

Z.T. Abdugarimova, S.S. Surkova

*M.Kh. Dulaty Taraz State University, Taraz, Kazakhstan  
(E-mail: svetlanka\_8709@mail.ru)*

### **Legal basis for tourism development in Kazakhstan**

The relevance of research of questions of impact of the accepted norms in Kazakhstan for development of tourism lies in the fact that the prerequisites for the development of tourism has changed in recent years. A market was emerged administrative structures was emerged, but the problem with the development of tourism remains a big problem. In June, 2017 in Kazakhstan was accepted the Concept of development of tourist branch till 2023. One of the reasons hampering the accelerated development of tourism, mentioned in the Concept, is the insufficient level of regulatory regulation of the tourism industry. The main purpose of the project was the need to research the improvement of legislation in the field of tourism for the attractiveness of our country, improve its competitiveness, and develop directions for improving the tourist structure, not only for tourists but also for investors. The result of the work will be proposals for improving legislation in this area, informing government agencies about the norms that do not allow tourism development in Kazakhstan, and developing proposals on ensuring the safety of tourists, procedures directly or indirectly regulating the development of tourism as a business area.

*Keywords:* tourism, tourism licensing, tourist activity, tour operator, travel agent, tourist industry, tourism legislation.

#### *Introduction*

In modern conditions of world economy development tourism of becomes one of the leading and dynamic developing industries. According to the UNWTO, the volume of business tourism today is equal to or even exceeds the export of oil, food or cars. Tourism has become a major player in international trade, and at the same time represents one of the main sources of income for many developing countries. This global spread of tourism in industrial and developed countries leads to the development of many related industries - from construction to agriculture, telecommunications and road construction. According to the UNWTO, the profit from international tourism in 2015 reached 1.184 million dollars, and the tourist flow reached 1.5 trillion dollars of export earnings. At the same time, the growth of international tourist arrivals from 3.5 % to 4.5 % in 2016 is forecasted, and by 2030, according to UNWTO forecasts, this figure should grow to 1.8 billion dollars [1]. This determines the relevance of the study of the impact of adopted norms in Kazakhstan on the development of tourism, because according to the authors, the adopted norms do not sufficiently affect the attractiveness of tourism as a sphere of business in Kazakhstan and the attractiveness of the country as a tourist center.

Based on what was mentioned earlier, it is important to look at the reality of tourism development in Kazakhstan over the past 5 years. Tourism in Kazakhstan over the past 25 years of development shows steady growth and is becoming one of the fastest growing economic sectors in the country. However, it's not all as easy as it sounds. The share of tourism in the gross domestic product (calculated only for accommodation and meals) in 2015 was about 0.3 %. If we consider the dynamics of servicing visitors to places of accommodation in inbound tourism, we see the following figures: 2012 - 641.3; 2013 -586038; 2014 -679018; 2015 -504215; 2016 -528446 (Fig.).

According to the Committee on Statistics of the Republic of Kazakhstan, the volume of services provided by the accommodation sites shows that the provision of hotel services has grown from 53,486,371 in 2012 to 73,108,551 in 2015 (Statistics Committee of the Republic of Kazakhstan, 2016).

The growth is also shown by the use of sites for camping, recreational vehicle fleets and trailer parks. However, the occupancy of hotels is low. So, this indicator on the average for the country in 2012 was 24.9 %, in 2016 it was 24.5 % [2]. At the same time, domestic tourism accounted for 31.5 %, inbound tourism - 4.7 %, outbound tourism - 63.8 % in the structure of tourism.

Only 129 companies and 80 firms that carry out tour operator activity are registered in the state electronic register of travel agents, guides (guides-translators), tour guides and tourism instructors [2]. Thus, it can be stated that tourism is gradually becoming more important both in the non-productive sphere and in the economy of the Republic of Kazakhstan. It is becoming more and more a mass form of active recreation for a person, an important means of improving the quality of its life. However, this sphere of activity doesn't yet

bring the income for which the country has potential. For example, the Russian Federation by rating of Travel & Tourism Competitiveness Index 2015 Ranking occupies 45 place in 2015, Georgia 71 place [3].

