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## Main trends in the development of tourism legislation in Ukraine

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### Abstract

The study is devoted to the theoretical and legal analysis of the main trends in the development of tourism legislation in Ukraine. The relevance of the chosen subject lies in the presence of grounds to consider the tourism industry promising, given the possible positive social and economic effect for Ukraine, if the state considers the factors necessary for such an increase. The purpose of this study is to analyse the main trends in the development of tourism legislation of Ukraine and international legislation as part of national legislation. The analysis, synthesis, historical-legal, and comparative-legal methods are applied to achieve this goal. This methodology enabled the analysis and comparison of the international and national regulatory framework through the prism of historical and legal experience and allowed the drawing of conclusions about the current main trends in legislative development in the field under study. The results of the study are: today, tourism in Ukraine remains a non-priority industry (this statement is based on the general trend towards stagnation of the tourism sector in Ukraine), is unattractive for foreign tourists (this is due to objective reasons, including not only external threats that exist today, but also scanty indicators recorded before the outbreak of the pandemic and armed aggression by the Russian Federation) and works mainly for domestic consumers, which is confirmed by the data of the state statistics service of Ukraine. The situation has developed, in particular, due to a number of factors that are presented in this study (considering the experience of foreign countries), and insufficient regulation of tourist relations at the legislative level, which is analysed in detail in the paper. The study can be useful for further disclosure of issues in the area and as a basis for discussion in scientific circles against the background of the decline of the industry

**Keywords:** tourism, tourism industry, international tourism, domestic tourism, national legislation

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## Introduction

For the revival of the Ukrainian tourism industry today, it is necessary to pay special attention to the creation of an effective legal mechanism in this area. In particular, the prospect of Ukraine's accession to the European Union will require an intensive rule-making process aimed at bringing national legislation in line with European standards. Moreover, this process has already begun with the adoption of the "Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part" (2014), ratified by the Law of Ukraine of September 16, 2014 (Law of Ukraine No. 1678-VII..., 2014), and obtaining the status of a candidate for EU membership on June 23, 2022, by Ukraine.

Adaptation of the tourism legislation of Ukraine to the EU legislation was conducted rather slowly, and in modern conditions, it is practically suspended. In addition, an important and integral component of Ukrainian tourism legislation is international regulations ratified by the laws of the country. In the context of globalisation taking place in the global economy, ensuring guarantees for compliance with international standards in the field of tourism will improve the quality of the national tourism product and make it competitive on the international market. Accordingly, the research of these areas of development of tourism legislation is promising and relevant.

Particular problems of tourism legislation development were considered in papers of such researchers as: M.V. Semenova (2019), whose studies were aimed at reviewing the economic and legal regulation and the essence of tourism activities, the theoretical and practical results obtained by the author helped to identify a number of legal problems in the implementation of economic activities in the field of tourism. A.M. Williams and V. Baláž (2020), J. Fourie *et al.* (2020) analysed such a phenomenon as the development of tourist confidence in the place of tourist travel, which allowed an understanding of exactly how the tourist market is built depending on the state of social and economic development in the regions and the country in general. Ye.V. Kozlovskiy and Yu.O. Tsegelnyk (2012), in part of the papers from whom, the concept of legal status and its characteristic features were derived, and the main activities of international organisations in the field of tourism, as a result of which the authors provided their own vision of the system of international tourism legislation.

Considering the already formed discussion in the scientific community regarding the field of legal regulation in the field of tourism, the authors of this study focus on generalising the current legal framework and on general factors that negatively affect the development of the tourism sector.

