



LEGAL REGULATION OF TOURISM AS A NEW SUPPORTING COMPETENCE OF THE EUROPEAN UNION

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Summary

This article covers the scope of the EU's competences and their effect on the member states, their usage, impact on national interest, and future challenges. The main attention is paid on the current EU's supporting competences, particularly tourism which is relatively new, dating back to the Lisbon Treaty which entered into force in 2009. The EU is yet to legislate under that competence, although various policy initiatives have been announced.

Key words: competence, exclusive competence, shared competence, supporting competence, tourism, legal regulation.

Аннотация

Рассматривается сфера компетенций Европейского Союза и их влияние на государства, входящие в его состав, их использование, влияние на национальные интересы и будущие вызовы. Основное внимание уделяется текущим поддерживающим компетенциям Европейского Союза, в особенности туризму. Компетенция в сфере туризма является относительно новой и начинается с Лиссабонского договора, который вступил в силу в 2009 г. Европейский Союз еще законодательствует в сфере туризма, несмотря на то, что в этой отрасли были объявлены различные политические инициативы.

Ключевые слова: компетенция, исключительная компетенция, совместная компетенция, поддерживающая компетенция, туризм, правовое регулирование.

Statement of the problem.

The Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community (initially known as the Reform Treaty) which entered into force in 2009 stated tourism as a new EU competence. Therefore the studies of tourism as a new supporting competence of the EU, as well as prospects for its development, are very important and timely to date. According to the Treaty on the Functioning of the European Union (TFEU) (Title I, Article 6) "The Union shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States. The areas of such action shall, at European level, be <...> tourism". Herewith, Title XXII, Article 195 of the TFEU specifies that "the Union shall complement the action of the Member States in the tourism sector, in particular by promoting the competitiveness of Union undertakings in that sector. To that end, Union action shall be aimed at: encouraging the creation of a favorable environment for the development of undertakings in this sector; promoting cooperation between the Member

States, particularly by the exchange of good practice". That means that the EU Member States and their regions have full competence in the tourism field and the EU competence in this area is to complement, support and coordinate the action of the Member States in the tourism sector. It provides no harmonization of the laws and regulations of the Member States [16, p. 5–6].

State of research. The issues of competences of the EU in the area of tourism have been partially studied by national researchers such as A.Y. Alexandrova, E.N. Artemova, S.S. Galasyuk, N.V. Kolesnik, V.A. Kozlova, V.A. Kvar-talnov, A.O. Tolochko, I.V. Zorin. A considerable work in this area has been also carried out by the foreign scientists such as C.M. Hall, T.E. Coles, P. Lynch, C. Lashley, A. Morrison, R. Conrady, M. Buck, E. Smeral, H. Song, S. Lin, R.M. Woodworth and others.

However, these studies are more related to general issues, aspects and peculiarities of tourism as a supporting competence of the EU.

The main attention was paid to a regulatory framework in this area, which

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is firstly based on the provisions of the existing constituent documents of the European Union such as consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union; the Charter of Fundamental Rights of the European Union; regulations, directives and other regulations issued by the institutions of the European Union; EU jurisprudence as well as international agreements concluded by the European Union.

Research methods that have been used in the article are the method of analysis, synthesis and comparative legal method and others that are necessary to obtain scientific results.

The purpose and objectives of the research. The aim of the article is a comprehensive research of the competences of the European Union at the present stage, as well as trends and prospects of their development. The main attention is paid to a new supporting competence of the EU such as tourism.

Achievement of this goal involves the following major tasks: definition of competence of the EU; identification of patterns of competence of the EU at the present stage; analysis of the powers of the EU in the implementation of the competence of the EU; examination of tourism as a new supporting competency of the EU; new perspectives of tourism development.

Basic material. Competence is one of the fundamental categories of the European Union (EU) law. Theoretical understanding of the processes of its development is currently one of the most complex and urgent problems.

The modern science of European law has no clear comprehension of the basic patterns of the development of the competence of the EU, which is needed in order to predict the prospects of its development. Those concepts which are available in law and literature reflect only a few aspects of the discussion of the issue, indicating the lack of theoretical elaboration of the topic. Evolution of the competencies of the EU is a complex dialectical process that takes place in accordance with the particular laws that are specific to the EU. Therefore, it is needed to define the concept of the competence of the EU with the current changes, clarify the evolution of its competence and reveal the essence of this phenomenon.

The article investigates the development of the competence of the EU at the present stage of development and particularly pays attention to such specific supporting competence of the European Union as tourism.

Competence in the context of this article is about everything deriving from EU law that affects what happens in the EU member states. That means examining all the areas where the Treaties give the EU competence to act, including the provisions in the Treaties giving the EU institutions the power to legislate, to adopt non-legislative acts, or to take any other sort of action. But it also means examining areas where the Treaties apply directly to the member states without needing any further action by the EU institutions.

