

ISSN 1563-0366
Индекс 75882; 25882

ӘЛ-ФАРАБИ атындағы ҚАЗАҚ ҰЛТТЫҚ УНИВЕРСИТЕТІ

ҚазҰУ ХАБАРШЫСЫ

Заң сериясы

КАЗАХСКИЙ НАЦИОНАЛЬНЫЙ УНИВЕРСИТЕТ имени АЛЬ-ФАРАБИ

ВЕСТНИК КазНУ

Серия юридическая

AL-FARABI KAZAKH NATIONAL UNIVERSITY

KazNU BULLETIN

Law series

№3 (75)

Алматы
«Қазақ университеті»
2015



ХАБАРШЫ

ЗАҢ СЕРИЯСЫ № 3 (75)



25.11.1999 ж. Қазақстан Республикасының Мәдениет, ақпарат және қоғамдық келісім министрлігінде тіркелген

Куәлік №956-Ж.

Журнал жылына 4 рет жарыққа шығады

ЖАУАПТЫ ХАТШЫ

Ережепқызы Р., жауапты хатшы

(Қазақстан)

Телефон: +7727-377-33-36;

8-727-377-33-37 (ішкі н. 12-57)

E-mail: rose@mail.ru

РЕДАКЦИЯ АЛҚАСЫ:

Байдельдинов Д.Л., з.ғ.д., профессор

(бас редактор) (Қазақстан)

Кенжалиев З.Ж., з.ғ.д., профессор

(бас ред. орынбасары) (Қазақстан)

Сартаев С.С., з.ғ.д., академик (Қазақстан)

Тыныбеков С.Т., з.ғ.д., профессор (Қазақстан)

Ибраева А.С., з.ғ.д., профессор (Қазақстан)

Джансараева Р.Р., з.ғ.д., профессор (Қазақстан)

Усенинова Г.Р., з.ғ.д., профессор (Қазақстан)

Еркинбаева Л.К., з.ғ.д., профессор (Қазақстан)

Жатқанбаева А.Е., з.ғ.д. (Қазақстан)

Трунк А., профессор (Германия)

Монтекило С., профессор (БАӘ)

Бурхард Б., профессор (Германия)

Лисица В., профессор (Ресей)



ҚАЗАҚ
УНИВЕРСИТЕТІ
Б А С П А У Й І

Ғылыми басылымдар бөлімінің басшысы

Гүлмира Шаққозова

Телефон: +77017242911

E-mail: Gulmira.Shakkozova@kaznu.kz

Редакторлары:

Гүлмира Бекбердиева, Еркін Жайнақов

Компьютерде беттеген:

Айгүл Алдашева

Жазылу мен таратуды үйлестіруші

Мөлдір Өміртайқызы

Телефон: +7(727)377-34-11

E-mail: Moldir.Omirtaikyzy@kaznu.kz

ИБ №8886

Басуға 15.08.2015 жылы қол қойылды.

Пішімі 60x84 1/8. Көлемі 35 б.т. Офсетті қағаз. Сандық басылыс.

Тапсырыс №3514. Таралымы 500 дана. Бағасы келісімді.

Әл-Фараби атындағы Қазақ ұлттық университетінің

«Қазақ университеті» баспа үйі.

050040, Алматы қаласы, әл-Фараби даңғылы, 71.

«Қазақ университеті» баспа үйінің баспаханасында басылды.

© Әл-Фараби атындағы ҚазҰУ, 2015

Dochshanova A.S.

The correlation of «tourism» and «tourist activity» categories under the legislation of the Republic of Kazakhstan

This article deals with the correlation between the concepts «tourism» and «tourist activity» under the laws of the Republic of Kazakhstan. In particular, it analyzes characteristics of tourism and tourist activities. Tourist activity is considered as an entrepreneurial activity. The attention is given to the features of tourist activity as entrepreneurial activity. Also the issue of subjects of tourist activity are analyzed.

Key words: tourism, tourist activity, entrepreneurial activity, subject, risk.

Дошанова А.С.

