

The Provision of Tourists' Rights in Uzbekistan: International and National Standards



Surayyo Bultakovna Usmanova

Ph.D. in law, Associate Professor, University of World Economy and Diplomacy,

ABSTRACT: This article examines the issues of legal regulation, which are the basis of all areas and directions of tourism. In particular, the analysis of the importance of international legal norms in ensuring the rights, freedoms and safety of tourists in Uzbekistan, the need for their implementation in national legislation. The author has also developed suggestions and recommendations for specific issues based on the findings of this study.

KEYWORDS: Convention, freedom, implementation, international norms, law, tourist, tourism.

INTRODUCTION

The first Universal «Framework Convention on Tourism Ethics» of the United Nations World Tourism Organization (UNWTO) from 2017 underlined: «to develop tourism to contribute to economic development, international understanding, peace, prosperity and universal respect for, and observance of human rights and freedoms for all without any kind of distinction» [4]. With this regard, the considerable focus has been observed on the enhancement and development of the legal framework of the sphere of tourism and the perfection of international-legal norms on tourists' rights and responsibilities.

It is demanded to conduct scientific researches on the acceleration of the legal regulation of this sphere and its' main subjects – tourists' rights, freedom and security to sustainable develop the tourism by the states and organizations in the world, which affect the development of societies and the implementation of international standards into national legislation.

Important measures are being taken to ensure the participation of Uzbekistan in international tourism organizations, the development of close contractual relations with foreign countries, and the perfection of national legislation in the sphere of tourism according to the international norms. In particular, it was noted that «tourism has become a strategic sector of the country's economy» [21] and «the development of the normative-legal framework in the sphere of tourism, the implementation of international norms and standards in organization of favorable conditions for tourism development»[22] identified as the important tasks of the intensive development of this field. In this context, *it is purposed* to devise proposals and recommendations on improvement of the national legislation in the sphere of tourism by analyzing the latest tendencies of the international-legal norms related to the provision of tourists' rights, security, and responsibilities in Uzbekistan.

THE LITERATURE REVIEW

The research is based on the international and legal framework of tourism, which makes it to analyze various legal norms. However, legal scientific research in this direction is not fully extended yet. The study of the international legal framework of tourism and collaboration in this sphere engaged in the works of foreign scientists as V.Vakhmistrov, E. Pisarevskiy, A. Maniatis, and Y.Abaydeldinov [6, P.1-13]. In Uzbekistan, particular issues of civil-legal regulation of tourism services providing in the Republic of Uzbekistan were researched by U.Dustov and legal regulation of hotel services in the framework of the legislation of Uzbekistan can be observed in the scientific research papers of L.Achilova.

Several aspects of tourism have been researched in the Republic of Uzbekistan by several scientists as E.Golisheva, N.Fayzibaeva, M.Usmanov, etc. in the sphere of tourism [20], but there is no comprehensive complex research of the issues on the maintenance of tourists' rights, security, and responsibilities from the perspectives of the Republic of Uzbekistan. The prospects of implementation of international-legal standards into national legislation to develop the sphere of tourism and raise solve actual issues related to tourists' rights provision determine the content of this research work.

National and international legal review on the maintenance of tourists’ rights and freedoms. Foreign researchers emphasized that the development of international tourism demands state solutions to many problems. These problems become a subject of discussion at various international meetings, and approaches to resolving them are established at conferences and in international treaties and declarations [1, P.716]. The rule of law principle has to do with the perception of Justice and is strongly related to the issue of human rights. Although national Constitutions do not usually tend to incorporate a definition of this legal tool, it is about a state officially submitted to legal rules, relating to the entirety of its activity concerning tourism [6, P.4].

The legal framework in the field of ensuring the rights and freedoms of tourists in the Republic of Uzbekistan is based on the relevant provisions of the Constitution. Among them, we highlight those that are closely related to ensuring the rights and freedoms of tourists. Article 23 of the Constitution, states the provision of rights and freedoms to foreign citizens and stateless persons located in the Republic of Uzbekistan following international law [16, C.4]. Therefore, tourists who are foreign citizens have certain rights, which are enshrined in international legal acts.