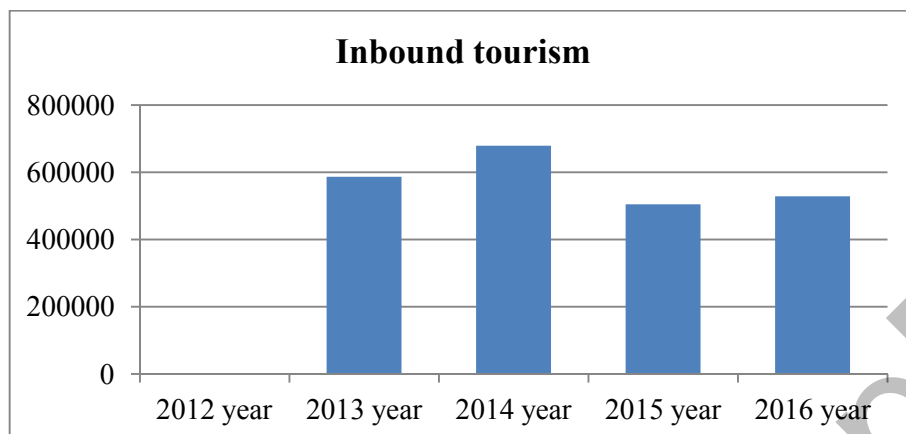


Figure. Statistics of Inbound tourism in Kazakhstan. (Committee on Statistics of the Republic of Kazakhstan, 2016)

To improve this situation and raise the positions in the rating, the government of Kazakhstan should improve the processes of attracting tourists. The legal framework regulating this field of activity should become the basis for the development of the tourist industry. To do this, it is necessary to exclude existing legal barriers.

#### *Methodology*

In order to understand how today's laws and other acts of the state make it possible to develop tourism in Kazakhstan, we turned to an analysis of all current legislation in this area. Methodological, we use a formally legal method that is traditional in the study of legal norms and is based on an analysis of the current legislation [4]. We have analyzed 7 laws and 24 other normative acts regulating this issue. With the help of this method, we summarized the provisions of the current legislation and tried to see norms that in our opinion hamper the development of tourism.

In order to compare the policies of states in the adoption of tourism standards and the effectiveness of these norms, we investigated the legislation of several countries in the post-Soviet space and use the method of comparative analysis [5]. This allowed us to determine the effective legal policies of states in the management of tourism that could be used in Kazakhstan, based on the experience of the Russian Federation, which has higher positions in the ranking of countries in the development of tourism than in Kazakhstan. (Kazakhstan in 2015, 85th place, Russian Federation 45th place, in 2016, Kazakhstan's rating is 81st place, the Russian Federation is 43rd place) [6].

Analysis of the provisions of legislation in the field of tourism in Kazakhstan.

The concept of development of the tourism industry of the Republic of Kazakhstan until 2023 sets an ambitious goal to provide work in the tourism sector, including for the population of rural and remote areas and for young people without breaking away from the traditional rural way of life [7].

Along with this, the state sets the task of increasing the contribution of the tourist industry to the economy of the state; Development of entrepreneurship, including Small and Medium Entrepreneurs in related sectors of the economy, and human potential, in general across the country and regions, including rural areas; Creation of modern highly effective and competitive tourist complexes for integration of Kazakhstan tourism into the world tourist market. To achieve these goals, much has been done in terms of regulatory tourism industry regulation. Including, in recent years, the laws regulating this type of activity in Kazakhstan have become established. Let us dwell on them in more details.

First, the law «Tourism Activities in the Republic of Kazakhstan» of June 13, 2001, No. 211-11 was adopted [8]. The peculiarity of this law is that it gave a full definition both to the concept and types of tourism and became the basis of the classification of tourist accommodation places, the authority of the Tourism Council, the powers of state bodies administering tourism issues and etc. Since January 1, 2016, the law «Tourism Activities of the Republic of Kazakhstan» has been supplemented by a new chapter regulating the system of guaranteeing the rights of citizens of the Republic of Kazakhstan in the field of outbound tourism. The amount of the commission fee, deducted from the amount of money to be transferred to a bank account,

opened specifically for the administrator of the system of guaranteeing the rights of citizens of the Republic of Kazakhstan in the field of outbound tourism, is equal to 10 percent [9]. Failure to comply with this requirement leads to suspension of the license in accordance with the legislation of the Republic of Kazakhstan on permits and notifications. The legal entity entrusted with the administrator function of the system that guarantees the rights of Kazakhstani citizens in the field of outbound tourism is determined by the competition. At the same time, only legal entities that carry out tour operator and / or travel agency activities participate in the competition [10].