Қазақстан Республикасының заңнамасы бойынша «туризм» және «туристік қызмет» категориялардың ара-қатынасы

Мақалада Қазақстан Республикасының заңнамасы бойынша «туризм» и «туристік қызмет» категориялардың ара-қатынасы қарастырылады. Әсіресе, туризм мен туристік қызметтің белгілеріне көңіл бөлінді. Туристік қызмет кәсіпкерлік қызмет ретінде қарастырылды. Туристік қызметтің белгілеріне көңіл бөлінген. Оған қоса туристік қызметтің субъектілері сараланды.

Түйін сөздер: туризм, туристік қызмет, кәсіпкерлік қызмет, субъект, риск.

Дошанова А.С.

Соотношение категорий «туризм» и «туристская деятельность» по законодательству Республики Казахстан

В данной статье рассматриваются вопросы соотношения понятий «туризм» и «туристская деятельность» по законодательству Республики Казахстан. В частности, проанализированы признаки туризма и туристской деятельности. Туристская деятельность рассмотрена как предпринимательская деятельность. Внимание уделено признакам туристской деятельности как предпринимательской. Также проанализирован вопрос о субъектах туристской деятельности.

Ключевые слова: туризм, туристская деятельность, предпринимательская деятельность, субъект, риск.

**THE CORRELATION
OF «TOURISM» AND
«TOURIST ACTIVITY»
CATEGORIES UNDER
THE LEGISLATION OF
THE REPUBLIC
OF KAZAKHSTAN**

From the associative point of view the category of «tourism» in the minds of people is connected with rest, organization of free time and leisure to travel. In reality, today the scope of the spread and development of tourism on a global scale makes it possible to talk about **such kinds of tourism that are the person's lifestyle**. Geographical, climatic, cultural and historical diversity serves as a beacon for the constant movement of people from one part of the globe to another in the desire to learn something new, the unknown.

Increasing interest in tourism increasingly affects the economic development of the tourism industry, which in turn gives rise to the need for proper regulation of economic relations in the process of implementation of the tourist activity. Development of tourism and tourism activity is one of the most vivid examples of when the basis – public relations – ahead of the setting – the legal rules governing these relations.

Firstly, the legal analysis of the relations in the sphere of tourism and tourist activity is necessary to begin by considering the legal component of the above mentioned categories.

The first basic category is «tourism». **Turning to the current legislation** where in Article 1 of the Law of the Republic of Kazakhstan «On tourist activity in the Republic of Kazakhstan» the legislator provided the following definition: «Tourism – a journey of individuals with duration of twenty-four hours to one year, or less than twenty-four hours, but with an overnight stay in purpose of non-remunerated activity in a country (place) of temporary stay» [1].

It should be noted that, in theory, there are different sources of variation in the interpretation of the term «tourism». For example, according to some scholars, the concept of «tourism» is covered by all kinds of human movement not associated with a change of place of residence and work. At such a point of view the tourism can be understood as a form of migration that has no permanent character [2]. Other authors (Azar V.I., Hodorkov L.F., Gerasimenko V.G. etc.) **in their definition of «tourism» underscore the dynamic («displacement», «movement»)** and territoriality of the phenomenon. Some authors by tourism necessarily imply the presence of outdoor activity [3].

In the Manila Declaration on World Tourism of 1980 [4] **tourism** is defined as an activity, which is important in the life of the

peoples of the direct effects on the social, cultural, educational and economic life of the region and their international relations.

Tourism, by definition of the International Academy of Tourism, is a general term for all forms of temporary departure of people from their places of permanent residence for health purposes, and (or) to meet the cognitive interests in their spare time or in professional and business purposes, without employment paid activity in a place of temporary stay [5].

On the basis of a legislative definition, the features of tourism include the following:

- tourism as a journey;
- of individuals;
- its duration – twenty-four hours to one year, or less than twenty-four hours, but with an overnight stay;
- for purposes not related to paid activity;
- in the country (place) of temporary stay.

The first feature: tourism- a journey. Different dictionaries give the following definitions of the term «journey».

