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TURISM AND THE ISSUE OF REGULATION OF TURISM WITH FUNCTIONAL LEGISLATION IN COUNTRIES OF TRANSITION

- emphasizing specially Kosovo -

Summary

In this work it is presented the issue of legal regulation of tourism in countries of transition emphasizing specially Kosovo. From this work you can see that tourism and hotels are important economic activities which not always are being treated with appropriate importance within the frame of social and economic development of life. Apart from the development of “massive tourism” and benefits gained by certain countries from these activities, in some countries of South-East Europe are presented serious problems especially in issuance of legislation. This lack of tourism development is a serious gap of development and attraction of foreign investments in Kosovo. Kosovo is a specific case of a transitional society because of many political problems which have generated negative impact with in the frame of economic and legal development. After the end of the last war the gap of overall economic and tourism development was influenced by many subjective and objective factors. This work not only identifies these problems but at the same time offers some measures of urgent matter in order to eliminate them and provide a balanced and qualified development.

Main notions: *Tourism, tourism legislation, trade usages, legal contracting relations in the tourism field, the contracting right,*

Introduction

Building of an open society, democratic and European, based in principles of market economy, cannot be achieved without establishing respectively democratization of certain legislation based in internationally accepted standards. This vision, in the first sight seems to be an easy one, but for a part of countries it is evaluated as a difficult one to be implemented in practice. Difficulties in transforming process and transition of national economies and the necessity for their adherence in processes of regional integrations are influenced mostly by the impact of certain political, economic, legal, social problems that in actual instance have reflected with delays in course of such process in social life. It is a known fact that changes of economic-social systems are difficult and complicated processes which require unavoidable cost which will be compensated with benefits deriving by the victory of new run.² Reformation process for some countries in South-East Europe, at least in our opinion, until now is faced with impossibility to establish a national strategy which will successfully and efficiently harmonize regional development in open market, issuance and implementation of modern legislation and minimization of social problems.

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² Dr. Hana L, Dr. Telo I., Transition in Albania: achievement and challenges, Albanian Science Academy – Economic Institution, Tirana 2005, page. 40

Despite dilemmas and problems faced by countries in transition, especially lacks in economic field, today is valued that the tourism and hotels are economic activities interesting as well as beneficiary for specialized business subjects which their overall activities have based in potential tourism destinations. Economic importance of these activities reflects positive effects for individual budget, enterprises and bidder country and now it has a new dimension, respectively new value that deals with growth of employment. New developing and economic concepts for a “tourism industry” are in full compliance with new and similar concepts with the so called “service industry” which are spectacularly softening noticeably negative impact of unemployment caused by big influence of sophisticated technique and technology in branches and other industrial –economic activities.

Tourism and hotels are specific economic activities, heterogeneous because they are finally valued with adaptability and emphatic dynamism to adapt to its form in almost all segments of social life. They can easily, initially with small investments show flexibility to be in a function of “hospitality” which in the end should be paid by their user. Their importance will increase because of considerable profit achieved by natural and legal subjects on the basis of existing potential sources own and their professional elaboration for entertainment of tourists or guests. Except the dimension of content, quality, types, forms, offers and tourism requirement, it is valued of high importance the correctness of formal aspect of these activities based on a legal normative system which shall contribute the certain development to be in harmony and in compliance with legal order in national and international level. Compensation of elements and principles of above mentioned hotels and tourism, regulated with systematic legal national and international norms, are strategic basis of tourism development of all countries.

Handling the matter

Almost throughout all professional and scientific tourism literature it is emphasized the fact that this activity in global plan is showing positive results. Certainly, the statistic data published by World Organization of Tourism was offered only in numeric aspect and for identification of difficulties it is necessary that the matter of lack in development in some countries that are in transition is treated essentially and in many dimensions. Being aware that identification of weaknesses and problems is difficult task of doctrine, and for the interest of this topic, we are focused in identification of difficulties related to the implementation of positive legislation in the process of tourism development. Development of tourism activities based on global principles meant for a sustainable tourism, in economic and legal level, have emphasized that in Europe, in a broader conception, based in studies and comparative analyses, there are some group of countries that are distinguished for their characteristics and own specifics. Therefore, these countries can be systemized in three groups that have specific characteristics of economic-legal development.