The winner of the competition is determined by the commission that awards points taking into account the following criteria: 1) information about the founder of a legal entity with at least 3 years of experience in the tourism industry; 2) information on the work experience availability of the head of a legal entity in tour operator and / or travel agency activities for at least 3 years; 3) the presence in the staff of employees with work experience in tour operator and / or travel agent activities, with foreign languages knowledge; 4) the presence of a branch and / or representation of a legal entity. The legal entity with the highest overall score is recognized as the winner.

The received funds are sent to protect the rights of Kazakhstani citizens in the field of outbound tourism in the following cases:

- 1) a written or oral appeal of a Kazakhstani citizen in case of violation of his rights in the field of outbound tourism;
- 2) appeals of state bodies on the facts of the legislation violation of the Republic of Kazakhstan on tourist activities in the field of outbound tourism;
- 3) written appeal of the tourists association (associations) on the facts of violation of the rights of Kazakhstani citizens in the field of outbound tourism;
- 4) circulation of mass media on the facts of violation of the rights of Kazakhstani citizens in the field of outbound tourism, etc.

The legal entity that performs the functions of the system administrator of guaranteeing the rights of citizens of Kazakhstan Republic in the sphere of outbound tourism in Kazakhstan at the moment is the corporate fund «Tourist Camero» [10].

A special body was set up by the Council for Tourism [11], whose main tasks and responsibilities are the development of recommendations in the implementation of state policy in the field of tourism; Adoption of proposals for the implementation of the main activities in the field of tourism; Preparation of proposals on anti-dumping policy in the field of export and import of tourist services; Development of coordinated proposals on the formation and development of priority tourism and tourist areas; Development of recommendations on coordination of actions of government agencies and other organizations to ensure tourism security and control of tourist flows [12].

Secondly, it is legally established in Kazakhstan that the implementation of tour operator and travel agency activities is allowed in the presence of a tour operator and travel agent of a valid contract of compulsory insurance of civil liability of the tour operator, travel agent. At the same time, tour operator activity is a licensed type of activity; Travel agency activities, as well as the activities of guides (guides-translators), tour guides and tourism instructors are carried out in a notification procedure. The difference between them is that the tour operator provides tourists with all services included in the tourist product, independently or with the involvement of third parties, on which the tour operator is responsible for the performance of part or all of its obligations to tourists.

The travel agent also promotes and sells only a tourist product, formed by a tour operator. Promotion and realization of tourist product by a travel agent are carried out on the basis of an agency contract for the sale of a tourist product concluded with a tour operator in writing.

Who and how to license tourist activities in Kazakhstan and what are the requirements of the legislation?

We have already determined that tour operator activity is a licensed type of activity; Travel agency activities, as well as the activities of guides (guides-translators), tour guides and tourism instructors are carried out in a notification procedure.

The procedure and types of activities that are subject to licensing are defined by the Law of the Republic of Kazakhstan «On Permits and Notifications» [13], the same law establishes the Qualification requirements for tourist operator activities and a list of documents confirming compliance with them. The main ones are the following: the presence of at least one worker with a tourist education, who has at least one year's work experience; Availability of premises for the office on the right of ownership or other lawful grounds; Presence of the contract of compulsory insurance of civil liability of the tour operator; And a tourist product.

Licensors are the local executive bodies. For travel agency activities, the rules are established, according to which it is sufficient to send a notification through the state information system of permits and notifications and start activities.

To monitor the licensee, in order to verify compliance with licensing requirements, the criteria for assessing the degree of risk for compliance with the legislation of the Republic of Kazakhstan on tourism activities are defined. It defines the types of violations: 1) significant violations - violations of the requirements established in the law «On Tourism in the Republic of Kazakhstan», preventing the receipt of quality tourist services by citizens of the Republic of Kazakhstan, who are tourists; 2) minor violations - violations that restrict the receipt of reliable information by citizens of the Republic of Kazakhstan who are tourists, as well as the existence of confirmed complaints and appeals to audited entities; 3) gross violations - violations of the requirements established in the Law, in the absence of notification of the start of travel agency activities, the activities of a guide (guide-interpreter), tour guide and tourism instructor, the lack of an obligatory civil liability insurance contract for a tour operator, travel agent, and the contract for the sale of tourist products, formed by the audited tour operator, as well as the availability of confirmation of the provision of information about the features of travel and dangers to citizens of the Republic of Kazakhstan who are tourists [14]. Verification is carried out on the basis of checklists for compliance with the legislation of the Republic of Kazakhstan on tourist activities, which includes only those requirements for the activities of the audited entities, non-compliance with which entails a threat to life and health of a person, the environment, legal interests of individuals and legal entities, the state. The requirements specified in the checklists are subject to verification. These requirements are established by Article 143 of the Business Code of the Republic of Kazakhstan [15]. The tourist operator, tourist agent, guide, tour guide, and tourist instructor are subject to inspection. A corresponding checklist has been developed for all.