According to the Administration of the State Border Service of Ukraine, published by the State Statistics

Service of Ukraine, in 2017, 38,958 foreign citizens crossed the state border of Ukraine for the purpose of tourism (State Statistics Service of Ukraine, 2018), according to other data of the State Statistics Service "the number of tourists served by tour operators and travel agents, by types of tourism" – 39,605, in 2020 – 11,964 people (State Statistics Service of Ukraine, 2020). For example, in the neighbouring country of Poland, this figure was 823,812 people in 2017 (Bilaniuk, 2018), and in 2020 – 4,696,938 people (Główny Urząd Statystyczny, 2020). Therewith, it should be considered that the recreational and natural potential of Ukraine is no worse than that of neighbouring countries. Among the reasons for the decline in this indicator, according to the authors of the study, were: the lack of sufficient state support for the tourism industry, and the presence of outdated legislation that did not correspond to modern trends in its development. Admittedly, in the realities of a full-scale war that is taking place on the territory of Ukraine, it is impossible to create a "favourable climate" for the functioning of tourism. According to experts in the field of tourist services, Ukrainian tourism is completely destroyed (Dvorska, 2022). Moreover, the UN estimates that if military operations last for over a year, the global tourism industry could lose 14 billion (United Nations, 2020).

The purpose of the study is to conduct a theoretical and legal analysis of the main trends in the development of tourism legislation in Ukraine.

The scientific originality of the results obtained lies in the fact that based on a comprehensive study of scientific doctrine and legislation in the field of tourism, the ways of reviving the tourism industry in the post-war period are justified.

## Materials and Methods

During the study, a number of methods of scientific knowledge were used. These are philosophical (dialectical), general scientific (formal-logical, analysis and synthesis), and special-scientific (historical-legal, formal-legal, comparative-legal). The methodological basis of the research is based on the dialectical method. This allowed considering the main trends in the development of tourism legislation in Ukraine in the relationship of socio-economic and legal factors. The general scientific formal-logical method contributed to the preparation of the conclusions of this study. The analysis as a method is based on the examination of the basics of the doctrine of tourist law, including the identification of gaps in the legal acts regulating relations in the field of tourism, in particular, regarding tourist insurance. The synthesis method was used in the process of substantiating the conclusion about the need to develop a state target programme for the development of tourism in Ukraine. The historical-legal method was used in the implementation of a retrospective analysis

of tourist legislation. The formal-legal method allowed for identifying the content of regulatory legal regulations regulating public relations in the tourism sector and developing proposals for their better regulation. Comparative-legal method was used to compare the adaptation of the tourism legislation of Ukraine to the EU legislation, and the fulfilment of international obligations assumed by the state.

In the process of research, a number of international and Ukrainian normative legal acts were developed, which directly or tangentially regulate the development of the tourism industry and the cooperation of different countries in this field. Among the European documents considered are the following: Convention Concerning Customs Facilities for Touring (1954), Recommendation Concerning the Most Effective Means of Rendering Museums Accessible to Everyone (1960), Recommendations on International Travel and Tourism (United Nations Conference..., 1963), International Covenant on Civil and Political Rights (1966), International Covenant on Economic, Social and Cultural Rights. (1966), European Agreement concerning the work of crews of vehicles engaged in international road transport (AETR) (1970), Council Directive 90/314/EEC on package travel, package holidays and package tours (1990), Framework Convention on the Protection and Sustainable Development of the Carpathians (2003), Directive (EU) 2015/2302 of the European Parliament and of the Council on package travel and linked travel arrangements... (2015), Resolution adopted by the General Assembly "Transforming our world: The 2030 Agenda for Sustainable Development" (2015), Chengdu Declaration on "Tourism and the Sustainable Development Goals". (2017), etc.

From the Ukrainian legislation, the following were studied and compared with international documents: Laws of Ukraine "On the Procedure for Leaving Ukraine and Entering Ukraine for Citizens of Ukraine" (1994), "On Tourism" (1995), "On Insurance" (1996), "On International Treaties of Ukraine" (2004), "On State Target Programmes" (2004), "On Accession to the Protocol on the Sustainable Development of Agriculture and Rural Areas to the Framework Convention on the Protection and Sustainable Development of the Carpathians" (2020), "On Ratification of the Agreement between Ukraine, on the one part, and the European Union and its Member States, on the other part, on Common Aviation Space" (2022); the State Programme for the Development of Tourism for 2002-2010 (Resolution of the Cabinet of Ministers of Ukraine No. 583..., 2002), Strategy for the Development of Tourism and Resorts for the Period until 2026 (Decree of the Cabinet of Ministers of Ukraine No. 168..., 2017), Resolution of the Cabinet of Ministers of Ukraine "On the Implementation of the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part" (2017), etc.

