
КОНСТИТУЦИЈАЛЫҚ ЖӘНЕ ХАЛЫҚАРАЛЫҚ ҚҰҚЫҚ КОНСТИТУЦИОННОЕ И МЕЖДУНАРОДНОЕ ПРАВО CONSTITUTIONAL AND INTERNATIONAL LAW

UDC 341.01

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An analysis of International legal documents and national legal acts of the Republic of Kazakhstan in the sphere of tourism activity

Nowadays tourism has become one of the leading sectors of the world economy. Development of tourism is a priority direction in Kazakhstan's policy. Intergovernmental cooperation in the tourism sphere is regulated and organized by bilateral and multilateral international treaties. Thus, this article aims to examine international legal acts and national legislation in the Republic of Kazakhstan in tourism sector, to analyze bases of cooperation of states in the sphere of international tourism. Moreover, an activity of the World Tourism Organization, fundamental principles of tourism established in international law documents, are analyzed, too.

Key words: tourism, international law, national legal acts, law, principles, convention, declaration.

Tourism is a significant component of the global economy and an important area of the state economic policy for virtually all countries. The statistics of employment in tourism is a very significant indicator for economy, as the new workplaces in tourism industry actively stimulate the development of other industries connected with tourism. By experts' forecast, one workplace in tourism sector leads to the emergence of not less than twenty workplaces in the corresponding branches [1; 8]. According to the data provided by the World Tourism Organization (UNWTO), income generated by international visitors on accommodation, food and drink, entertainment, shopping and other services and goods reached an estimated US\$ 1,232 billion (euro 1,110 billion) in 2015, an increase of 3.6% accounting for exchange rate fluctuations and inflation. International tourist arrivals increased by 4.4% in 2015, reaching a total of 1,184 million [2].

The World Tourism Organization and the Formation of the International Legal Framework of Tourism

The important international legal documents on tourism that emerged over the last 40 years are related to the operation of the World Tourism Organization. It is safe to say that an operational international legal regulation of tourism would have been impossible without the UNWTO.

The UNWTO was established as a specialized organization within the UN system in 1975. Since that time, it has played a crucial role in the development of the international travel business. From the UNWTO perspective, tourism should be responsible and publicly accessible; it should facilitate international stability through mutual understanding and economic development by internationalizing the travel business. Tourism as an international phenomenon should serve the cause of peace, facilitate the wellbeing of people and nations, and teach mutual respect and unconditional observance of civil rights and fundamental freedoms. This is the mission of the UNWTO. Every single national federation and association of tourists and tour operators shares this point of view regarding the importance of international tourism.

Over the course of its operation, the UNWTO adopted a number of fundamental documents on the development of international tourism: the Manila Declaration of World Tourism; the Hague Declaration on

Tourism; the Global Code of Ethics for Tourism; the Tourism Bill of Rights and Tourist Code; the Osaka Tourism Declaration; the Osaka Millennium Declaration, etc.

These legal acts regulate the activity of all countries in the field of international tourism. Each act has its scope and object of specific regulation. For instance, the Manila Declaration is the outcome document of the World Tourism Conference (Philippines, 1980), the adoption of which was participated in by the delegations of 107 UNWTO and UN member-states, as well as 91 delegations that acted as observers [3]. Later, the General Assembly of the United Nations insisted on countries paying due attention to the Manila Declaration when drafting and implementing national programs and when outlining the policy in the field of tourism in accordance with their national priorities. The Declaration emphasizes the importance of such fundamental principles of international law as fairness, noninterference in domestic affairs, and cooperation of all countries regardless of their economic and social systems. The Declaration also concerns the issues of social tourism, the development of youth tourism, and the creation of a World Forum on Tourism.

International Regulatory Legal Acts on Tourism and the Issue of Tourist Security

When it comes to the main international regulatory legal acts on tourism, it is worth emphasizing the Hague Declaration on Tourism, which is the outcome document of the Inter-Parliamentary Conference on Tourism that was organized by the Inter-Parliamentary Union and the UNWTO and held in 1989 [4]. This declaration presents the 10 principles of tourism; however, all these principles have legal effect. Each principle includes several constituents, which cover recommendations and the possible ways of solving problems that arise in the field of their legal regulation.