- a) First group is composed of countries with longevous tradition in this filed and leading economic position for development of above mentioned activities. This position and legal –economic stability even today was based in issuance, possession and implementation of the entire legal norms clearly systemized and based in real life, rich in legal concise nature. Their value grows for the

fact that they are easily implemented and from business view these activities function successfully.³ We should mention that in these countries the scientific-professional study has played a serious part. Besides, in these countries exist many legal alternative sources – trade usages which traditional aspect of hospitality have transformed in social respected rules and the tourism and national hotels have transformed in activity with national identity and relatively immune from attacks done by the globalization process.

- b) Second group is composed of countries which have serious approach towards the necessity for development of tourism and hotels which in reality don't have any modern perfect legal basis but base on the experiences, trade usages, possession of specific destinations, sources of tourism facilities and created standards from this field, are showing results. Nevertheless, because of the necessity to take part in integration processes, they have understood clear that the economic development requires issuance and implementation of entire legal regulation norms which will guarantee and implement this development.⁴ Majority of these countries the tourism and hotels activities have regulated with legal acts and sub-legal acts but at the same time, in order to indirectly regulate these activities, to harmonize and systematize in compliance with standards and legal system of European Union. This is done in order to enable the process of strategic development to be executed without problems within national strategy for integration in the EU.
- c) In the third group are countries that are faced with different fundamental problems economic as well as legal and in the field of tourism.⁵ But, taking into account problems coming from countries that are in transition process and at the same time inherited problems of state status and measures taken by their Governments towards the transformation of economy. Process of composition of principles for tourism and hotels development based in a specific regulation is showing serious complications.

In this group Kosovo is certainly placed at the end although its tourism is showing positive results regardless of really difficult economic-social state. Certainly, the results are evident but very small ones and followed up with big problems. If we add to this the fact that the neighboring and regional countries are distinguished with a very rapid economic growth, we can conclude that the situation. We are strongly convinced that this very small development is not result of engagements of responsible governmental subjects, which by their acting or non acting have a negative impact in destroying objective and subjective tourism sources, but it is a result of private business engagement and the positive nature itself possessed by these activities. Being aware of the fact well known by the whole world that the economic and the tourism development in Kosovo is very passive, Governmental institutions

³ Germany, Italy, France, Spain, Greece, Slovenia, Croatia etc, are some countries that regulate the tourism and hotels in the field of legislation and also have shown encouraging results from economic benefits. Besides usage of the legislation, they also have strategic developing documents which in general are supported in legislative basis. For example the Slovenian case, for more information click on <http://www.google.com/search?hl=en&q=strategija+za+razvoj+turizma+&btnG=Search>

⁴ Montenegro, Macedonia, Bosnia and Herzegovina, relatively Albania,

⁵ The most typical case of this category is considered Kosovo and Albania.

now are very much committed to regulate this field in formal-legal aspect and don't have any strategy how to develop these activities in its essence.

Lack of movements

It is known fact that the vision and the mission of EU is to create an organization that will integrate all the countries which geographically belong to the Continent of Europe. There are no doubts to the fact that all European Countries do understand the importance of this vision and that is why their activities are being developed in some certain phases and dimensions. For all the South-Eastern European Countries without an exception being a part of these processes is systemized in Government agendas and programs. In this context, there is no Government which didn't prepare a strategy or a program together with an action program to fulfill all the requirements to integrate in EU according to the rules and regulations for membership in the EU. According to EU program – for participation of the Balkan Countries to EU it is not required only through transformation of legal - formal system – but also through the mentality of people and of Governmental people who would like to be members of the EU. In this relation it is required a new vision, which through composition of a new strategy, legal changes, and together with a wide economical support to gradually stimulate the economic, tourism and hotels development. It is a well known fact that exactly on these points stands difficulty for those countries. We should not forget that EU- first of all is about joining people and then countries. Therefore it would be waste of time and energy if only the formal-legal side of country would change without an engagement in establishing standards based on mentality of people and rational economic development. This would be a failure with unbearable economic and social cost for citizens of that country. Such acts would have high cost and indicate clearly the non-functioning of the legal and state system, and as consequence to this indicate also the difficulty to implement the legal system.

