

Legal Regulation Of Insurance In Tourism

Uliana Andrusiv[†], Volodymyr Skrypnyk^{††}, Inna Zihunova^{†††}, Oleksii Klochko^{††††}

Volodymyr Khutkyy^{††††}

maxnik8888@gmail.com

[†] Department of the Civil Law Disciplines, Institute of Law, Lviv State University of Internal Affairs, Ukraine

^{††} Department of the fundamental and branch legal sciences, Kremenchuk Mykhailo Ostrohradskyi National University, Ukraine

^{†††} Department of Tourism and Hotel and Restaurant Service, Sumy State Pedagogical University named after A.S. Makarenko, Ukraine

^{††††} Department of Social Work and Management of Socio-Cultural Activities, Sumy State Pedagogical University named after A.S. Makarenko, Ukraine

^{†††††} Department of International Tourism, Kyiv University of Culture, Ukraine

Summary

The article is devoted to the issue of the content of legal instruments in terms of tourism business, namely the problems of legal regulation of insurance in tourism. The analysis of the state of development of the problem in question shows that the issue of legal regulation of the insurance contract in general and the contract in tourism services, in general, is insufficiently studied. The article is devoted to topical issues of legal regulation of insurance in the field of tourism, the search for effective mechanisms to increase the liability of both underwriters and insurers. Therefore, insurance can be considered as one of the methods of preventing unfortunate consequences during the implementation of tourism activities. The author's vision of the content of the package of measures that can positively influence not only the development of the tourist industry in general but primarily to help identify those legal segments that need improvement in the future has been stated.

Key words:

Tourism, Contract, Tourism Activity, Insurance, Insurance Policy, Transaction.

1. Introduction

Insurance is the most important element of economic relations and an effective way to compensate. Insurance and tourism belong to the service sector and have a significant impact on the economic development of almost every developed country. The tourism industry has always been the third most profitable industry among all other sectors of the world economy. What is more, for the economy of many other countries, it is basic. The number of travel companies is constantly increasing. The main segments of the market of tourism services are corporate tourism which means the organization of business trips

and recreation of employees of various companies. It began to develop simultaneously with the emergence of large foreign and joint enterprises in Ukraine; individual tourism – the organization of rest according to the individual program, and also the organization of VIP transportations; mass tourism – tourist trips abroad, as well as within the country via standard tour packages. New categories such as ecological and extreme tourism are becoming increasingly popular, as well as the confidently developing youth and student tourist sector.

The onset of the COVID-19 coronavirus pandemic proved to be the largest test the world has faced since World War II. After appearing in Asia in late 2019, the virus has spread to almost every continent except Antarctica. Countries have sought to slow the spread of the virus by testing and treating patients, tracking contacts, restricting movement (closing borders and airports), quarantining citizens, and banning large-scale events, including sports, concerts and schooling. It has significantly affected all spheres of human life and tourism in particular.

The tourism industry operates at risk. Protection of the interests of tourists can be provided by various tools, among which insurance occupies a special place. Insurance is a way to reduce the risks that arise in the field of tourism, in particular for its subjects – tourism organizations and tourists.

To solve the set tasks, the following research methods were used in the work, adequate to the subject, goals and objectives of the research: theoretical methods - analysis of philosophical, psychological and pedagogical, regulatory and scientific and methodological literature on the research topic; empirical - a generalization of advanced pedagogical experience, the method of pedagogical modeling and design, a pedagogical experiment, a questionnaire method, a testing method, a method of expert assessments, methods of analyzing the products of students' activities. Methods of

mathematical statistics were used to process the data obtained in the course of the experimental study.

The state and society must take seriously the problem of risks that accompany many types of socially useful activities and have harmful consequences. Insurance in this case can be considered as one of the methods of leveling adverse effects during the implementation of tourist activities. The methods that accompany the professional activity of the employee must provide a certain degree of property protection of the interests of both the perpetrators and the victims. The legislature provides for compulsory insurance (state liability), but the state is not always able to do so, and voluntary insurance does not cover all risks either. Thus, the issue of civil insurance in tourism needs detailed elaboration.