## Results and Discussion

Tourism is not only a cultural exchange; it is an opportunity to solve a number of socio-economic problems for each country. In particular, it creates an additional stable source of income in the form of foreign exchange earnings, encourages the creation of new jobs, and invests in the development of infrastructure facilities.

One of the main problems of further development of the tourism industry in Ukraine, especially in the post-war period, may be the problem of ensuring the safety of tourist travel. A.M. Williams and V. Baláz (2020) emphasise the need to build the tourist's trust in the country to which they are travelling. In particular, the tourist expects situational normality – this is the belief that the environment of trust works "as usual". A tourist, for example, believes that no serious negative events (such as pandemics or natural disasters) will affect their intention to purchase a tourist package. J. Fourie *et al.* (2020) also highlight the "tourist safety" factor. Tourists who travel have their own safety experience, and this factor is important for them when choosing a destination. On the one hand, tourists from more dangerous countries will be more tolerant of a certain level of insecurity in the destination country, on the other hand, the negative effect will be greater if tourists travel from a safe country to a dangerous one (Fourie *et al.*, 2020). The most effective, in the opinion of the authors, mechanism of property security for a tourist is insurance. In accordance with Art. 9 of the Law of Ukraine "On the Procedure for Leaving Ukraine and Entering Ukraine for Citizens of Ukraine" (1994), insurance is a guarantee of reimbursement to the tourist of expenses incurred (cases that can be attributed to insurance), in case of adverse circumstances abroad. However, it is necessary to consider the fact that this issue is not properly regulated in the legislation. Thus, Art. 16 of the Law of Ukraine "On Tourism" (1995) provides for medical insurance and accident insurance, which are mandatory. Such insurance is provided by tourist entities based on agreements with insurers. Moreover, the insurance of a tourist (citizen of Ukraine) is mandatory regardless of the place of tourist travel, that is, even if the trip is conducted only on the territory of Ukraine. Therewith, the relevant Law of Ukraine "On Insurance" (1996) does not include in the mandatory types of insurance personal insurance of tourists, which follows from Art. 7 of this Law.

Other factors include the following:

- solving the dispersion of ecotourism programmes. For example, the study of B.S. Thompson (2022), highlights the problems of attempts to develop ecotourism operations in places with low ecotourism potential. This refers to a project in the Philippines. Stakeholders were initially involved in projects and guaranteed the economic, social, and environmental benefits that ecotourism can bring. However, most of the facilities were located far from major cities and tourist centres, with

limited infrastructure, and could not surpass other attractions, such as coastal recreation areas, etc.;

- brand creation and promotion of the tourism industry at the state level. This is noted in the study by L. Reynolds *et al* (2022). This refers to social capital (including travel service providers, tourism advocates, businesses and entrepreneurs, visitors, investors, tourism lobbyists, and community and resident groups), which considers the legitimacy that can be obtained by entities that work collectively, establish relationships, networks, and connections, develop and maintain group support. Social capital can effectively influence the development of the tourism sector.

Admittedly, the solution of the above-mentioned problems is impossible without the development and adoption of an appropriate state target programme. The draft of such a document must contain mandatory elements provided for in Art. 9 of the Law of Ukraine "On State Target Programmes" (2004), in particular, according to the authors, the main place in which should be occupied by "calculating the expected results (economic, social, environmental, etc.) of the programme's implementation and its effectiveness".

The last such state programme (for 2002-2010) was adopted in 2002 and approved by the Resolution of the Cabinet of Ministers of Ukraine No. 583 (2002). If back in 2013, the government tried to approach the adoption of the following programme (on August 1, 2013, the Order of the Cabinet of Ministers No. 638-r approved the "Concept of the State Target Programme for the Development of Tourism and Resorts for the Period until 2022" (2013); the order became invalid based on the Resolution of the Cabinet of Ministers No. 71 of 05.03.2014), then in the future this approach was generally considered unpromising and the tourism industry received only the Strategy for the Development of Tourism and Resorts for the Period until 2026, approved by the Order of the Cabinet of Ministers of March No. 168-R (2017). Notably, in the EU, the financing policy is also based on a programme-target approach and considers the combination of the economic potential of the relevant structural and investment funds (Semenova, 2019).