In summarized details regarding lacks of movements or the difficulties of implementation of legislation in economy fields, particularly in tourism and hotels field are within certain subjective and objective elements which will be presented as following:

a) The subjective elements considered are:

1. Lack of vision on national identity of Kosovo tourism, based on national sources as the answer to a globalism.
2. Carelessness of central government official authorities and local official authorities, over tourism;⁶
3. Unprincipled influence of politics in aspect of development of economy and tourism;
4. The shortage of human resources prepared for schooling and education by government department;
5. Negligence of people who are involved in tourism and hotels, to advance themselves in higher education with more knowledge on new standards and to move with new changes in tourism and hotels;

⁶ The case of Kosovo it is unique comparing to other regions, with competence I state that the activity in tourism and hotels not that it is just disregarded , but it is known fact that incompetent people, failure, unqualified, without any vision, not professional, do lead such important position appointed by direction of government just to take a seat in such rank.

6. Draft of the laws and legal acts by incompetent subjective who have the ability of translation from neighboring country without adapting them based on circumstances and development of society and the economy of the country;
7. Lack of involvement of the interested groups in Parliamentary Committees in drafting and issuing the new legislation for tourism and hotels;
8. Lack of responsibilities for appointment of individuals in such positions for respecting basic infrastructure of law;
9. Lack of responsibility of Institution and competent individuals for enforcement of law;
10. Mismanagement and informal phenomenon;
11. Lack of tradition in tourism and hotels area;

b) The objective elements considered are:

1. Lack of real and rational strategy for development of economy and tourism in this plan and tourism destinations in sustainable way and in the long run;
2. Possession of fund and reach the undeveloped destination ;
3. Lack of Government in investment, financial system and lending ;
4. Lack of co-operation within area, region and global;
 - c) Weakness in schooling and education;
 - d) Unplanned development in zones with ecological importance;
 - e) Danger of mismanaging the whole ecosystem;
 - f) Etc.

The road to follow

Process of transition and transformation of society has commenced and it is huge complex and complicated. It is natural in those circumstances that the situation we are in is more difficult than we initially thought.

Based on these facts the responsible person in all these matters, should tell us which way we should follow? What kind of method we should engage, such as legal matter, economical and social, to improve our tourism, hotels in positive way of development and to bring profit for business in the country? How should we use our tourism as a main factor to bring us closer to the EU countries?

Based on the difficulties we have identified from above and the problems we incur at the present, we should take a drastic step as a matter of urgency to avoid the barriers, which stand in our way. The measures to be taken are as follows:

- Legal acts, in relation to a tourism and hotels, translated from other countries which are not adapted for our conditions and do not serve for the purpose of true picture in our region of Kosovo economy, tourism and hotels, to review them, fill them as necessary in professional way, with more realistic and flexible facts so that they will adopt with conditions in the region.