After the adoption of the Decree of the President of the Republic of Uzbekistan on ensuring the accelerated development of the tourism industry, the issue of further improvement of the legislation and regulatory framework in the sphere of tourism has become the most relevant [19]. Especially the paragraph on the implementation of a set of measures to ensure the safety of life and health of tourists and travelers in organizing tourist services is significant in compliance with the principles and norms of international law in the Republic of Uzbekistan.

Among the generally recognized principles of international law, the principle of respect for human rights and freedoms is of paramount importance for the regulation of tourism activities. Today, this principle is an integral part of the theory and practice of international human rights law.

The Republic of Uzbekistan is a party to two fundamental multilateral human rights treaties, which enshrined the provisions relating to the tourism sector (the rights and freedoms of each): The International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.

Furthermore, there are several international-legal norms in the sphere of tourism in which the Republic of Uzbekistan does not participate. The Manila Declaration on World Tourism, adopted in 1980, outlined the role and place of tourism in modern society. This document confirms the requirements of respect and enforcement of human rights. Its main provisions are reduced to the following statements:

- observance of the human rights to rest, to vacation and freedom of travel (paragraph 3);
- providing maximum opportunities and benefits in the field of youth tourism, tourism of the elderly and people with physical disabilities (paragraph 15);
- social tourism is the goal towards which society should strive in the interests of less affluent citizens when they use the right to rest (paragraph 10);
- tourist resources are the property of mankind.

This declaration is a fundamental document of a global scale, which includes the legal status of tourists at the highest level.

The next international legal standard is the Acapulco document (1982), which confirms the principles of the Manila Declaration and also adds the followings to them:

- ensuring the right of citizens to rest, leisure, paid leave and the creation of legislative provisions to facilitate access to holidays by all segments of the population;
- release of information materials on tourism, etc.

The Tourist Code, which is an Annex to the Tourist Charter (1985), confirms the principles proclaimed by the Manila Declaration and the Acapulco Document. At the same time, the Charter establishes the basic rights and obligations of tourists, which are specified in the Tourist Code.

The Hague Declaration on Tourism (1989) proclaimed 10 principles on which relations in the tourism sector are based. Not all principles of The Hague Declaration are legal. In addition to the principles formulated in documents adopted earlier, The Hague Declaration indicates the principle of safety and protection of tourists, as well as the principle of respect for their dignity; emphasizes that tourism should be planned by state authorities and requires the development of *unified national tourism policy*.

A new approach to the right to tourism. Tourism has to do with the liberty of moving from place to place, without any bans imposed by states. So, it is intrinsically connected with civil fundamental rights, like the freedom of motion. It has been noticed convincingly, especially in French theory, that the law on the matter is older than it seems to be. It can find its origins in the regulation of the liberty to go and to come from one place to another. Since people have the possibility of traveling, this question has emerged [5, P.145].

Uzbekistan has not also participated in one of the last approved Conventions of the UNWTO — Framework Convention on Tourism Ethics. The proposal to convert the Code, the UNWTO's important document, into an international convention to reinforce its effectiveness was submitted in 2015 by the World Committee on Tourism Ethics to the General Assembly of the UNWTO [10].

This Convention provides new trends in the rights of tourists, based on the provisions of the Universal Declaration of Human Rights and the nine principles of the Code of Ethics for Tourism [2, P.218]. In particular, the document provides clear definitions of the fundamental concepts of the tourism industry, the rights of workers and entrepreneurs in the tourism industries, respect for national legislation, the benefits of the host countries, the responsibilities of all participants in the tourism process, the environmental aspects of tourism, prevention of negative impacts of tourism on society and the conciliatory mechanism for resolving disputes under this Convention [11].