Refusal to issue a license is carried out in cases when: 1) occupation by type of activity is prohibited by laws of the Republic of Kazakhstan for this category of individuals or legal entities; 2) the license fee has not been paid; 3) the applicant does not meet the qualification requirements; 4) the licensor received a response from the corresponding matching state body about the applicant's incompatibility with the requirements for licensing; 5) in relation to the applicant, there is an effective court decision (ruling) on the suspension or prohibition of activities or certain types of activities subject to licensing; 6) the court, on the basis of the submission of the bailiff, is temporarily prohibited from issuing a license to the applicant-debtor [13]. The Code on Administrative Offenses provides for liability for violation of licensing requirements.

Third, the law «On compulsory insurance of civil liability of the tour operator and travel agent» was adopted [16]. The purpose of civil liability compulsory insurance of a tour operator or travel agent is to protect the property and (or) other interests of tourists in the implementation of the activities of a tour operator or travel agent to provide tourist services through the implementation of insurance payments. At the same time, the object of compulsory insurance of the civil liability of the tour operator (hereinafter - compulsory insurance of the responsibility of the tour operator) is the property interest of the tour operator, related to its duty, established by the civil legislation of the RK, to compensate for the damage caused to the property and (or) the formation of a tourist product. The object of civil liability compulsory insurance of the travel agent is the property interest of the travel agent associated with its duty, established by the civil legislation of the RK, to compensate for the damage caused to the property and (or) other interests of the tourist in the course of the promotion and sale of the tourist product formed by the tour operator.

Fourthly, the procedures for migration control and visa processing have been simplified. In 1995, the law «On the legal status of foreigners» [17] was adopted, which determined their basic rights and freedoms in the territory of the Republic of Kazakhstan. In accordance with the Decree of the Government of the Republic of Kazakhstan of December 23, 2016 No. 838, citizens of 47 countries have the opportunity to enter and leave the Republic of Kazakhstan without visas if their period of stay in the Republic of Kazakhstan does not exceed thirty calendar days from the moment of crossing the State border of the Republic of Kazakhstan [18]. Similar rights have been established in 58 countries for citizens of Kazakhstan. The Law «On Migration» was adopted, on the basis of which the process of regulation of migration processes and coordination of work in the field of population migration is under way [19]. Thus, we see that the main regulatory framework has been adopted. From the point of view of laws, a lot has been done. However, Kazakhstan can not be called a tourist center. The flow of international and domestic tourism is still very low. According to the Competitiveness Index of the Travel and Tourism Sector, Kazakhstan ranked 88<sup>th</sup> place in 2013, rose to three positions in 2015 and took 85<sup>th</sup> place out of 141 countries represented [20].

Now in the Muslim countries, Halal tourism is actively developing. Are there legal norms regulating this activity in Kazakhstan? It should be noted that the analysis of the current legislation did not allow revealing these norms. Although Islam and the Muslim community represent in 57 member countries.

At now a day we can expect that this type of tourism will grow. Halal tourism is not developed in Kazakhstan. According to the 1995 Constitution, Kazakhstan is a secular state [21], the church in the country is separated from the state. However, in the country it is the places of worship that are most attractive for domestic tourists.

Analysis of the provisions of legislation in the field of tourism in Russian Federation.

In 2014, the Russian Federation adopted the Strategy for the development of tourism in the Russian Federation for the period until 2020 [24]. The main legal act regulating tourism activities is the Federal Law «On the Bases of Tourism Activity in the Russian Federation» of 24 November 1996 [22]. The conditions for the implementation of tour operator activities in Russia is the introduction of a tour operator into the Unified Federal Register of Tour Operators.

In order to protect the rights and legitimate interests of citizens and legal entities, the implementation of tour operator activity in the territory of the Russian Federation is allowed by a legal entity in the presence of a contract of civil liability insurance for non-fulfillment or improper performance of obligations under a contract for the sale of a tourist product or a bank guarantee for the performance of obligations under a contract for sale Tourist product (hereinafter also - financial security).

All tour operators registered in the territory of the Russian Federation must have financial security provided for by the Federal Law. Tour operators operating in the field of outbound tourism should also be members of the association of tour operators in the field of outbound tourism, acting in accordance with Federal Law.