The EU's competences are set out in the EU Treaties, which provide the basis for any actions the EU institutions take. The EU can only act within the limits of the competences conferred on it by the Treaties, and where the Treaties do not confer competences on the EU they remain with the member states [9, p. 25].

A new separation of competences between the European Union and Member States is explicated by the Treaty of Lisbon. From now on an exact classification of the competences for the first time in the founding Treaties, distinguishing between three main types of competence: exclusive competences, shared competences and supporting competences [8, p. 13].

This alteration is essential and important for the proper functioning of the EU, since in the past between the EU and Member States several conflicts of competence have arisen. From now on, the borders between the competences of each are clearly determined. In addition, this transparency makes easier the application of the fundamental principles relating to the control and exercise of these competences.

The EU's competences are set out in the EU Treaties, which provide the basis for any actions the EU institutions take (Articles 2–6 of the Treaty on the Functioning of the European Union – TFEU) [6]. The EU can only act within the limits of the competences conferred on it by the Treaties, and where the Treaties do not confer competences on the EU they remain with the Member States.

As it was mentioned before, there are 3 main types of competence of the

EU. The first competence which is called “*exclusive competence*” means that only the EU can act in areas where it has such a competence, in this specific area, only the Union may legislate and adopt legally binding acts, the Member States are able to do so themselves only if so empowered by the Union or for the implementation of Union acts (Article 2) [5, p. 50–51]. It includes: customs union; the establishing of the competition rules necessary for the functioning of the internal market; monetary policy for the member states whose currency is the euro; conservation of marine biological resources under the common fisheries policy; common commercial policy; concluding international agreements: when their conclusion is required by a legislative act of the EU; when their conclusion is necessary to enable the EU to exercise its internal competence; in so far as their conclusion may affect common rules or alter their scope.

The second competence is a “*shared competence*” (Article 4) [5, p. 51–52]. It implies that the Union shall divide competence with the Member States where the Treaties endows with it. In these areas either the EU or the Member States may act, but the Member States may be prevented from acting once the EU has done so. This competence embraces: internal market; social policy, limited to the aspects defined in the TFEU; economic, social and territorial cohesion; agriculture and fisheries, excluding the conservation of marine biological resources; environment; consumer protection; transport; trans-European networks; energy; area of freedom, security and justice; common safety concerns in public health matters, limited to the aspects defined in the TFEU; research, technological development and space; development cooperation and humanitarian aid.

The third competence is named “*supporting competence*” and is regulated by Article 6 of TFEU. It defines that the EU has competence to support, coordinate or supplement the actions of the Member States in certain areas, the EU may not adopt legally binding acts that require the Member States to harmonize their laws and regulations, that denotes that both the EU and the Member States may act, but action by the EU does not prevent the Member States from taking action of their own.



The competence involves: protection and improvement of human health; industry; culture; tourism; education, vocational training, youth and sport; civil protection; administrative cooperation.

In all three cases the EU must act in accordance with fundamental rights as set out in the Charter of Fundamental Rights [2, p. 391–407] (such as freedom of expression and non-discrimination) and with the principles of subsidiarity and proportionality. Under the principle of subsidiarity, where the EU does not have exclusive competence, it can only act if it is better placed than the Member States to do so because of the scale or effects of the proposed action. Under the principle of proportionality, the content and form of EU action must not exceed what is necessary to achieve the objectives of the EU treaties.

EU competence in relation to culture, administrative cooperation, civil protection, sport, and tourism is supporting. Among these competences we can distinguish four new areas of competence in which the EU may interfere according to the Treaty of Lisbon, which are: administrative cooperation, civil protection, sport and tourism.

In these areas all these four new EU's competences are supporting competences. Without being able to harmonize national law, the EU does not obtain any additional legislative powers thus as it can act only to support the actions of its Member States. Furthermore, the EU already intervened in these areas by means of cross-cutting policies. From now on, the Treaty of Lisbon clarifies the EU's objectives and action by creating specific legal bases for these areas [17, p. 1].

A special attention in this article we would like to pay to such a new supporting competence of the EU as tourism. There is no specific EU definition of the tourism sector. The EU Commission's Communication on the future of EU Tourism of 13 November 2001 noted that it is "a service sector with a particularly complex product dependent on an extremely fragmented supply". Each link in the chain (travel agencies, tour operators, carriers, hoteliers, restaurateurs etc.) offers one element in the overall product [3, p. 1]. That product is extremely diverse. Natural and cultural resources, tourist facilities, the communications infrastructure, accommodation and

restaurants are the basic resources of the tourist destination. The combination of local tourism resources and the services offered determines the type of tourism to which a destination belongs: such as coastal or mountain tourism, sport or religious tourism, thermal or gastronomic tourism, and of course business tourism.

