

## DREPT PENAL ȘI PROCESUAL PENAL

### FRAUD IN THE PROVISION OF TRAVEL SERVICES – A CONSEQUENCE OF GAPS IN THE LEGISLATION



**Olga KLYMENKO**

Lecturer of the Department of Training and Professional Development of Military Prosecutors, National Prosecution Academy of Ukraine

#### SUMMARY

The article presents analysis of the Ukrainian legislation in the field of tourism and the impact of existing legislative gaps on the commitment of fraud in the provision of travel services. The issue of legal regulation of criminal legal security of the tourism industry was considered. Means of combating crimes in this area were defined and prospects for improving national legislation on tourism activities were outlined.

**Key-words:** *crime in the field of tourism, fraud in the provision of travel services, criminal liability, determinants of crimes in the field of travel services, contract for the provision of travel services, tour operator, travel agent.*

**Formulation of the problem.** Tourism is a highly profitable sector of the economy and an important means of cultural development of people, providing employment, increasing currency earnings, protecting the legitimate rights of tourists and travel companies [1, 3]. The tourism industry is a factor of effective economic strengthening of the country and cultural rapprochement of peoples, establishing a peaceful inter-state dialogue. It serves as a means of physical and spiritual development. Tourism, which attained signs of a global phenomenon, is strongly supported by the international community for its contribution to peace and stability in the world, for the preservation of cultural monuments and unconditional economic benefits. As a result of reforms in some of the state sectors, with the support of the international community, the tourism industry emerged and gained dynamic development in Ukraine, and today it is an important segment

#### FRAUDA ÎN FURNIZAREA SERVICIILOR DE CĂLĂTORIE – O CONSECINȚĂ A LACUNELOR ÎN LEGISLAȚIE

##### SUMAR

Articolul prezintă analiza legislației Ucrainei în domeniul turismului și impactul lacunelor legislative existente privind antrenarea fraudei în furnizarea serviciilor de călătorie. Problema reglementării juridice a securității juridice penale a industriei turismului a fost cercetată. Mijloacele de combatere a crimelor în acest domeniu au fost definite, iar perspectivele pentru îmbunătățirea legislației naționale privind activitățile de turism au fost conturate.

**Cuvinte-cheie:** *crimă în domeniul turismului, fraudă în furnizarea serviciilor de călătorie, răspundere penală, factorii determinanți ai crimelor în domeniul serviciilor de călătorie, contract pentru furnizarea serviciilor de călătorie, operator de turism, agent de turism.*

of the economy. The strategic goal of tourism development in Ukraine is to create a globally competitive product able to meet the tourism needs of the population, to provide for a comprehensive development of areas and their socio-economic interests on this basis [2, 4].

Imperfection of the domestic legislation and the lack of effective control in the field of tourism is one of the factors of crime growth in this area, including organized crime, controlling tourist flows, creating a variety of fraud schemes and sham businesses, encroaching on private and public interests, etc. Organized forms of human trafficking and illegal migration, smuggling of relevant items and drug trafficking spread under the guise of tourism.

**Analysis of recent research and publications** consisted of works of modern scientists in the field of criminal law, criminology and history of law (M.I. Bazhanov, Iu.V. Baulin, V.I. Borisov, V.P. Glynianyi, V.K. Gryshchuk, O.O. Dudorov, O.M. Kostenko, M.I. Korzhansky, V.S. Makarchuk, M.I. Melnyk, P.P. Mykhailenko, A.A. Musyka, V.O. Navrotsky, M.I. Panov, A.V. Savchenko, O.V. Smahliuk, V.V. Stashys, M.I. Khavroniuk, V.Ia. Tatsiy, P.L. Fris, Iu.L. Shuliak, etc.), as well as experts in the tourism industry (I.Iu. Afanasiev, L.P. Voronkova, T.A. Diorova,



V.K. Fedorchenko, M.V. Sokolova, G.F. Shapoval, G.S. Usykin, etc.).