As noted above, one of the most important areas of development of Ukrainian tourism legislation is its harmonisation with the EU legislation. It is necessary to consider a number of obligations that Ukraine assumes under the association agreement. For example, Art. 417, concerning organised tourist complex trips and tours in accordance with the provisions of Council Directive 90/314/EEC (1990), requires substantial changes to the tourist legislation, including the adoption of the Law of Ukraine "On Tourism" in a new version. In the context of the above, even if this law is brought into compliance with Council Directive 90/314/EEC (1990), Ukrainian tourism legislation will not comply with EU legislation. Ultimately, these relations are now regulated by a new

EU regulatory document – Directive (EU) 2015/2302 of the European Parliament and of the Council (2015) on package travel and related travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC.

The Cabinet of ministers adopted Resolution No. 1106 "On the Implementation of the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part" (2017) to bring the Ukrainian tourism industry closer to European standards. According to this document, the state should take steps to create a general strategy for the development of the tourism business, with a separate focus on the development of rural green tourism and agro-recreation clusters, on the development of resort areas until 2026, etc..

It is also necessary to pay attention to the fact that Ukraine actively cooperates with the EU (at the bilateral, regional, and European levels) to strengthen the development of the industry under study (Art. 399 of the Association Agreement). According to the national legislation, namely Art. 9 of the Constitution of Ukraine (1996) and Art. 19 of the Law of Ukraine "On International Treaties of Ukraine" (2004), "existing international treaties, the consent to be bound by which is given by the Verkhovna Rada, are part of the national legislation of Ukraine". For example, on October 12, 2021, an Agreement between Ukraine, on the one hand, and the European Union and its Member States, on the other hand, on Common Aviation space and ratified by the Law of Ukraine of "On Ratification of the Agreement between Ukraine, on the one part, and the European Union and its Member States, on the other part, on Common Aviation Space" (2022). This document has dozens of appendices that contain EU requirements, that Ukraine should gradually implement. Verification of the implementation of the above-mentioned standards is conducted by the European Commission and the European Aviation Safety Agency. The quality of implementation of standards in the aviation space on the part of Ukraine is guaranteed by the so-called aviation visa-free regime. In particular, this applies to air traffic control, flight safety, and environmental protection. This vector was chosen within the framework of the organisation of cooperation with the EU, including the regulation of global tourism policy. For Ukraine, this is an opportunity to be included in financial and technical assistance programmes and investment projects in the tourism sector.

Another substantial trend in the development of Ukrainian legislation in the field of tourism is international cooperation, which is conducted through the conclusion of bilateral and multilateral international treaties. The following can be cited: Agreement between the Cabinet of Ministers of Ukraine and the Government of the Republic of India on cooperation in the field of

tourism (2003), Agreement between the Government of Ukraine and the Government of the Republic of Georgia on cultural cooperation (1993), Agreement between the Government of Ukraine and the Government of the Republic of Kyrgyzstan on cooperation in the field of tourism, mountaineering and the hotel industry (1993), Agreement between the Cabinet of Ministers of Ukraine and the Government of the Kingdom of Morocco on cooperation in the field of culture (2013), Agreement between the Cabinet of Ministers of Ukraine and the Government of the Republic of Poland on cooperation in the field of tourism (2006).

In modern conditions, the role of cross-border cooperation of Ukraine in ensuring the ecological integrity of natural systems is growing. Here it is worth mentioning the Framework Convention for the Protection and Sustainable development of the Carpathians (2003), signed by the ministers of Ukraine, Slovakia, the Czech Republic, Poland, Romania, Hungary, Serbia, and Montenegro. Besides, Ukraine has joined the Protocol on the Sustainable Development of Agriculture and Rural Areas to the Framework Convention on the Protection and Sustainable Development of the Carpathians (Law of Ukraine "On Accession to the Protocol...", 2020). Ukraine, according to the provisions of these documents, should provide stable support and promote the development of rural areas, including through tourism (paragraph 3 of Art. 1).