- Tourism and hotels although they have similarity and they serve the same mission, they should be regulated by law in separate matter, and not in the way it stands at the moment as they are regulated only by one law;
- Shortage of systematic laws which regulate tourism and hotels, should immediately be regulated with issuance of other laws (or replacement of existing one) which will guarantee successful transition to EU, and after a period of time they will be replaced by the EU ones;
- Certain professional levels, professional associations and groups of interests should be identified, systemized, codified and publish trade usage belonging to the country and the priority should be given to the ones that are more compatible with a high standards of the EU countries;
- In parliamentary groups there should also be members from civil society, people who do look at the interest of business and community, in the way to assure that the outcome of the law will be enforced in every day life;
- Certain acts of the law, sub-legal acts, trade usages, international contracts should not be the barrier of local business just for sake of accordance of the law with the EU standards, it should be on the contrary;
- The Government of Kosovo, more likely the Ministry of Trade and Industry should establish the Tourism Office of Kosovo which will play the role in the frame of national and international co-operation and development;⁷
- To stimulate and encourage the Non-Government Organization to perform and implement the projects for education, consciousness of people, schooling of business subjects and citizens for sustainable tourism based on Agenda 2000 population;
- To look at the possibility of issuing and implementing facilitation on the taxes to those subjects that are successful in tourism, as a matter a fact to look at the possibility of helping and stimulating those subjects who are dedicated in development of economy and tourism capacities;
- As a matter a fact it would be beneficial to create a mixed intergovernmental body such as TASK FORC which will be liable and will have authority to contribute on implementation of developing strategies and avoiding the difficulties that stand on the way of law enforcement;

We could conclude that the strategy of developing the tourism and hotels, just like economy in general, it would not be successful and real in implementation if that is not prepared properly in economic, tourism and legal plan. In order to understand this conclusion, we have to remind ourselves that the overall social –economic system in EU is regulated by enormous rules and regulation with are quiet complicated based on standards which in the end have been inaugurated in integration conditions. However, especially for our country it would be a mistake to do harmonization of legislation of our country with the EU one. On the contrary, within the national strategy we should propose and issue new legal acts in the benefit of country even if those in beginning are not as compatible with EU laws-

⁷ We believe that foundation of Organization such as Kosovo Tourism in Kosovo from Kosovo Government-Ministry of Commercial an Industry the way that ther Countries in the region do, it will help to have improving the tourism in Kosova. Besides, this Organization will co-operate in the level with the World Organization of Tourism, which will attract good investment from abroad.

which for very short period of time would guarantee positive development of Country in tourism and hotels.

The necessity for the European Developing Strategy

We should appreciate the role of Governmental Institution and the Institution of EU- as well as the role of non Government Organizations towards promotion of the need for establishing and developing a strategy for tourism in region on sustainable bases. The role of these Institutions has been emphasized in the International Conference in accordance with “*Agenda 21 for sustainable tourism*” and it has been reached an understanding of Coalition of all EU countries, to avoid together all the negative points which are reflected by tourism but at the same time to define the development principles. In this plan it is defined that:

- a) Tourism is very important Industry in XXI Century;
- b) Foundation of clear policies of a country in promotion and sustainable development;
- c) Free market movements
- d) Engagement of citizens and the state Institutions for minimizing the negative effects and improvement of living environment caused by tourism;
- e) Through the development of tourism to increase number of employees in this area;

In integrating process which is happening right now in the whole Europe, it is clear that there is a need for preparing a good overall social strategy in developing the tourism of Europe.

Conclusion

From all the actors that are involved scientifically and professionally with tourism, based on the data they offered by certain countries and Tourism World Organization, we agree that tourism and hotels are specific economic activities, dynamic and heterogeneous which provide important income for businesses and budget of the countries. This is based on the fact that tourism is adaptable to any social activity and such activities can transform to a tourism business. In order to have optimum activities it is necessary for certain countries to issue a legislation which should be a guarantee of development based on market economy. Nevertheless, not all countries have possibilities to achieve the foreseen purposes. Process of integrations in Europe is also difficult for some countries with low economic development. This circumstance has placed competent institutions of countries before a challenge which is being a serious barrier of the economic development. Lack of real strategy which would give solution for integration and lack of capacities for this aim is the most difficult problem. The number of Countries trying to modernize their legislation with the one in EU- without considering their capacity and their subjective and objective sources is considered as a huge mistake because such legislation cannot be implemented in the country. To avoid and eliminate these deficiencies, it is necessary to take careful steps which will assure that the integration process will be divided in national and regional plan. We can clearly say that

development of tourism and hotels requires more discipline and wide participation of actors with professional skills who are willing to serve for the development of these fields.

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