**Purpose (task) of the article** is: attempts to cause public interest in the growth of crime in the area of tourism, consideration of theoretical and applied aspects of certain types of crimes committed in the area of tourism, national legislation on tourist activities; analysis of the impact of existing legislative gaps on the increase in crime; outline the prospects for improving national legislation on tourism activities.

**Statement of the main material of research.** In modern conditions, the issue of security (including criminal law) of tourism requires exceptional attention, and is controlled by the governments of all countries developing this sector of the national economy. In addition to local events, the international community made global steps to promote safe tourism. Specifically, to this end, a number of international normative acts were adopted (including Manila Declaration on World Tourism 1980, the Charter of Tourism and the Code of Tourists 1985, Resolution of the IX General Assembly of WTO (Buenos Aires) concerning the simplification of travel, as well as security and protection of tourists (1991), Resolution of the XI General Assembly of WTO (Cairo) on the prevention of organized sex tourism (1995), Stockholm Declaration on Combating Sexual Exploitation of Children for Commercial Purposes (1996), Initiative of the "Group of Eight" on the Safe and Simplified Procedure for International Travel" (SAFTI) 2004) [3]. In this case, the legal basis of international cooperation in the field of tourism is international treaties of Ukraine, signed under the Law of Ukraine „On International Treaties of Ukraine” dated June 29, 2004 [4].

Subject to the provisions of the Law of Ukraine „On Tourism” dated September 15, 1995, the basis for determining the specified area should probably be the concept of „tourism activities”. Although this Law does not define such activities, this term is used frequently in its text. So tourist activity is an activity that is associated with the creation of a tourist product, tourist services or implementation of mediation to provide specific and related services according to the requirements of the abovementioned Law and other legislative acts of Ukraine [5].

Thus, in the Law of Ukraine No.324/95-VR „On Tourism” dated September 15, 1995, Articles 13-16 of Section III “Safety of Tourism” are dedicated to the issues of tourism safety. In general, security in the tourism industry is a set of factors that characterize the social, economic, legal and other state of securing the rights and legitimate interests of citizens, legal entities and the state in the field of tourism.

It is directly stated in Art. 13 of this Law that public

authorities and local authorities and their officials within their powers shall take measures aimed at:

- a) provision of the rights of citizens, stated in the Constitution of Ukraine, to environment that is safe for life and health, in the implementation of tourist trips, protection of citizens of Ukraine abroad;
- b) protection of the personal safety of tourists, preserving their property, non-damage to environment;
- c) informing of travel companies of threat to tourists in the country (place) of temporary stay;
- d) provision of the necessary assistance to tourists who find themselves in an emergency;
- e) ensuring visitors (excursionists) opportunities of smooth reception of medical, legal and other types of emergency assistance, access to communications;
- f) prohibition on the use of tourism to illegal migration;
- g) sexual, labor and other exploitation of citizens;
- h) protection of tourism resources of Ukraine, establishing of maximum permissible loads on the cultural heritage and environmental objects;
- i) ensuring safety of tourist visits taking into account the risk of natural and man-made disasters and other emergencies, etc. [5].

It should be highlighted that the current crime instantly reacts to imperfect legislation. The presence of a number of gaps in the national legislation on tourism creates conditions for various abuses by travel companies, and for creation of travel financial pyramids, leading to the bankruptcy of travel companies. It shall be noted that a travel company is a commercial enterprise that sells travel services to consumers. Depending on the functions performed in the implementation of these services, companies are divided into travel agents and tour operators [6, 144].

The vast majority of crimes in the field of tourism are committed in summer, when the activity of the services market is at the highest level, and travel companies accumulate more funds. After the accumulation on accounts of a tour operator of a considerable amount of money, it can assign them by transferring money to appropriate bank accounts. Crimes of this category are committed by offenders according to a previously shaped plan, concluding agreements on brokerage in the sale of travel products, services, tourism services, with special knowledge in law and accounting. Therefore, without the involvement of relevant experts, it is difficult to establish the wrongfulness of the act in the tourism business.