Dmitriev's Dictionary explains the journey as somebody's movement by foot or by transport far away from their place of residence [6].

Small Academic Dictionary: a journey – a trip on foot or travel anywhere beyond domicile with a scientific, educational, sports and other purposes [7].

Ideographic Dictionary of the Russian language: the journey – long trip; movement on any territory with cognitive purposes [8].

The essence of all the interpretations, is to ensure that this is a movement of individuals, in any way move, including hiking, to the place far from the residence. In some cases, there is the purpose of this movement.

It should be noted that the category of journey completely reflects the features of tourism.

Another feature of tourism is the subject – an individual. Tourism is considered as a movement of individuals, because it is a journey and a category opposite gainful activity. There are no distinctions of age, ethnicity, nationality. Accordingly, the tourism is **understood as the movement of natural persons** of any age and citizenship.

In our opinion, the key features of tourism will be the length of traveling and its purpose.

The legislation deals with two variations of the length of journey: 1) from 24 hours to 1 year; 2) at least 24 hours, but overnight. The absence of signs of movement faces one of these variations shows that this is not tourism, but excursion.

The purpose of tourism should be either not related to paid activity in the place of temporary residence. As a rule, gainful employment includes employment **and entrepreneurial activity. In accordance with the nature of such activity it includes educational activity.**

The meaning of this attribute of tourism can be justified by the following circumstances. Movement of individuals across the territorial boundaries of states associated with licensing procedures within the territory of a foreign state, that is, obtaining its visa.

Particularly important these procedures are in cases where the states do not have special agreements on visa-free stay of the subjects. In this case, consulates of foreign states issue targeted visa, which indicate the main purpose of the visit. As a rule, the issuance of entry permits to a foreign country for the purpose of paid activity allows individuals to realize the goals related to tourism. If the individual received a tourist visa, the exercise of gainful employment is prohibited.

The legislation highlights that tourism is only possible in a country (place) of temporary stay.

The second basic category is the tourist activity. In general, the law defines tourist activity as one of the sectors of the economy. In accordance with the Law of the Republic of Kazakhstan «On tourist activity in the Republic of Kazakhstan» tourist activity – entrepreneurial activity of individuals and legal entities for the provision of tourism services.

The features of tourist activity are:

- tourist activity – it is entrepreneurial activity;
- subjects – individuals or legal entities;
- an activity for the provision of tourism services.

In accordance with Article 10 of the Civil Code of the Republic of Kazakhstan «Entrepreneurship – a proactive activity of citizens and legal entities, regardless of ownership, aimed at obtaining net income by meeting the demand for goods (works, services), based on the right of private property (private enterprise) or the right of business authority or operational management of public enterprises (public enterprise). Entrepreneurial activity is carried out on behalf of, risk and financial responsibility for the entrepreneur» [9].

Since this time, the adoption of the Entrepreneurial Code of the Republic of Kazakhstan is discussed we should refer to the definition of entrepreneurship in this draft normative legal act.

Article 2 of the project of the Entrepreneurial Code of Kazakhstan states: «Entrepreneurship – in-

dependent, initiative activity of citizens and legal entities, carried out on behalf of, risk and financial responsibility of **the entrepreneur aimed at obtaining net income through the use of property, sale of goods, works and services based on the right of private property (private enterprise) or the right of business authority or operational management of public enterprises (public enterprise)**» [10].

Based on the content of **presented two definitions**, the features of entrepreneurial activity are:

- initiative;
- independence of citizens and legal entities;
- the risk;
- focus on the net income;
- **by meeting the demand for goods, works, services / use of property, sale of goods, works and services;**
- is based on the right of private ownership or the right of **business authority or operational management**.

The first feature – **initiative**. One of the key principles of business is the freedom of entrepreneurship. Subjects engaged in tourist activities are free in their expression of the will of beginning or ending of tourist activity, its content and direction of. In terms of majority of **types of tourism, each subject**, initiated its tourist activities have the right to choose the type of activity.