Since the European Council of 21 June 1999 on the topic of 'tourism and employment', the EU has become increasingly aware of tourism's contribution to employment in Europe. In its communication on "Working together for the future of European tourism", the Commission proposed an operational framework and measures to boost the EU tourism industry. The Council resolution of 21 May 2002 on the future of tourism ratified the Commission's approach and, having set the goal of making Europe a top tourist destination, quickly led to closer cooperation between public and private stakeholders in the EU tourism industry. On that basis the Commission then implemented a wide range of measures [18, p. 1].

The Commission published seven communications between 2001 and February 2014 setting out its policy guidelines for the development of the tourism sector. These included:

- Agenda for a sustainable and competitive European tourism of 19 October 2007 [4] which sets out how sustainable development could ensure the long-term competitiveness of tourism and announced a three-yearly set of preparatory activities;

- Europe, the world's No 1 tourist destination – a new political framework for tourism in Europe of 30 June 2010 [10], which analyses the factors which make the European tourism industry competitive and the obstacles to its sustainable development;

- Implementation and development of the common visa policy to spur growth in the EU of 7 November 2012 [13], which seeks to bring about an increase in the number of tourists from third countries visiting the EU by establishing a common visa policy;

- A European Strategy for More Growth and Jobs in Coastal and Maritime Tourism of 20 February 2014 [1], which seeks to promote sustainable growth and competitiveness in coastal and maritime tourism.

During the recent economic decline tourism was Europe's most flexible sector and will remain as a main driver further on the road to recovery. In several European policies, particularly in regional policy and employment policy tourism was already present. The Treaty, from now on, creates a specific legal basis in order to enable the EU to intervene in this area (Article 195 of TFEU).

The action of the EU can therefore have two objectives: a) creating a favorable environment for the development of undertakings in the tourism sector; b) promoting cooperation between the member states, particularly through the exchange of good practice.

As it was stated above, the EU's competences in relation to tourism are supporting only. This means that both the EU and the member state may act, but action by the EU does not prevent the member state from taking action of their own. Nevertheless, in this area the EU has acted under other competences (some of which are shared or exclusive), in ways that impact on this sector.

Before the Treaty of Lisbon only a few documents in tourism sector were adopted, among them should be mentioned such documents as Resolution of 8 September 2005 on new prospects and new challenges for sustainable European tourism [12]; Regulation (EC) № 1931/2006 of the European Parliament and of the Council of 20 December 2006 laying down rules on local border traffic at the external land borders of the Member States [7]; European Parliament Resolution of 29 November 2007 on a renewed EU Tourism Policy: Towards a stronger partnership for European Tourism [11] and some others.

In 2010 the Commissioner for Industry and Entrepreneurship of the EU A. Tajani offered a Communication on a new political framework to stimulate the competitiveness of the European tourism sector. This document drafted a number of perspective and promising actions and helped to simplify procedures for short-stay visas, create numerous initiatives to tap into new markets and diversify Europe's overall tourism offer.

The EU's Communication on Tourism identified four priorities for action:

- stimulating competitiveness;
- promoting sustainable, responsible and high-quality tourism;



– consolidating Europe's image as a collection of sustainable, high-quality destinations;

– maximizing the potential of EU financial policies for developing tourism.

In 2012 the EU has published an implementation plan for these priorities, and to capitalize on Europe's common heritage. Plans include an ICT and tourism platform to support the tourism sector in using new information technology, and the development of a 'Consumer Markets Scoreboard' to measure consumer satisfaction with services such as transport, accommodation, travel and package tours. Besides that, in May 2012 the "Senior Tourism Initiative" [15, p. 1–2] was launched (further proposals published in 2013) and it described how basic adjustments to facilities and information services will enable senior citizens and travelers with special access needs to fully enjoy Europe's tourism experiences.

A set of voluntary European Tourism Quality Principles was proposed by the European Commission on 20 February 2014 [14, p. 1–10]. Tourism providers, especially SMEs, are encouraged to adopt the principles as a way to promote the quality of their services and enhance consumer confidence.

The Commission will help raise global awareness of these principles, which cover areas such as staff training, cleanliness, maintenance and access to reliable information. This way, consumers know they can expect quality services from participating organizations regardless of which member state they visit.

This document is intended to:

– help tourism service providers, for example hotels, restaurants, tourist attractions and other organizations that decide to follow these principles. The main aim of it is to help them promote the quality of their service, even beyond their usual markets. This will be done by raising global awareness about the EU Principles both within and particularly, outside Europe;

– highlight the quality of tourism services to consumers, particularly to those travelling outside their own country or visiting from outside Europe. Consumers will be reassured that, if a tourism service provider abides by the EU Principles, it will provide quality services, regardless of which EU country is concerned.