The requirements imposed in accordance with the Federal Law on the implementation of tour operator activities are also applied to legal entities that sell a tourist product in the territory of the Russian Federation formed by a foreign tour operator.

In the Russian Federation, the law is more demanding for the formation of a tourist product. The tour operator is liable to the tourist in accordance with the legislation of the Russian Federation for failure to perform or improper performance of obligations under the agreement on the sale of the tourist. At the same time, the law considers a full list of requirements when implementing a tourist product. The legislation of Kazakhstan does not address these issues in detail.

In Kazakhstan, as we have noted, tour operator activity is a licensed type of activity, what we couldn't say the same about the Russian Federation. To conduct tour-operator activity in the Russian Federation in the field of outbound tourism, it is necessary to be members of the association of tour operators in the field of outbound tourism and have a fund of personal responsibility of the tour operator.

In the Republic of Kazakhstan, a tour operator in the field of outbound tourism promotes and sells a tourist product exclusively through travel agents. The travel agent promotes and sells tourists only a tourist product, formed by a tour operator established in accordance with the legislation of the Republic of Kazakhstan.

On the territory of the Russian Federation, the realization of a tourist product, formed by a foreign legal entity, an individual entrepreneur or an organization that is not a legal entity in accordance with the legislation of a foreign state (hereinafter - a foreign tour operator), is authorized to carry out legal entities that have financial security of the tour operator's responsibility, On terms that are provided for by the Federal Law.

It is prohibited to carry out tour operator activity by a legal entity, information about which is not available in the single federal register of tour operators, as well as the implementation by the tour operator of tour operator activities in a certain sphere of tourism (inbound tourism, outbound tourism, domestic tourism), information about which such a tour operator is not available in a single federal register Tour operators.

In the Russian Federation, the classification of tourism industry objects (hotels, tourist accommodation, ski slopes and other means) is carried out by accredited organizations in the manner established by the authorized federal executive body. Accreditation of organizations carrying out this classification is carried out by state authorities of the constituent entities of the Russian Federation in the manner established by the authorized federal executive body.

The state authority of the subject of the Russian Federation sends information on the organizations accredited to it, including information on the termination of their accreditation, to the authorized federal executive body for inclusion in a single list of accredited organizations that classify objects of the tourist industry, including hotels and other accommodation facilities, Ski slopes, beaches.

With regard to the legislation of the Republic of Kazakhstan, the classification of placements is carried out according to the Rules of Classification, which define the main objectives, organizational structure and minimum requirements and regulate the order of assigning categories to tourist accommodation places.

According to these rules, the applicant submits an application and a questionnaire to the conformity assessment body, if the decision is positive, the conformity assessment body issues a decision on the establishment of the commission for conducting the classification evaluation, then the commission goes to the site and decides whether to issue / refuse the certificate.

We believe that the norms of the legislation of the Russian Federation have settled these issues more «transparently» in order to exclude the emergence of corruption.

The issues of insurance of the responsibility of the tour operator in the Russian Federation are regulated by Article 17.6 of the Federal Law of the Russian Federation «On Tourist Activities» [23]. The tour operator, at its own expense, insures the risk of its liability, which may occur as a result of non-fulfillment or improper performance of obligations under the contract for the sale of the tourist product. In the Republic of Kazakhstan, these issues are regulated by the Law of the Republic of Kazakhstan «On compulsory insurance of civil liability of the tour operator and travel agent» of December 31, 2003 (29 articles) [16]. Of course, insurance issues have a more detailed regulated character in the Republic of Kazakhstan. However, there is another side, as there is such a need for a whole law, and whether there is a duplication of the norms of this law with the civil code and the Law of the Republic of Kazakhstan «On insurance activity» of Kazakhstan.

#### *Conclusions and suggestions.*

The above analysis allows us to conclude that Kazakhstan's legislation in the field of tourism regulation requires its improvement. This is due to several factors:

- firstly, the mechanism of liability of tourist organizations for violating the procedure for providing tourist services does not work. Every year Kazakhstani citizens become hostages to unscrupulous travel agencies;
- secondly, the placement certification system does not work, which does not promote competition in this area, and the development of tourist infrastructure;
- thirdly, high prices for the accommodation of tourists;
- fourthly, participants in the tourism market are disjointed.