A crime in the field of tourism services is characterized by the complexity of fraud schemes and disguise as

execution and fulfillment of legitimate civil contracts, which essentially cover the great costs. Danger of crime growth in the provision of travel services is that:

- a) losses incurred due to the implementation of fraudulent schemes constitute significant amounts of money;
- b) a large number of victims become victims of these crimes;
- c) offenders are generally not liable for the offense, as the image of a successful swindler in society begins to associate with the image of a successful entrepreneur.

Thus, for willful default, a legal entity formally incurs only civil liability, through which the perpetrators usually avoid criminal liability. Frauds committed in providing tourist services are characterized by disguise of ordinary civil agreements that promotes latency of this category of socially dangerous acts. Thus, the result of criminal acts is intentional non-fulfillment by tourist operators of obligations under concluded agreements, which are signed by a victim as a party to a civil agreement under the influence of deception. But the presence of civil disputes does not exclude the possibility of criminal liability.

As attention in the article is focused mainly on committing fraud, it is necessary to pay attention to the specifics of committing such crimes in the field of tourism. This is a special type of fraud that is currently not directly provided for in the national legislation, but criminal responsibility for its commission occurs within the general or qualified components of crime of fraud. In our opinion, in order to achieve positive results in combating crime (fraud) in the field of travel services, it is necessary to improve Art. 190 of the Criminal Code of Ukraine by supplementing it with provisions (qualifying signs) on a significant number of victims or actions in respect of older people, or on the willful non-fulfillment of contractual obligations in the field of entrepreneurship, etc.

Thus, in order to ensure proper penal response and effective combating crimes in the field of tourism, according to our beliefs, among other things, it is necessary to improve the Law of Ukraine "On Tourism" and the Criminal Code of Ukraine.

**Conclusions:** The most common property crime committed in the field of tourism is fraud. A typical specific way of committing these crimes are disguising of these invasions as a civil law agreement. In addition,

it is a good practice to review the imposition of criminal liability for committing certain types of deliberate non-fulfillment of civil agreements.

The legislation concerning the field of travel services does not actually has such a developed component as a criminal and legal safety from crimes (primarily economic), which promotes various abuses on the part of travel companies (such as fraud), the creation of various tourist financial pyramids, occurrence of travel agencies bankruptcy. In this connection, the experience of foreign countries will be useful, where criminal legal means of combating fraud and other illegal activities in this area have already been developed. Abroad, there are various guidelines and mechanisms to prevent fraud in the field of tourism – from victimological to normative, from regulatory to incentive, etc. However, in our opinion, the starting point for the Ukrainian state should be conducting a comprehensive study of the type of fraud specified above and developing a program (strategy) to prevent it. Given the current situation in the country, such steps are likely to facilitate the return of public confidence in the tourism industry.

Systemic reforms in all the areas of the state, bringing the national legislation into conformity with the requirements of the international law is essential for the integration of Ukraine into the European Community.

## References

1. Kiriadzhy V.V. Legal regulation of the travel industry sectors: [study guide] / Kiriadzhy V.V. – Donetsk: Donetsk Institute of Travel Industry, 2001. – 339 p.
2. Seletsky S.I. Legal regulation of tourism in Ukraine [study guide] / S.I. Seletsky. – K.: Center of Educational Literature, 2012. – 186 p.
3. Pisarevsky E.L. Legislation in the field of tourism security provision / E.L. Pisarevsky [Electronic resource]. – Access mode: <http://www.aasp.ru/info/articles/9/119.html>
4. On the International Treaties of Ukraine: Law of Ukraine No. 1906-IV dated June 29, 2004 [Electronic resource]. – Access mode: <http://zakon4.rada.gov.ua/laws/show/1906-15>
5. On Tourism: Law of Ukraine No. 324/95-VR dated September 15, 1995 [Electronic resource]. – Access mode: <http://zakon5.rada.gov.ua/laws/show/324/95-%D0%B2%D1%80/page>
6. Fedorchenko V.K. Tourist dictionary – reference book: study guide / [V.K. Fedorchenko; I.M. Minich]. – K.: Dni-pro, 2000. – 160 p.

