drogą morską i drogą wodną śródlądową oraz zmieniające rozporządzenie (WE) nr 2006/2004 (Official Journal of the EU L of 2010, No. 334, p. 1, as amended) oraz rozporządzenie Parlamentu Europejskiego i Rady (UE) nr 181/2011 z dnia 16 lutego 2011 r. dotyczące praw pasażerów w transporcie autobusowym i autokarowym oraz zmieniające rozporządzenie (WE) nr 2006/2004 (Official Journal of the EU L of 2011, No. 55, p. 1).

⁴⁶ Based on Article 55 UIT.

⁴⁷ The amount of the penalty was defined by the legislator as its upper limit and, depending on the type of violation of obligations or the conditions of EU regulation, it amounts to a maximum of PLN 30,000 or PLN 50,000, Article 56 UIT.

⁴⁸ Art 17 KPA: [SKO are] "higher-level bodies in relation to all bodies of local government units, unless the provisions of substantive administrative law in a specific individual case clearly indicated another body", C. Martysz, *Właściwość samorządowych kolegiów odwoławczych*, [in:] I. Lipowicz (ed.), *System Prawa Samorządu Terytorialnego. Tom III. Samodzielność samorządu terytorialnego – granice i perspektywy*, Warszawa 2023, p. 562.

Bibliography

Legal Acts

- Ustawa z dnia 14 czerwca 1960 r. Kodeks postępowania administracyjnego (unified text – Journal of Laws of 2024, item 572).
- Ustawa z dnia 2 kwietnia 1997 r. Konstytucja Rzeczypospolitej Polskiej (Journal of Laws no. 78, item 483, as amended).
- Ustawa z dnia 20 sierpnia 1997 r. o Krajowym Rejestrze Sądowym (unified text – Journal of Laws of 2023, item 685 as amended).
- Ustawa z dnia 24 listopada 2017 r. o imprezach turystycznych i powiązanych usługach turystycznych (unified text – Journal of Laws of 2023, item 2211).
- Ustawa z dnia 6 marca 2018 r. o Centralnej Ewidencji i Informacji o Działalności Gospodarczej i Punkcie Informacji dla Przedsiębiorcy (unified text – Journal of Laws of 2022, item 541).
- Ustawa z dnia 6 marca 2018 r. Prawo przedsiębiorców (unified text – Journal of Laws of 2024, item 236).
- Dyrektywa Parlamentu Europejskiego i Rady 2006/123/WE2006/123/WE z dnia 12 grudnia 2006 r. dotycząca usług na rynku wewnętrznym (Official Journal of the EU L 376, 27/12/2006, p. 36).
- Dyrektywa Parlamentu Europejskiego i Rady (UE) 2019/1158 z dnia 20 czerwca 2019 r. w sprawie równowagi między życiem zawodowym a prywatnym rodziców i opiekunów oraz uchylająca dyrektywę Rady 2010/18/UE (Official Journal of the EU L 188, 12/07/2019, p. 79).
- Rozporządzenie Parlamentu Europejskiego i Rady (UE) nr 1177/2010 z dnia 24 listopada 2010 r. o prawach pasażerów podróżujących drogą morską i drogą wodną śródlądową oraz zmieniające rozporządzenie (WE) nr 2006/2004 (Official Journal of the EU L 2010, No. 334, p. 1, as amended).
- Rozporządzenie Parlamentu Europejskiego i Rady (UE) nr 181/2011 z dnia 16 lutego 2011 r. dotyczące praw pasażerów w transporcie autobusowym i autokarowym oraz zmieniające rozporządzenie (WE) nr 2006/2004 (Official Journal of the EU L of 2011, No. 55, p. 1).
- Rozporządzenie Ministra Rozwoju i Finansów z dnia 27 grudnia 2017 r. w sprawie minimalnej wysokości sumy gwarancji bankowej i ubezpieczeniowej wymaganej w związku z działalnością wykonywaną przez organizatorów turystyki i przedsiębiorców ułatwiających nabywanie powiązanych usług turystycznych (unified text – Journal of Laws of 2021, item 1357).
- Rozporządzenie Ministra Sportu i Turystyki z dnia 1 marca 2018 r. w sprawie Centralnej Ewidencji Organizatorów Turystyki i Przedsiębiorców Ułatwiających Nabywanie Powiązanych Usług Turystycznych (Journal Laws, item 518).
- Sejm Rzeczypospolitej Polskiej, Prace sejmowe, Druki sejmowe, Rządowy projekt ustawy o imprezach turystycznych i powiązanych usługach turystycznych. Druk nr 1784 – uzasadnienie, access: 12.05.2024.