In order to solve all the above problems, it is necessary in the law «Tourism Activities in the Republic of Kazakhstan» to consider in detail the issues of financial support for the activities of tourist organizations, classifications of types of accommodation (this includes the hotel, motel, camping, tourist base, guest house, rest house, boarding house and others) and procedures for their evaluation. The creation of appropriate standards applied to the locations will resolve issues related to control over the compliance of the quality of hotel services.

The law of the Republic of Kazakhstan «On State Registration of Rights to Immovable Property», which must be supplemented with the concepts of «tourist object», «tourist real estate», with the purpose of developing club tourism, also requires its improvement.

The tax legislation of the state also requires changes. To stimulate the development of the tourist infrastructure, it is necessary to introduce local tourist rent, levied from the tourism industry, by restructuring other taxes. The collected funds can be invested in the development of tourist infrastructure facilities and recreational resources.

The tourism industry needs legislative guarantees, ensuring maximum security, legal protection and insurance guarantees, with minimal risks of staying in the country for both Kazakhstani and foreign tourists. It is necessary to develop a mechanism to strengthen the responsibility of tourist organizations for violation of their order of monitoring compliance with the rules of entry and stay in the Republic of Kazakhstan on their visa support for foreigners.

The state needs to increase the list of economically developed, politically and migratory stable states, whose citizens are exempt from the necessity of presenting an invitation for issuing visas in different categories. Now there are 48 of them.

It is necessary to develop the standards of Halal tourism.

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## Қазақстан Республикасындағы туризмді дамытудың негізгі мәселелері

Туризмнің дамуына Қазақстанда қабылданған нормалардың ықпал етуі мәселелерін зерттеудің өзектілігі соңғы жылдары туризмді дамыту үшін алғышарттардың өзгеруімен түсіндіріледі. Нарық пайда болды, басқарушылық құрылымдар қалыптасты, алайда туризмді дамытумен байланысты сұрақтар күрделі мәселе болып отыр. 2017 жылдың маусым айында Қазақстанда 2023 жылға дейін туристік саланы дамыту концепциясы қабылданды. Онда көрсетілгендей, туризмнің қарқынды дамуын тежеп отырған себептердің бірі туризм индустриясын нормативтік реттеудің жеткіліксіз деңгейі болып отыр. Жобаны жазудың негізгі мақсаты — отандық туризмді жандандыру, мемлекетіміздің бәсекеге қабілеттілігін арттыру үшін туризм саласындағы заңнаманы жетілдіруді зерттеу, туристер үшін ғана емес, сонымен бірге инвесторлар үшін де туристік құрылымды жетілдіру қажеттілігімен түсіндіріледі. Бұл саладағы заңнаманы жетілдіру бойынша ұсыныстар қалыптастыру, Қазақстанда туризмді дамытуға мүмкіндік бермейтін нормалар туралы мемлекеттік органдарды ақпараттандыру, сонымен қатар туристердің қауіпсіздігін қамтамасыз ету мәселелері бойынша және бизнестің аясы ретіндегі туризмнің дамуын тікелей немесе жанама реттейтін рәсімдер бойынша ұсыныстар қалыптастыру жұмыстың нәтижесі болады.

*Кілт сөздер:* туризм, туризмді лицензиялау, туристік қызмет, туроператор, турагент, туристік индустрия, туризм саласындағы заңнама.

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## Правовые проблемы развития туризма в Республике Казахстан

Актуальность исследования вопросов влияния принятых норм в Казахстане на развитие туризма заключается в том, что предпосылки для развития туризма за последние годы изменились. Появился рынок, возникли управленческие структуры, но проблема с развитием туризма все еще остается значительной. В июне 2017 г. Постановлением Правительства Республики Казахстан принята Концепция развития туристской отрасли Республики Казахстан до 2023 г. Одной из причин, затрудняющих ускоренное развитие туризма, указанных в Концепции, считается недостаточный уровень нормативного регулирования индустрии туризма. Основной целью написания статьи послужили необходимость исследования совершенствования законодательства в области туризма для повышения туристской привлекательности нашей страны, ее конкурентоспособности и разработка направлений совершенствования структуры отрасли не только для туристов, но и для инвесторов. Итогом работы станут предложения по совершенствованию законодательства в этой области, информирование государственных органов о нормах, не позволяющих развивать туризм в Казахстане, а также выработка предложений по вопросам обеспечения безопасности туристов, процедур, прямо или косвенно регламентирующих развитие туризма как сферы бизнеса.

*Ключевые слова:* туризм, лицензирование туризма, туристская деятельность, туроператор, турагент, туристская индустрия, законодательство в сфере туризма.

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