2. Theoretical Consideration

In the field of tourism, contractual relations are governed by international law, which are enshrined in the following documents: International Convention on Travel Contracts – (adopted on October 22, 1970 by the General Assembly of the World Federation of Associations of Travel Agencies); Regulations on Tourism Contracts and Exchanges (adopted at the Vienna Meeting of the States Parties to the Security Council of the Council of Europe in 1992); Geneva Convention relative to the International Carriage of Passengers and Luggage by Road (adopted in Brussels in 1967); Code of Relations between Hotels and Travel Agencies (adopted by the World Federation of Travel Agency Associations and the International Hotel Association in 1987); Athens Convention relating to the Carriage of Passengers and their Luggage by Sea; Agreement and standard contract between the hotel and the carrier (adopted by the International Hotel Association and the International Union of Road Transport Participants in 1994); Council of Europe Directive in the field of tourism organization; Intergovernmental Agreement “On Cooperation in the Field of Tourism” (adopted by the governments of the CIS member states on December 23, 1993), and other documents.

A contract (transaction) is a form of documenting partnerships (subject of the contract, mutual rights and obligations, consequences of breach of agreement), which mediates the relationship in the process of production and sale of products or provision of various services [7-9].

Roman lawyers also said: “A contract is a law for two”. What did they mean? Is it just that contracts must be strictly and necessarily enforced? It seems that this statement has another meaning: in the process of concluding a contract, the rules of law are created, but the rules are individual, designed for specific individuals. What is the regulatory force of the contract? In the process of concluding the contract, the participants themselves develop its terms, model their own rights and responsibilities. At the stage of the emergence of contractual relations, these models are transformed into

subjective rights and legal obligations. The law establishes a general normative model of rights and obligations, which in the presence of relevant legal facts is transformed into the rights and obligations of specific subjects [5-8].

A contract is an agreement between two or more parties aimed at establishing, changing, or terminating civil rights and obligations. The contract is a legal fact. The difference between the contract and other legal facts is that 1) a contract is the result of concerted actions of persons involved in its conclusion; 2) it establishes in accordance with the requirements of the legislation the content of civil legal relations arising on its basis; 3) determines the liability of the parties in case of non-performance or improper performance of duties [1-4].

Insurance is the main form of guaranteeing consumers of tourist security services in the country (place) of temporary stay. In order to protect the rights and interests of tourists, the legislator has defined a system of regulatory guarantees of travel insurance. Thus, the provisions of Art. 9 of the Law of Ukraine “About procedure for departure from Ukraine and entry into Ukraine of citizens of Ukraine” stipulate that in order to create conditions that guarantee to a citizen of Ukraine the reimbursement of expenses related to emergencies during their stay abroad, they must be insured [7-9].

According to Article 1 of the Law of Ukraine “On Insurance” dated 07.03.1996 № 85/96-VR, insurance means a type of civil law relations regarding the protection of property interests of individuals and legal subjects in the case of certain events (insured events), defined by the insurance contract or current legislation, at the expense of monetary funds formed by the payment of insurance payments by individuals and legal subjects (insurance premiums, insurance premiums) and income from the placement of these funds. This Law is complex in nature, because in addition to the relationship between the insured and the insurer also regulates the procedure for ensuring the financial activities and stability of insurers and the procedure for state control over insurance activities [10].

According to Part 1 of Art. 16 of the Law of Ukraine “On Tourism”, tourist insurance is mandatory and provided by the subjects of tourism activity on the basis of agreements with insurers. Such legal relations are based on an agency agreement between the tour operator and insurers. Under this agreement, the insurer authorizes the agent to insure the tourist during the conclusion of contracts for the provision of tourist services, and in the event of an insured event, the insurer becomes the subject responsible.

Insurance is a way to reduce the risks that arise during the implementation of tourism activities, in particular its subjects, such as tour operators and tourists. To find out the features of insurance in the field of tourism, first of all, we will reveal the legal essence of this category. The legal community approaches the definition of the term “tourism insurance” in different ways. Tolkachova, Dzhobinashvili believe that

insurance in tourism is a relationship between insured (travel organizations, tourists) and insurers (insurance companies) to protect the property interests of tourists in the event of contractual events during a tourist trip [4-7].