The principles focus on 4 main areas of tourism service quality: a) employee training; b) consumer satisfaction policy; c) cleaning and maintenance; d) information provided to tourists.

There is no doubt that all the abovementioned documents brought positive outcomes, nevertheless the need for continued support, especially with threats such as emerging international destinations and fast-changing consumer behavior is still urgent.

In order for Europe to keep its top position in tourism sector, it should be based on its capacity to innovate, to diversify its offers, to open new markets and to attract new clients.

In the international field the EU cooperates with international organizations, including the European Travel Commission, the World Tourism Organization and the OECD, and with non-EU countries to promote European Tourism under implied exclusive competence powers. The EU is currently working on a draft joint statement with the Chinese National Tourism Administration.

Conclusions. Due to the fact that one of the most crucial economic activities of the EU nowadays is tourism, its legal regulation in the EU is nowadays mostly important. Undoubtedly, tourism has a considerable effect on employment, economic growth and social development. Yet, this sector collides a series of challenges that the European Commission constantly resolves.

Tourism is comparatively new current EU's supporting competence, dating back to the Lisbon Treaty of 2009. This means that both the EU and the member state may act, but action by the EU does not prevent the member state from taking action of their own. Despite the fact, that the EU is yet to legislate under that competence, though various policy initiatives have been announced. As disclosed in the article, EU policy aims to maintain Europe's standing as a leading tourist destination while maximizing the industry's contribution to growth and employment. It also promotes cooperation between EU countries, particularly through the exchange of good practice. To maintain Europe's position as a leading tourist destination, the quality of its services needs to be continuously improved and legally adjusted.

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ВЛИЯНИЕ СУДЕБНОЙ ПРАКТИКИ НА ПРЕДОТВРАЩЕНИЕ И УСТРАНЕНИЕ СУДЕБНЫХ ОШИБОК В ГРАЖДАНСКОМ ПРОЦЕССЕ УКРАИНЫ

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Summary

The article describes the different views of scientists on definition of jurisprudence. Given its own definition these concepts. It carried out an analysis of the legal literature study of the legal nature of judgments of superior courts, namely, Supreme Specialized Court of Ukraine for Civil and criminal cases and the Supreme Court of Ukraine. It is proved that the higher courts have a special legal status, which is determined by the fact that they not only administer justice, and are designed to perform the function of providing uniform application of the law by all courts. Proceeding the results of the study indicated the benefits of providing unity of jurisprudence.

Key words: similar cases, higher courts, unity jurisprudence, legal certainty, legal position, judiciary error, litigation, judicial system, judgment.

Анотация

В статье раскрываются различные точки зрения ученых относительно определения понятия «судебная практика». Приводится собственное определение указанного понятия. Осуществляется анализ юридической литературы по исследованию правовой природы судебных решений высших судов, а именно Высшего специализированного суда Украины по рассмотрению гражданских и уголовных дел и Верховного Суда Украины. Обосновывается, что высшие суды имеют особый правовой статус, который определяется тем, что они не только осуществляют правосудие, но и призваны выполнять функцию обеспечения единообразного применения законодательства всеми судами. Исходя из результатов исследования, указывается на преимущества обеспечения единства судебной практики.

Ключевые слова: аналогичные дела, высшие судебные органы, единство судебной практики, правовая определенность, правовая позиция, судебная ошибка, судебная практика, судебная система, судебное решение.

Постановка проблемы. Качество судопроизводства, а также авторитет всей судебной системы Украины определяется правильным и единообразным применением судами законодательства. Обеспечение единства судебной практики, безусловно, нужно прежде всего потому, что оно является реализацией принципа правовой определенности, который обеспечивает прогнозируемость судебных решений и стабильность правового регулирования. Благодаря обеспечению единства судебной практики также реализуется конституционный принцип равенства всех граждан перед законом и судом, и это не является новеллой. Кроме этого, обеспечение единства судебной практики дает также другие положительные результаты. В частности, это сказывается на уровне загруженности судей, ведь если в государстве скла-

дывается устойчивая судебная практика, обеспечивается ее единство, то лица, намереваясь обратиться с соответствующим заявлением в суд, могут прогнозировать, каким будет судебное решение, поэтому определенное количество обращений в суд, а также случаев обжалования судебных решений, безусловно, уменьшится.

Актуальность темы исследования подтверждается тем, что в настоящее время на уровне гражданской процессуальной науки Украины нет фундаментальных работ, в которых исследуется влияние судебной практики на предотвращение и устранение судебных ошибок.

Состояние исследования. Исследованию вопросов определения понятия «судебная практика», обеспечения единства судебной практики уделяли внимание такие ученые, как В. Беля-