For instance, the eighth principle is devoted to the problem of terrorism. It notes that terrorists must be treated like any other criminals and should be pursued and punished without statutory limitation, no country thus being a safe haven for terrorists. This principle shows that human security is the top priority.

The Declaration includes specific conclusions and recommendations that determine the most important issues related to customs rules and medical formalities. The above three documents were the result of international conferences; their provisions laid the foundation for various treaties in the field of tourism. The Tourism Bill of Rights, which includes the Tourist Code, was adopted in 1985. It formulated the universal concepts and terms of tourism, the principles of statistics, the standards and recommendations for forming national laws, and the creation of a system of tourism education. The rights and obligations of tourists at their place of temporary stay were specified.

For instance, Article 14 notes that everyone is entitled to make his or her needs known to legislative representatives and public authorities so that he or she may exercise his or her right to rest and leisure in order to enjoy the benefits of tourism under the most favorable conditions and, where appropriate and to the extent consistent with law, associate with others for that purpose. This right follows from the Universal Declaration of Human Rights, adopted in New York in 1948.

The following, equally important, document is the Global Code of Ethics for Tourism, which was adopted unanimously at the regular session of the UNWTO in Chile in 1999 with the participation of more than 100 states [5]. The Code consists of ten articles that cover various aspects of tourism, including such elements as mass media, tourism companies, and tourists themselves. The content of the code is an original synthesis of various declarations and protocols that were previously published by the UNWTO, but with several new provisions, including the prohibition of child abuse in tourism. The attitude to any novelties is generally negative; likewise, the attitude of various states to this regulatory legal act was ambiguous. For instance, Algeria, Germany, and Japan refused to adopt this Code in full, while the article on the responsibility of states for the security of tourists caused doubts on the part of the Argentinean and Indian delegations.

Article 10 of the Global Code features an instruction for the creation of an implementation mechanism for the act under consideration. According to this provision, an impartial third body known as the World Committee on Tourism Ethics should be established, with a view to settling disputes concerning the application or interpretation of the Global Code of Ethics for Tourism.

The World Committee on Tourism Ethics is formed by UNWTO agencies and comprises of 12 specialists and 12 deputies. Regional UNWTO committees also serve as regional committees on tourism ethics. Despite various outbursts against the Global Code of Ethics, it was adopted in 2001, which emphasized the importance of its provisions. This document contains the fundamental principles and recommendations for various subjects in the tourist sector, which aim to mitigate the negative impact of tourism on the ecology and culture, while maximizing profit from tourism in the advancement of sustainable development, understand-

ing between nations, and poverty reduction. Thus, the Global Code of Ethics for Tourism is an important document on the list of regulatory legal acts that govern international tourism.

The next regulatory legal act is the Osaka Millennium Declaration, which was adopted in 2001 in Osaka at the regular session of the General Assembly of the World Tourism Organization. The declaration outlines the main issues that are especially important for the development of tourism and gives suggestions regarding the solution of various problems [6]. When compared to other documents, the Osaka Millennium Declaration focuses more on the administrative and legal problems related to the intensive development of tourism on the international scene.

Fundamental Principles of Tourism in International Regulatory Legal Acts

The analysis of the Manila and Hague declarations on tourism, the Global Code of Ethics of Tourism, the Tourism Bill of Rights, the Osaka Tourism Declaration, the Osaka Millennium Declaration, and other regulatory legal acts on international tourism enabled distinguishing the following fundamental principles that are reflected in international law:

1) The right to tourism. This principle is reflected in virtually all regulatory legal acts due to its fundamental nature. This principle obliges the state to guarantee the protection of the human right to rest, leisure, and free travel. The Tourism Bill of Rights includes the right to a limited workday and paid vacation. Hence the obligation of the state simplifies access to vacation for all demographics. At that, the freedom of movement is unquestionable. State policies should stimulate international tourism through vacation system improvement and rational planning of days-off throughout the year. According to the Tourism Bill of Rights, every tourist is entitled to make his or her needs known to legislative representatives and public authorities.