Vykhrystenko, Opanasyuk interpret this legal category as a system of legal relations between tourists, tourism entities, and insurance companies to protect the lives of tourists, their health, and property interests in the case of certain events (insured events), which is carried out within the current legislation of Ukraine [8-10].

The insurance contract is the main regulator of the relationship between the tourist/tour operator and the insurance company. The Law of Ukraine "On Insurance" defines the general requirements for the insurance contract, and therefore, its provisions apply to the insurance contract in the field of tourism. Tourist insurance is provided by the subjects of tourism activity on the basis of transactions with insurers, which should be understood as an agreement between the tour operator (insured) and the insurer, according to which the insurer undertakes to provide the insured person – the tourist – the necessary emergency assistance and compensation, caused as a result of the insured event during the validity of the insurance policy, and the insured undertakes to pay insurance premiums on time and fulfill other conditions of the contract. Analysis of the structure of insurance relations in the field of tourism shows the existence of two groups of legal relations: the design of legal relations involves the participation of a tour operator as an insurance agent who carries out intermediary activities in the field of tourist insurance; insurance relations in which the tour operator purchases insurance services in advance and then includes their cost in the price of the tourist service. In the first case, the tour operator enters into an agency agreement with the insurance company for tourist insurance. We are talking about the so-called intermediary contract of travel insurance.

In the second case, the tour operator enters into an insurance contract in favor of a third party – the tourist. Based on this contract, the insurer is the insurance company, and the insured is the tour operator. The tour operator provides the insurer with lists of tourists to be insured and receives from them the forms of insurance policies (certificates). The tour operator (travel agent) must keep records of insurance policies issued to tourists. In this case, the calculations are made as follows: the travel agency transfers the insurance company insurance premium at its own expense, and tourists are provided with a travel service, the price of which includes the cost of insurance services. In the case of an insured event, the tourist applies directly to the insurance company for reimbursement.

When visiting different countries, tourists are more likely than locals to be exposed to adverse risk factors. There is an average of 40 deaths per 1,000 thousand tourists. There are many reasons for such statistics, firstly, most trips are drastic changes in climate and environment, which often negatively

affect tourists, secondly, the unstable situation in a number of countries in Europe, Asia, and Africa, the possibility of terrorist attacks and natural disasters, and last two years of the COVID-19 pandemic, which caused many deaths among tourists as well. The occurrence of insured events entails unforeseen costs, the amount of which during the trip and a foreign country can be very large, and not every tourist will be able to pay them in full. It is in this situation that the problem of protection against the manifestation of specific risks in the field of tourism is very relevant. Problems can arise both directly at the tourist and at the travel company.

In order to eliminate the shortcomings of the legislative regulation of the studied area of relations, it is advisable to make appropriate adjustments to the aforementioned legislative provisions. Part 3 of Art. 16 of the Law of Ukraine "On Tourism" should be stated in a new wording: "Information on the conditions of compulsory/voluntary insurance and all related risks must be brought to the notice of the tourist against a receipt before concluding a contract for tourist services". Item 9 of Part 3 of Art. 191 should be enshrined in the Law of Ukraine "On Tourism" as follows: "on the procedure for providing the tour operator with compulsory insurance, the amount, the procedure for payment of insurance indemnity, as well as the possibility and conditions of voluntary insurance of costs associated with the termination of the contract for tourist services at the initiative of the tourist, property insurance and any other probable risks that may occur during a tourist trip". These innovations will not only increase the level of awareness of tourists about all types of insurance that can be offered in different combinations in each case but also will contribute to a higher level of tourist safety.

The insurance contract, in addition to the listed medical expenses, may include additional protection for the health and property of the traveler. Recently, tourists have become more interested in new entertainment, including extreme entertainment, which poses a certain health risk. In such cases, it is advisable to choose insurance that includes additional risks when playing active sports or playing sports at a professional or amateur level.