The second feature – **autonomy**. The Civil Code it is reflected in the independent name, property and responsibility. The subjects of tourist activity may be individuals and legal entities.

Individuals known to be classified on different grounds: age, according to nationality, etc. Entrepreneurial activity can be carried out in full to the acquisition of full deed capacity. As a general rule, **full deed capacity begins at the age of eighteen**. Exceptions are possible in the case of marriage before 18 years of age or emancipation. It should be taken into account that under the legislation the possibility of recognizing a person incapacitated and to limit its capacity is regulated.

In accordance with the legislation on **tourist activity** some types are subject to licensing, others – to certain notification.

With regard to **legal entities, the implementation** of the tourist activity is limited to commercial private entities. Exclusion from the circle of potential tourist organizations of state enterprises based

on the norms of the law of the Republic of Kazakhstan «On State Property», which lists in Article 134 the scope of the appointment of public enterprises [11].

As for the name of the subject of the tourist activity, the legislation does not stipulate specific requirements for inclusion in the title indication of the type of tourism. At the same time the subjects retained the right to use special terms, indicating the type of activity. As an example, Otrar Travel, Gulnar Tour, Travelsystem etc. These subjects used international terms «tour», «travel», related to the tourist activity.

Regarding independent property responsibility, in terms of entrepreneurial law liability of tourist activities subject to the rules imposing liability on entrepreneurs. **At the same time, there is no real burden of responsibility**, because most of the entities were created in the form LLP, where liability is limited to the contributions of the participants.

One of the features characterizing the **entrepreneurial tourist activity is the risk – conscious assumption of adverse effects**. The main method of risk management is the insurance. There is a special law – the Law of the Republic of Kazakhstan «On compulsory insurance of civil liability of the tour operator and travel agent» [12].

Current legislation provides two basic types of tourist activity: tourist agency activity and tourist operator activity. Classification of tourist activity is based on the types of services provided.

Travel agency activity – **entrepreneurship of individuals and (or) legal entities** for the promotion and implementation of the tourism product, formed by tour operator.

Tour operator activity – **entrepreneurship of individuals and (or) legal entities** licensed to this activity, to build a tourist product, its promotion and sale **to tourist agents and tourists, as well as the promotion and implementation of the tourism product, formed by non-residents of the Republic of Kazakhstan**.

Thus, tourism and tourist activity – is **diametrically opposed categories, interconnected with each other**. **Tourism – an objective opportunity of individuals to realize their need for knowledge of the world through travel**. **Tourist activity – business activity aimed to help in the implementation of this opportunity**.

References

- 1 Law of the Republic of Kazakhstan from 13.06.2001 N 211-II On touristic activity // IS Paragraph.
- 2 Builenko V.F. Osnovy professionalnoi deyatel'nosti. – Rostov-na-Donu, 2008. – 378 p.
- 3 Builenko V.F. Planirovanie ekologicheskogo turizma. – Krasnodar, 2006. – 243 p.
- 4 Manila Declaration on World Tourism of 10 October 1980. Adopted by the World Conference on Tourism held in Manila (Philippines) from 27 September to 10 October 1980.
- 5 International Law: textbook / Ed. Yu.M. Kolosov, E.S. Krivchikova. – M., 2005. – 900 p.
- 6 Dmitriyev D.V. Russian language dictionary. – M., 2003. – 1578 p.
- 7 Small Academic Dictionary // http://biblioclub.ru/?page=dict&dict_id=118
- 8 Ideographic Dictionary of the Russian language // <http://slovari.ru/default.aspx?s=0&p=5485>
- 9 The Civil Code of the Republic of Kazakhstan dated 27 December 1994 // IS Paragraph.
- 10 Entrepreneurial code of the Republic of Kazakhstan. Draft // <http://adilet.zan.kz/rus/docs/P1400001425>
- 11 Law of the Republic of Kazakhstan dated 1 March 2011 «On State Property» // IS Paragraph.
- 12 Law of the Republic of Kazakhstan dated December 31 2003 N 513 «On compulsory insurance of civil liability of the tour operator and travel agent» // IS Paragraph.