2) Guarantee of unrestricted access to tourist resources. This principle requires equal access to the public domain, with regard to existing tourist formalities.

3) International tourism should develop based on the concept of sustainable development. The connection between international tourism and intensive development has two aspects. Firstly, tourism is regarded as a tool for achieving sustainable development. Secondly, tourism itself should develop with regard to the requirements of sustainable development.

4) The principle of international tourism security and prohibition of misuse. International tourism security implies the neutralization of the possible harmful effect of tourism on the environment on the one hand and the security of tourist service users on the other hand.

5) The obligation of states to help and participate in the creation of regulatory legal acts.

6) The Tourism Bill of Rights obliges the states to resolve legal conflicts in the field of international tourism and to amend and supplement the existing regulatory legal framework.

The above principles are interrelated and comprise a dynamically developing system that reflects the essence of legal regulation in international tourism. At present, the existing mechanism of legal regulation of tourism raises the question regarding the place of respective regulations in the system of law.

This brings us to another problem — tourism has not yet developed into an independent branch of modern international law, despite being an effective form of foreign economic bonds between states. International law is characterized by a unified method of legal regulation, while the objective nature of the established system of international law in general is undoubted, despite the fact that the issue of distinguishing criteria of branches in the doctrine is a matter of argument.

The existence of a certain group of international relationships does not mean that this group can become an independent branch of law, i.e. the object of legal regulation in and of itself cannot be a criterion for distinguishing branches. At present, the main role in the regulation of international tourism is played by national legal sources that are created by the states with regard to international legal obligations and the UNWTO regulatory legal documents.

Legal Regulation of Tourism Activity in the Republic of Kazakhstan

According to the Concept of tourism branch development in the Republic of Kazakhstan until 2020, Kazakhstan, having rich tourist and recreational potential, is characterized by an insufficient level of development of tourism [7]. Its volume in gross domestic product makes approximately 0, 3%. Kazakhstan during the period from 2011 to 2013, having risen by five positions, takes the 88th place in the rating of the countries of the world on the Travel and Tourism Competitiveness Index 2013. The indicators characterizing a state of environment, tourism development, and system of communications have improved. Such criteria as the local legislation, environment level, safety, health care and hygiene, all types of service of air and land

transport, infrastructure of tourist branch, price indicators, human resources and a condition of culture were considered in drawing up the rating [8].

The development of international tourism in Kazakhstan is impossible without its appropriate legal regulation. As M. Zhaskairat notes, «state regulation of tourism development is the impact on the state work of businesses and market conditions to ensure normal conditions for the functioning of the market mechanism, the implementation of government social and economic priorities and develop a common concept for the development of tourist areas» [9]. The Constitution of the Republic of Kazakhstan does not mention the citizen right for tourism. However, Article 21 determines that everyone who has a legal right to stay on the territory of the Republic of Kazakhstan shall have the right to freely move about its territory and freely choose a place of residence except in cases stipulated by law. Everyone shall have the right to leave the territory of the Republic. Citizens of the Republic shall have the right to freely return to the Republic. Article 24 (4) establishes the right to rest. Working labor agreements stipulating the length of working time, days-off and holidays, and paid annual leave shall be guaranteed by law [10]. These and other provisions of the Constitution in totality form the so-called «right on tourism». Absence of the direct consolidation of right on tourism in the Constitution is filled in by the Law of the Republic of Kazakhstan from June, 13, 2001 № 211-III «On tourist activity in the Republic of Kazakhstan» (hereinafter — the Law). According to its preamble, the Law determines legal, economic, social, organizational frameworks of tourist activity as one of industry of economy of the Republic of Kazakhstan [11]. Chapter II of the Law is, in essence, the core of this legal act. Here the most important legal issues are announced: the place of tourism in the economy of Kazakhstan, the principles of State regulation of tourist activities, the objectives, priorities and methods of State regulation of tourism. Thus, Article 9 Paragraph 1 states that the State recognizes the tourism activity as a priority and a highly profitable branch of the economy of the Republic of Kazakhstan. For the first time in the norm of the law it is stated that tourism is an industry of Kazakhstan's economy and that this industry is one of the valuable ones. The principles of state regulation of tourism activity are formulated, too. The Law assigns a duty of the state to promote tourist activity and to create favorable conditions for its development, to define and support the directions of the tourist activity, to form an idea of Kazakhstan as the country favorable for tourism, to carry out support and protection of the Kazakhstan tourists, tour operators, travel agents and their associations.