Conclusions

It is fair to conclude that the potential of the tourism industry in Ukraine is extremely high. Support of state authorities, legislative stimulation of the activity of private enterprises in this direction and attraction of foreign investments can radically change the situation on the domestic tourist market. This will definitely create additional demand for insurance services. As a result, it is necessary to identify factors that hinder the development of tourism insurance:

- ignorance of the population in the field of tourism insurance;
- distrust of the population to insurance companies due to late and incomplete fulfillment of obligations to insurers;

- imperfect legal framework in the field of tourism insurance;
- non-compliance with insurance legislation by insurers that are insuring tourism activities;
- low solvency of the population, as a result of reducing the number of tourists, and narrowing the range of potential customers for insurers engaged in travel insurance;
- a narrow range of insurance services for insurance in the field of tourism, provided to customers;
- limited amount of insurance coverage in connection with attempts by insurers to make the insurance product cheaper, and to make more profit due to a larger volume of less expensive insurance services;
- low quality of insurance products for travel risk insurance, associated with attempts to reduce the cost of insurance products;
- untimely and incomplete fulfillment of obligations to insurers;
- insufficient professional level of specialists working in insurance companies and providing tourist insurance services;
- low qualification of employees of travel agencies, who choose insurance companies with which they cooperate in the future on the basis of lower cost of the insurance product;
- lack of effective protection mechanisms in the tourism sector;
- general low development of the country's insurance market, non-transparency of the insurance market, inadequate information support of insurance activities, and lack of perfect ratings of insurance companies.

One of the main features of the proper professional level of a travel agency is a contract for the provision of travel services and insurance contract, which the firm offers to conclude with a tourist, and the ability of the travel agency to take into account the proposals of the tourist when concluding it, if certain provisions of the contract do not suit the tourist. Further improvement of the legal framework for contractual regulation of relations in the field of tourism will contribute to the successful development of inbound and domestic tourism in Ukraine as one of the elements of economic growth and strengthening the country's international prestige.

References

- [1] On tourism: Law of Ukraine of 15.09.1995 № 325/95. Information of the Verkhovna Rada of Ukraine. 1995. № 31. Art. 24.
- [2] Law of Ukraine "On Insurance" № 85/96-VR of 07.03.1996. Bulletin of the Verkhovna Rada Council of Ukraine. 1996. № 18. Art. 78.
- [3] Gudima M.M. Protection of consumer rights under the contract for the provision of tourist services: dis. Candidate of Law Science: 12.00.03. National Academy of Legal Sciences of Ukraine, Research Institute of Private Law and Entrepreneurship. Kyiv, 2012. 46 p.
- [4] Tolkacheva O.P., Dzhobinashvili K.A. Features of insurance in the tourism industry. Bulletin of St. Petersburg University. 2014. № 3. 156 p.
- [5] Ablyatipova N.A., Papush V.A. Some problems of civil liability insurance in tourist activities. Colloquium-journal. 2019. No. 7 (31). P. 102-106
- [6] Voronina N. Civil regulation of insurance in tourism. National legal journal: theory and practice. 2017. № 5. S. 90-92
- [7] Mikhailova NV, Kartseva VV Medical insurance for tourists traveling abroad. Scientific Bulletin of Poltava University of Economics and Trade. 2017. № 4 (82). Pp. 122-126.
- [8] Iasechko S., Kuryliuk Y., Nikiforenko V., Mota A., Demchuk N. and Berizko V. Features of Administrative Liability for Offenses in the Informational Sphere/ IJCSNS International Journal of Computer Science and Network Security, Vol. 21 No. 8 pp. 51-54 <https://doi.org/10.22937/IJCSNS.2021.21.8.7>
- [9] Iasechko S., Ivanovska A., Gudz T., Marchuk M., Venglinskyi O. and Tokar A. Information as An Object of Legal Regulation in Ukraine/ IJCSNS International Journal of Computer Science and Network Security, VOL.21 No.5, pp.237-242 <https://doi.org/10.22937/IJCSNS.2021.21.5.33>
- [10] Vykhrstenko B., Opanasyuk N. Legal bases of insurance in tourism. Bulletin of the Ministry of Justice of Ukraine. 2012. № 4. 11 p.