Case Law

- Judgment of the Provincial Administrative Court in Warsaw of 11.04.2022 r., VI SA/Wa 2629/21, LEX No. 3422024.
- Judgment of the Provincial Administrative Court in Warsaw of 27.10.2022 r., VI SA/Wa 2058/22, LEX No. 3503351.

Literature

- Andrzejuk B., Heropolitańska I., *Gwarancje bankowe i ubezpieczeniowe*, Warszawa 2007.
- Barcik J., *Elementy międzynarodowego prawa publicznego w turystyce*, Warszawa 2011.
- Gospodarek J., *Prawo w turystyce i rekreacji*, Warszawa 2007.
- Krawczyk M., *Podstawy władztwa administracyjnego*, Warszawa 2016.
- Lizewski S., *Działalność regulowana*, LEX Wolters Kluwer 2024.
- Martysz C., *Właściwość samorządowych kolegiów odwoławczych*, [in:] I. Lipowicz (ed.), *System Prawa Samorządu Terytorialnego. Tom III. Samodzielność samorządu terytorialnego – granice i perspektywy*, Warszawa 2023.
- Pawłowski A. (ed.), *Ustawa o swobodzie działalności gospodarczej. Komentarz*, Warszawa 2009.
- Ślugocka M., *Wolność działalności gospodarczej jako norma-zasada*, „Acta Erasmiiana” 2012.
- Stawecki T., *Rejestry publiczne. Funkcje instytucji*, Warszawa 2005.
- Szydło M., *Ewidencja działalności gospodarczej w nowej ustawie o swobodzie działalności gospodarczej*, „Kwartalnik Prawa Publicznego” 2006, No. 6 (3).
- Tykwińska-Rutkowska D., *Rejestry i ewidencje administracyjne*, [in:] E. Bojanowski, K. Żukowski (ed.), *Leksykon prawa administracyjnego*, Warszawa 2009.
- Wajgner M., Tylińska R., *Ekonomia i prawo w turystyce*, Warszawa 2009.
- Wojtczak D., *Podjęmowanie działalności gospodarczej w obszarze usług turystycznych w świetle wolności gospodarczej*, „Internetowy Kwartalnik Antymonopolowy i Regulacyjny” 2018, No. 4 (7).
- Zimmermann J., *Prawo administracyjne*, Warszawa 2020.
- Żywicka A., *Regulowana działalność gospodarcza w dziedzinie usług turystycznych – uwarunkowania administracyjnoprawne*, „Roczniki Nauk Prawnych” 2013, vol. XXIII, No. 2.

Internet

- Obniżenie kosztów zawarcia umowy gwarancji w roku 2020, <https://www.gov.pl/web/gov/obnizenie-kosztow-zawarcia-umowy-gwarancji-w-roku-2020>, access: 10.05.2024.
- Obniżenie kosztów zawarcia umowy ubezpieczenia na rzecz podróżnych w roku 2020, <https://www.gov.pl/web/gov/obnizenie-kosztow-zawarcia-umowy-ubezpieczenia-na-rzecz-podroznych-w-roku-2020>, access: 10.05.2024.
- UN Tourism, <https://www.unwto.org/glossary-tourism-terms>, access: 10.05.2024.