

**PUBLIC AND PRIVATE COMPONENTS
IN THE INTERNATIONAL TOURISM LEGISLATION**

**ГРОМАДСЬКІ ТА ПРИВАТНІ КОМПОНЕНТИ
В ЗАКОНОДАВСТВІ ПРО МІЖНАРОДНИЙ ТУРИЗМ**

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The article focuses on the issue of disclosure of the tourism legislation and its scope. The effect of the subjects of tourism business during the formation, creation and management of a tourism business is revealed. A distinction between public law and private law spheres of tourism law is drawn. The levels of legislation on the example of the European Union are considered. The main recommendations in the matter of how to keep up to date and stay aware of any changes in tourism legislation are suggested.

Key words: legal regulation of international tourist activity, international tourism, public and private spheres of tourism, tourist activity of the European Union, levels of legislation in tourism.

У статті розглядається законодавство про міжнародний туризм, його поняття, обсяг і значення. Розкривається вплив суб'єктів туристичного бізнесу в процесі формування, створення туристичного бізнесу й управління ним. Окреслюється різниця між публічним та приватним правом у сфері міжнародного туризму. Виокремлюються рівні законодавства на прикладі Європейського Союзу. Пропонуються певні рекомендації щодо дій суб'єктів у процесі започаткування й ведення туристичного бізнесу, зокрема щодо питання розуміння сучасних тенденцій у правовому регулюванні туристичної діяльності.

Ключові слова: правове регулювання міжнародної туристичної діяльності, міжнародний туризм, публічна та приватна сфери туристичної діяльності, туристична діяльність Європейського Союзу, рівні законодавства про туризм.

В статье рассматривается законодательство о международном туризме, его понятие, объем и значение. Раскрывается влияние субъектов туристического бизнеса в процессе формирования, создания туристического бизнеса и управления им. Определяется разница между публичным и частным правом в сфере международного туризма. Выделяются уровни законодательства на примере Европейского Союза. Предлагаются определенные рекомендации относительно действий субъектов в процессе создания и ведения туристического бизнеса, в частности в вопросе понимания современных тенденций в правовом регулировании туристической деятельности.

Ключевые слова: правовое регулирование международной туристической деятельности, международный туризм, публичная и частная сферы туристической деятельности, туристическая деятельность Европейского Союза, уровни законодательства о туризме.

Statement of the issue. Nowadays a deficiency of knowledge about legislation in a tourism sector is obvious. That shortage influences on a tourism business and often becomes a common problem of small firms in this sector. In the tourism industry this issue is accentuated by the vast variety of legal and regulatory framework. This article defines the meaning of tourism legislation and underlines what it implies. Besides, the effect of legislation on a tourism business and the distinction between public and private law for tourism businesses is drawn.

State of the research. The issues of private and public spheres of international tourism activity have been partially studied by national researchers such as A.Y. Alexandrova, E.N. Artemova, V.A. Kvartalnov, A.O. Tolochko, I.V. Zorin. A considerable work in this area has been also carried out by the foreign scientists such as P. Lynch, C. Lashley, A. Morrison, R. Conrady, M. Buck, E. Smeral, R.M. Woodworth and others.

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 meaning of tourism legislation, its effect on a tourism business and the distinction between public and private law in tourism businesses.

Basic material. Defining tourism is not a simple matter, as it is a complex industry made up of many different businesses, the common theme being that they provide products and services to tourists/visitors.

According to the United Nations World Tourism Organization (UNWTO) [1], tourism entails the movement of people to countries or places outside their usual environment for personal or business/professional purposes. These people are called visitors. Generally speaking, a visitor is classified as a day visitor if his/her trip does not include an overnight stay and a tourist if it does include an overnight stay. The purpose of their trip can be for business, leisure or personal reasons, other than to

be employed by a resident entity in the country or place visited.