First of all, as importance in implementation of the Framework Convention into national legislation, we would like to focus on several drawbacks of previous “Law on tourism” of the Republic of Uzbekistan. So, in this Law, there was no direct enumerated fixation of state responsibilities in the sphere of tourism from 1999. In the Law only the main directions of state policy in the sphere of tourism were marked, which can be considered as the obligations of the state in front of the tourist and the development of the tourism industry. However, in the framework Convention on Tourism Ethics (will be used CTE) (in Article 3) and Charter of tourism, the duties of the state are enshrined directly in Articles III, IV, V. Furthermore, in the principles of the Global Code of Ethics for Tourism (now, it becomes the part of CTE) and in the Osaka Millennium Declaration on the assignment of states’ responsibilities in the field of tourism activities, as well as the responsibilities of participants of the tourism process were paid much more attention. Several norms of those international documents have been implemented into the Law on tourism in a new edition from 2019 without signing international norms in the field of tourism. The absence of the direct fixation of the duties of the state represented by its local authorities and self-government bodies more broadly in the sphere of tourism leads to the fact that the realization of the rights of tourists significantly hindered. With this regard, *it is suggested to ratify the Framework Convention on tourism ethics by the Republic of Uzbekistan.*

Moreover, at present one of the important issues in tourism development is to overcome and prevent its *negative results on societies’ and governments’ social, economic and environmental life*. The CTE is considered to be unique and the only framework Convention in the sphere of tourism, which regulates these problems in universal level. Namely, it was underlined that, this document takes into account the swift and continued growth, both past and foreseeable, of the tourism activity, whether for leisure, business, culture, religious or health purposes and other special interest tourism products and segments, and its powerful effects, both positive and negative, on the environment, the economy and the society of both generating and receiving countries, on local communities and indigenous people, as well as on international relations and exchanges. Furthermore, the universal ethical principals in tourism include (the CTE): the respect of host regions’ peculiar laws and customs, the issues of public culture; the tolerance on the rights of vulnerable people; prevention of negative impact of tourism on nature and development of ecotourism; the impact of innovative projects on various environmental and cultural heritage and the issues of preserving them [7]. From our consideration, these inclusive international norms of regulation of *actual problems re-affirm the ratification and implementation of the CTE into national legislation of Uzbekistan.*

Particularly, in the cases when some historical heritages of Uzbekistan, as Shakhrisabz, Bukhara and Samarkand were in danger of removing them from the UNESCO’s World Heritage List [8] during the organization’s WHC’s 43rd session, the implementation of this Framework Convention is of a particular importance. These are the main sources for Uzbekistan to increase the tourists flow and consequently for economic benefit of the country.

Here, we should note that, Uzbekistan does not participate in several international conferences and did not sign universal norms which directly regulate the sphere of tourism and tourists’ rights and freedoms, which were mentioned above, till 1991- as a subject of international law (as an independent state) and after the independence, it was not considered as an important factor for developing tourism industry in the country. According to Russian academicians, the above mentioned, as well as other documents, which constitute in itself the totality of the Institute of International Tourism Law, are an important guarantee of progressive and direct development of international cooperation in the field of tourism [15].

From our point of view, non-participation of Uzbekistan in these important legal acts in the sphere of tourism, from one hand, would influence on appearing misunderstandings in national legislation and functioning of subjects of tourism industry, and from another hand on international image, which was announced as one of the main dimensions in the Presidential Decree “On the Action Strategy for the Further Development of the Republic of Uzbekistan in 2017-2021 years”. The document, in particular, provides the implementation of “constructive foreign policy aimed at strengthening the independence and sovereignty of the state, creating a secure belt around Uzbekistan, stability and good neighborly relations, strengthening the country's international image” [12].