Another significant act in the sphere of tourism in Kazakhstan is the Concept of development of tourist branch of the Republic of Kazakhstan till 2020 (hereinafter — the Concept) worked out at the request of the Head of state in February, 2013. The Concept was developed for implementation of the President of the Republic of Kazakhstan Nursultan Nazarbayev's Message to the people of Kazakhstan from January 27, 2012 «Social and economic modernization — the main vector of development of Kazakhstan». It was worked out according to the system plans of tourism development of the Republic of Kazakhstan, the Borovoye resort zone of Akmola region, an alpine skiing zone near the city of Almaty, Kenderli recreation area, and also the master plan of the cluster program of tourism development in the East Kazakhstan region. 5 national tourist clusters are defined in the Concept, 4 national and more than 20 regional projects are selected among them. One of the key tasks of the Concept is creation of new constant workplaces. Thus, within its realization it is planned to increase the number of citizens occupied in the sphere of tourism and indirect branches for several times [7].

Other national legal acts in the sphere of tourism include the Decree of the Government of the Republic of Kazakhstan from October 30, 2000 № 1631 «On formation of Tourism Council», the Law of the Republic of Kazakhstan from January 11, 2007 № 214-III «On licensing», the Decree of the Government of the Republic of Kazakhstan from May, 19, 2014 № 508 «On establishment of the Model agreement on tourist service», Decree of the Government of the Republic of Kazakhstan from November 7, 2006 № 1063 «On the approval of Rules of implementation of tourist and recreational activity in the state national natural parks and deliveries of permission to use under construction objects of sites of the state national natural parks provided in use for implementation of tourist and recreational activity» and other normative legal acts.

Indeed, tourism at the beginning of the XX century became one of the leading directions of social and economic, cultural and political activity of the majority of the states and regions of the world, and the tourist industry became an integral element of consumer models and social behavior of considerable part of the population. Effective functioning of tourism system is impossible without planning, regulation, coordination of control from the structures responsible for its development. It causes need of tourist policy development and realization on national level in accordance with the norms and principles of international law.

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Қазақстан Республикасының туристік қызмет аясындағы халықаралық-құқықтық құжаттарын және ұлттық құқықтық актілерін талдау

Бүгінгі таңда туризм әлемдік экономиканың озық секторларының бірі болып қалыптасты. Туризмді дамыту Қазақстан саясатының басым бағыты болып табылады. Туризм аясындағы үкіметаралық ынтымақтастық екіжақты және көпжақты халықаралық шарттармен реттеледі. Бұл мақаланың мақсаты — туризм саласында Қазақстан Республикасының ұлттық заңнамасы мен халықаралық-құқықтық актілерді зерттеу, халықаралық туризм аясында мемлекеттердің ынтымақтастық негіздерін талдау. Сонымен қатар авторлармен Дүниежүзілік Туризм Ұйымының қызметі, халықаралық-құқықтық құжаттарда бекітілген туризмнің іргелі қағидалары жан-жақты талданды.

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Анализ международно-правовых документов и национальных правовых актов Республики Казахстан в сфере туристской деятельности

На сегодняшний день туризм стал одним из лидирующих секторов мировой экономики. Подчеркнуто, что развитие туризма является приоритетным направлением политики Казахстана, и межправительственное сотрудничество в сфере туризма регулируется двусторонними и многосторонними международными договорами. В статье изучены международно-правовые акты и национальное законодательство Республики Казахстан в сфере туризма, проведен анализ основ сотрудничества государств в области международного туризма. Проанализированы деятельность Всемирной Туристской Организации, фундаментальные принципы туризма, утвержденные в международно-правовых документах.

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