It's possible to define three main types or forms of tourism: domestic tourism, inbound tourism, and outbound tourism. Wherein, domestic tourism refers to activities of a visitor within their country of residence and outside of their home. Inbound tourism refers to the activities of a visitor from outside of country of residence. Outbound tourism refers to the activities of a resident visitor outside of their country of residence. The tourism industry is primarily a private sector industry, consisting of a significant amount of businesses. These businesses, in turn, could be divided into large, medium and small sized [2, p. 4].

Tourist relations today are characterized by a weak level of legal knowledge of participants of the tourist market. The lack of knowledge of tourism legislation is a main problem of the competitiveness in a tourism sector. In order to resolve this problem, the one who starts tourism business need to master the fundamentals of the legislation in this area. The main purpose of the article is to identify the basics of tourism legislation.

Tourism legislation is a set of legal rules that govern all professional activities in the tourism industry. Tourism industry comprises specific legal, operational and business issues. It covers businesses from a wide variety of industries that sell goods or provide services to visitors who have travelled from their usual place of residence (international or domestic) such as: tour operators, travel agents, short-term accommodation providers, recreation service providers, transport and hire service providers [3, p. 6].

Tourism legislation comprises public law and private law sphere which can be accurately distinguished.

Public law regulates field of activity and rivals of public tourism organizations and legislation concerning tourism companies and their disciplinary system.

Private law regulates private legal relationships between the subjects of tourist relations. The legal basis for such relations between the main tourism subjects (i.e., tour operator, travel agent, a tourist) is the conclusion of a tourism contract.

Private law for tourism businesses comprises contracts between the provider of the service or tourism business and the tourists themselves, or between tourism service providers, when creating a package holiday, for example [4, p. 3]. These contracts, in turn, can be divided into two different types: preparatory contracts (inter-company), i.e. accommodation reservation, travel assistance insurance, charter, etc.; consumer contracts: carriage of passengers, package holidays, accommodation, etc.

Public law sphere in tourism is more or less unified and comprises tourism legislation that affects tourism companies. As regards the private law in tourism it is formed in the domestic (internal) law of each country. Wherein, each state has its own rules that are characterized by the extreme diversity of regulation and even conflict of laws.

At the beginning we will concentrate on a *public law sphere* and analyze a tourism legislation that influences tourism companies. As is what stated before, tourism legislation can affect tourism entrepreneurs in a different ways depending on the different factors: the stage of the com-

pany development, the tourism subsector, the location of the business, etc.

There two stages of tourism business development that are: the first stage is the creation of the company and second – the development of the company. At first stage in order to launch of the tourist company successfully it is crucial to study tourist legislation about requirements, licenses and required permits. This legislation includes following: opening license; requirements on infrastructure, food safety, environment, etc. At the stage of the development of the company (the second stage) it is important that you keep yourself up to date with any possible changes that are made to the regulations that are applicable to the tourist company, take into account the changes, innovations and modifications, perform regular checks; keep up to date with legislative changes or a possible penalty.

It is obvious that legislation affects the tourism company from the moment the business is created and through all the subsequent stages. In this respect, it would be useful to analyze the situation with the tourist legislation within the EU as a unique and inimitable formation of its kind. In this regard, in the legal system of any EU member state there are multiple levels of legislation. Some regulations are applied at a European level and others are exercised at other different levels. Thus, the EU countries' legal systems generally have four different levels of legislation: European, national, regional and local. On the European level the Institutions of the European Union issue legislative acts. Some are mandatory and some are not. Some affect all countries and some only affect specific countries. On the national level the regulations, directives, decisions, recommendations and opinions are issued. Regional level exists in the countries which are divided into some country districts or regions, such as Austria, Germany and Spain. This level, in this case, is lower than national level. Local entities or councils form the lower level of legislation which is national or regional level. This level usually requires more specific legislation according to the particular characteristics of the local destination. For instance, city councils those develop specific regulations for public- tourism use of certain heritage resources whose management is within its jurisdiction.

Determination of the amount of legal basis and a set of rules required depends on the location of the tourism business and its registration. Environmental legislation, social contributors, labor law, food safety, taxation and many other important things also highly potentially effects tourism sector. Specific regulations for each tourism subsector such as accommodation, travel agencies, and restaurant establishments have a great influence in this area.