The perspectives of the protection of tourists’ rights: international standards and Uzbekistan. The continuous growth of the tourism sector and its current trends and challenges, including those related to safety and security and the expansion of new businesses’ models, require an adaptation to the global legal framework. With this regard, the UNWTO has been working since 2011 on the development of the International Convention to protect tourists and ensure confidence in the tourism sector, an initiative now in its final phase. The 9th meeting of the Working Group on the International Convention on the “Protection of Tourists and the rights and obligations of Tourism Service Providers” took place on 26-27 January 2017 [13]. According to the Draft of the Convention, tourists and providers of tourism services are granted rights and duties based on international human rights standards. Moreover, by signing this Convention, the parties undertake the obligations to join at least one Annex of it, which consists of emergency assistance, a package of travel and accommodation, providing appropriate conditions for foreign tourists under different circumstances [14]. The rules and conditions set out in the Convention are considered to be liberal in relation to the Convention on the Travel Contract (1970), which, after the signing of the new Convention, it is not worthwhile to accede to the 1970 Convention. The most significance of this Convention is *its easing touristic formalities in international level*. Almost all important documents in this direction were adopted only in regional and bilateral level. As the UNWTO’s ex-Secretary General Taleb Rifai expressed, “we are at a highly relevant crossroads; tourism is increasing every year and governments and private sector need tools to build a framework to guarantee tourist protection among other trends”.

It is known that, the Republic of Uzbekistan pays a great attention to ensuring human rights in the country and to the development of tourism, according to the international standards. *With this regard, ratifying of this Convention would facilitate in future:*

- trust of potential tourists in maintaining their rights and interests in the Republic of Uzbekistan; Namely, according to the Article 2, Part 1, “States Parties shall take measures to protect the interests of tourists and to ensure that tourism service providers respect the rights of tourists as set out in this Convention”. And also, it underlined State parties’ opportunity to grant a higher level of protection to tourists than that set out in this Draft Convention;

- further strengthening of the relations of the State Committee for Tourism Development of Uzbekistan and other private touristic organizations with major tour operators, branded network hotels; In particular, according to the second Annex of the Convention special international terms and their definitions are interpreted, which are often used to organize package travel and tours [3]. And they are considered to be useful for entering international relations with private sector of tourism industry of foreign countries.

Moreover, if this Draft will be approved by the world authority and opened to ratify, for Uzbekistan which put forward to join several international Conventions (as, International Convention on Contract Travel from 1970 and Convention on Custom Privileges for tourists from 1954) [17] in the sphere of tourism would not need to sign them and join directly to the Convention on the “Protection of Tourists and the rights and obligations of Tourism Service Providers”. Because current Convention foresees contractual information obligations, as well as pre-contractual issues, alteration of the price and its terms (Articles 2,6,7 of Annex II);

- presenting a significant direction of law enforcement, including number of judicial practice in the field of consumer rights protection of tourist services, as well as entrepreneurial activities in the sphere of tourism; The inclusion of protection in the event of the insolvency of the organizer (Article 11), and the functioning in the emergency situations of both parties (Article 5, Annex III and Annex I as a whole). And influence on the development of direct mutual relations of tourist providers in international level;

- attracting more foreign investment into the sphere of tourism development of the Republic of Uzbekistan.

National normative-legal improvement in the sphere of tourism. Reforms in normative-legal and institutional regulation of tourism were characterized with the development and implementation of legal norms aimed at enhancing the guarantees and effectiveness of protecting the rights and legitimate interests of consumers of the tourist product, the quality and safety of tourism. In particular, creation of special policemen (in the basis of the Ministry of Internal Affairs) in several regions of Uzbekistan and adoption of the special conception on “Secured tourism” was by the Cabinet of Ministers in 2017 show the effective results on preventing tourists’ rights in Uzbekistan [9].

We agree with foreign scientists view that, the legal regulation of tourism - is the effective, normative and organizational impact of the law and the totality of legal tools, and methods on the behavior and activities of participants in this sphere and their relations with a view to establish the legal basis for a single tourism market, the protection of human rights and freedom of citizens in the frame of tourism, including ensuring the rights of citizens to have a rest, freedom of movement, information, health protection, a favorable environment, and participation in cultural life and the use of cultural institutions through tourism [18, C.16].