The second no less important area is a *private law sphere* which concentrates on travel and tourism contracts between the parties. Among the most important sources of private sphere of international tourism law we can distinguish: national law; international law and cooperation; soft law; customary law and private autonomy.

State policies in the sphere of tourism are generally set by governments. Institutions of the state use their powers to execute state policies and to create conditions for its development.

Tourism contracts are naturally international contracts. The determination of the applicable national law, according

to the rules of international private law, it is not a satisfactory solution. The presence of different national laws can cause disparities, uncertainties and barriers affecting business. These problems can be solved in the harmonization processes in progress and in particular, through conventions designed to develop a uniform system [5, p. 6].

In this case, a good example would be the European Union as a unique supranational association where national and EU law combine and interact. Thus, all sources of the EU law have a great influence and impact on national tourism laws of all European countries; among them the most significant are European regulations and directives, which are binding sources of the EU law. The European Union law has significantly affected national private law systems with special regard to the impact of European directives on private law.

Tourism is comparatively new current EU's supporting competence, dating back to the Lisbon Treaty of 2009. Nevertheless, nowadays it is one of the most crucial economic activities of the EU, that's why 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 [6, p. 89].

As it is stated in the Part 1 of the Treaty on the Functioning of the European Union (TFEU) [7, p. 1] provides that tourism falls within those actions designed to "support, coordinate or supplement the actions of the Member State". The national private law, in this case, is also significantly affected by the Court of Justice of the European Union (CJEU) [8]. The CJEU ensures that the EU legislation is interpreted and applied in the same way in all EU countries. But the judgments of CJEU have had also an important role in the innovation of national private law. Actually some CJEU judgments have made doubtful some fundamental doctrines of contract laws regarding to the evolution of consumers' contract law according to the European regulations and directives.

Another important source of the international tourism private law sphere is international law and cooperation. This means that in the sphere of tourism states execute policies through creating legal framework which is required for the development of tourism, in accordance to international norms that involves international cooperation. In this area, the role of international organizations such as the World Tourism Organization (WTO) is of a great importance. This is the United Nations agency responsible for

the promotion of responsible, sustainable and universally accessible tourism.

Third, but no less important, source of the private sphere of tourism is soft law. This is a source which is created by the organizations of economic operators that develop and publish conduct codes that are called "Soft law". Many rules contained in such codes are included in tourism contracts according to the principle of private autonomy.

Customary law is another important source of tourism private law that we find when a certain legal practice is practiced and the relevant actors consider it to be the law.

Tourism private law can't develop without private autonomy that is the main principle of contract law, especially in the sphere of tourism. According to the principle of freedom of contract, parties can also make contracts that are not included in those specifically regulated by the law (so called atypical contracts) if such contracts are directed to the realization of interests worthy of protection according to the legal order. Thus scholars use to say that private autonomy is a source of law.

Conclusions. Tourism legislation comprises both public tourism law, which examines the administrative organization of tourism, and private tourism law, which considers the regulation of private legal contractual relations, established between tourists and tourism companies.

It is shown that tourism legislation affects tourism entrepreneur at every stage. In the creation phase, the analysis of legislation about requirements and necessary permits is crucial in order to launch the company successfully. In the further stages, the tourism company has to adhere to all laws as well as being alert for new rules or changes to existing legislation. This will prevent the company from refusal and non-compliance. The amount of legal regulations that have to be taken into account for the creation and operation of tourism business is determined by the location of the tourism business. In the international tourism law the applicable laws of other countries are also of a great importance.

It is proven that the second no less important area of international tourism law is a private law sphere which concentrates on travel and tourism contracts between the parties. Among the most important sources of private sphere of international tourism law we can distinguish: national law; international law and cooperation; soft law; customary law and private autonomy. State policies in the sphere of tourism are generally set by governments. Institutions of the state use their powers to execute state policies and to create conditions for its development.

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