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Moreover, it will be more plentiful the participation of private sector and nongovernmental organizations’ in prevention of tourists’ rights and freedom. The growth of the number of tourists in the country emerges the raise of problems and cases related to the violation of their rights or issues concerning misunderstandings on national laws for foreign citizens. Consequently, the tourists come to the arena as the consumers of legal services. Some of them usually are ready to pay for this service if it will be conducted in a valuable form, at same time another part of tourists asks for free legal consultancy in a received country. *With this regard, it is recommended to create special Legal clinic (s) in the form of non-governmental organization (both commercial and non-commercial forms) on protection of tourists’ rights and freedoms in Uzbekistan.* These law clinics would serve:

- to provide legal consultancy only to tourists regarding the provision their rights, freedoms and responsibilities;
- maintain attorney service in specific conditions related to the protection of tourists’ rights in civil, administrative or criminal cases;
- other services which are connected with the provision of tourists rights.

CONCLUSION

To summarize, it began a new period of tourism development in Uzbekistan from December 2016. Legal norms and changes are almost adopted by the government. And the main aim is to implement into this novation into the practice. At the initial stages of tourism development in Uzbekistan, the main efforts were aimed at attracting foreign tourists to the country, as well as overcoming the negative factors influencing on the development of inbound tourism. At the initial stages of tourism development in Uzbekistan, the main efforts were aimed at attracting foreign tourists to the country, as well as overcoming the negative factors influencing on the development of inbound tourism.

However, some aspects of legal promotion of tourism continue to be actual till present. Namely, improvement of the regulatory framework for the development of cultural, educational and pilgrimage tourism, the reformation in the field of tax preferences and the maintenance of security of tourists are also in the process of development now. However, some aspects of legal promotion of tourism continue to be actual till present.

Uzbekistan, as mentioned before is not a part in the universal specific international Conventions which regulate the sphere of tourism. From our point of view, the ratification of UNWTO’s Convention on tourism Ethics by the Republic of Uzbekistan would effect on:

- realization of the plans for sustainable development of the United Nations and the development strategy of the Republic of Uzbekistan in the tourism industry;
- shows the active participation of the Republic of Uzbekistan in the implementation of international standards in the field of tourism development;
- solution of the actual issues which are connected with the negative impacts of tourism (ecological, environmental and social-political issues (illegal migration, labor and other exploitation purposes));
- regulation of interconnections among the tourism industry subjects in international and local level;
- the result of “face-to-face conversation” would be a beneficial impact on the growth of international image of Uzbekistan;
- moreover, the signing and ratification of the Draft Convention on the “Protection of Tourists and the rights and obligations of Tourism Service Providers” by the world authority, and Uzbekistan in the near future will serve as the factor for provision of tourists’ rights in a higher sustainable level. In addition, the functioning of special legal clinics for tourists in accordance with the suggested form will be a unique implementation of international norms’ realization in institutional form in Uzbekistan.

Last but not least, the perspectives of tourism development in the Republic of Uzbekistan and solving the actual issues in this sphere should be based on the legal and institutional guarantee. Hence, the adoption of demanded legal provision comes from international standards, states’ practice and domestic initiatives.

References:

- 1) Abaydeldinov Y., Kala N. International Legal Aspects of Tourism Activity: International Treaties Analysis. Journal of Advanced Research in Law and Economics, (Volume VII, Summer), 4(18): pp.714 – 720, 2016. Available from: <http://www.asers.eu/journals/jarle/jarle-issues>.
- 2) Abdurakhmanov K.Kh. Management of tourism: Tutorial. – Jakarta.: Gunadarma Publisher, 2013. – P.218-225.
- 3) Draft of the Convention on the “Protection of Tourists and the rights and obligations of Tourism Service Providers”. Annex II. Packagetravel. Article 1.
- 4) Framework Convention on Tourism Ethics. Retrieved from: <http://cf.cdn.unwto.org/sites/all/files/docpdf/frameworkconventionontourismethics-esdt101117.pdf> (Last seen: 08.10.2017).

- 5) Jegouzo, L. “Le droit du tourisme, est-il un droit nouveau?”, *Juristourisme*, 2012, No.145, pp. 145-146.
- 6) Maniatis A., *Tourism and the rule of law African Journal of Hospitality, Tourism and Leisure* Volume 5 (1) – 2016, pp. 1-13.
- 7) Preamble of the framework CTE.
Article 4.
Tourism’s contribution to mutual understanding and respect between peoples and societies
Article 5.
Tourism as a vehicle for individual and collective fulfilment., Part 2.
Article 6.
Tourism, a factor of environmental sustainability.
Article 8.
Tourism, a beneficial activity for host countries and communities.
- 8) Shakhrisabz remains on the List of World Heritage in Danger. Available at: http://www.unesco.org/new/en/tashkent/about-thisoffice/singleview/news/shakhrisabz_remains_on_the_list_of_world_heritage_in_danger/ (last seen: 03.07.2019).
- 9) See: <http://lex.uz/docs/3422675> (last seen 14/09/2017). It should be emphasized that, according to this Conception, special official bodies for maintaining security of tourists and aiding to protect the rights and freedoms of them were organized. They function under the Departments of Internal Affairs of those four regions.
- 10) UNWTO: “Code of Ethics for Tourism Becomes International Convention”. Available at: <https://news.gtp.gr/2017/09/18/unwto-code-ethics-tourism-international-convention/> (last seen 07/09/2018).
- 11) Ibid.
- 12) See: <https://eadaily.com/ru/news/2017/02/08/v-uzbekistane-utverzhdena-strategiya-razvitiya-strany> (last seen 08/09/2017).
- 13) See: “Working Group progresses on the Convention on the Protection of Tourists”. Available at: <https://www.finchannel.com/tourism-and-travel/63367-working-group-progresses-on-the-convention-on-the-protection-of-tourists> (last seen 07/09/2018).
- 14) Ibid.
- 15) Vakhmistrov V.P., Vakhmistrov S.I. *Legal support of tourism: textbook - SPb .: Publishing house of Mikhailova V.A., 2005. - P. 98-101.*
- 16) Constitution of the Republic of Uzbekistan, "Adolat", 2017. C.4.
- 17) Resolution of the President of the Republic of Uzbekistan "On measures to implement the Concept for the development of tourism in the Republic of Uzbekistan in the medium term." Available: https://my.gov.uz/ru/getPublicService/332?Item_id=1296&action=view (date accessed: 08/09/2017).
- 18) Pisarevsky E.L. *Legal support of tourism. Textbook. - Moscow, 2014. - C.16-17.*
- 19) Collection of legislation of the Republic of Uzbekistan, 2016, No. 49, art. 558, 2017, No. 1, Art. 3.
- 20) Usmanov M.R. *Ўzbekistanaturismnirivozhlanishiningmintaqaviykhususiyatlari (Samarqandviloatimisolid) .: Geography of fannom Dis.-Toshkent, 2005; Abdurakhmanov K.Kh. Management of tourism: Tutorial. - Jakarta: Gunadarma Publisher, 2013. - P.25-26; Turaev B.Kh. Development of organizational and economic mechanisms of regional tourism management: Dis doc. Economic sciences. Tashkent, 2011; Faizibaeva N.T. Europe as one of the most important tourist centers in the world // International relations: politics, economics, law. - No. 4.2012: - P. 60; Golyшева E.V. Improvement of the organization and mechanism of regulation of tourism development in market conditions: Dis Candidate of Economic Sciences. Tashkent, 2012, - P.176; Rakhimova NR Features of the formation of marketing strategies in the market of tourist services .: Dis.... candid. econ. Science, Tashkent, 2010.*
- 21) Decree of the President of the Republic of Uzbekistan No. PF-4861 of December 2, 2016 "On measures to ensure the rapid development of the tourism industry of the Republic of Uzbekistan." Collection of Legislative Acts of the Republic of Uzbekistan, 2016, No. 49, Article 558.
- 22) Decree of the President of the Republic of Uzbekistan No. PF-5611 of January 5, 2019 "On additional measures for the development of tourism in the Republic of Uzbekistan". National Database of Legislative Acts, January 6, 2019, No. 06/18/5611/2430.