Given that Ukraine is a member of the UN, a substantial part of its tourism legislation consists of regulations adopted by this organisation in the field of international tourism activities. Ultimately, the competence of the UN includes the adoption of documents containing various recommendations on international cooperation in this area (Kozlovskiy & Tsegelniuk, 2012). Conventionally, the documents adopted by the UN in this area can be divided into documents of a general nature; those that directly relate to the organisation of tourism activities; those that regulate the organisation of certain types of economic activities related to the tourism industry.

The first group includes documents in the field of human rights protection. These are, in particular:

- Universal Declaration of Human Rights (1948), on ensuring the right to rest (Art. 24);
- International Covenant on Civil and Political Rights, adopted by the UN General Assembly (1966), ratified by Decree of the Presidium of the Verkhovna Rada of the Ukrainian SSR No. 2148-VIII of October 19, 1973, on the right to freedom of movement (Art. 12).
- International Covenant on Economic, Social and Cultural Rights, adopted by the UN General Assembly (1966), ratified by Decree of the Presidium of the Verkhovna Rada of the Ukrainian SSR No. 2148-VIII of October 19, 1973, on the right to rest (Art. 7);
- Resolution of the UN General Assembly "Transforming our world: The 2030 Agenda for Sustainable Development" (2015), approved at the UN summit on

sustainable development. This document sets out 17 Global Sustainable Development Goals, including poverty eradication; good health; quality education; conservation of marine ecosystems; clean water and adequate sanitation; combating climate change; sustainable urban and community development; peace and justice; conservation of land ecosystems. The development of society on such principles will also contribute to the development of tourism activities in the world.

The second group should include such international documents as:

- Convention Concerning Customs Facilities for Touring (1954), New York. States that have joined this document guarantee tourists the opportunity to import personal items and gifts into the relevant country duty-free, and export them, provided that they are not intended for trade purposes.

- General Resolution on Tourism Development, adopted at the UN Conference on International Tourism and Travel in Rome (1963). It defines the main provisions for regulating border crossing (visa control, passport (documentary), customs, currency, sanitary, and epidemiological control). Due to the recommendations developed at the Rome conference, the concept of "temporary visitor" (tourists as temporary visitors – over 24 hours; excursionists as temporary visitors – under 24 hours) was later included in the legislative field of international tourism legislation (Brusiltseva & Zyma, 2019).

Examples of documents that form the third group include:

- European agreement on the work of crews of vehicles performing international road transport, adopted by the United Nations in Geneva on July 1, 1970. Ukraine joined this agreement based on the Law of Ukraine of September 7, 2005, "On Ukraine's accession to the European Agreement concerning the work of crews of vehicles engaged in international road transport (AETR)". According to it, the requirements for technical equipment of vehicles have been tightened, considering passenger capacity (the use of tachographs when transporting from 9 passengers) (European Agreement..., 1970).

- Recommendation Concerning the Most Effective Means of Rendering Museums Accessible to Everyone, adopted on December 14, 1960, at the 11th session of the UNESCO General Conference (Paris). In this document, it was proposed to understand under the term "museum" any permanent institution that serves in the general interest for storage, examination, and demonstration in various ways (displaying a set of elements of cultural value: collections of art objects, history, science and technology, botanical and zoological gardens, aquariums). Therewith, member states should undertake to take measures to ensure that museums located on their territory are publicly accessible, regardless of economic or social conditions (Recommendation..., 1960).

Separately, it is necessary to focus on the characteristics of documents adopted by the World Tourism

Organisation (hereinafter referred to as the WTO). Its main form of activity is holding international conferences on tourism. Notably, the legal nature of the final acts of such conferences is variative. They can: have a recommendatory character for the state parties (simultaneously, they are not sources of international law); be an international treaty open to signature; be sources of international law (Directive (EU) 2015/2302, 2015). Interestingly, at one of these conferences, namely in the city of Chengdu, the first international agreement in the history of the WTO was adopted – the Chengdu Declaration on Tourism and the Sustainable Development Goals (2017).

It notes that timely and systematic measurement of the economic, environmental, and social impact of tourist destinations is essential to support evidence-based decisions and the effective use of information collected to prepare informed policy decisions at all levels. Therewith, special attention is paid to the environmental component of sustainable tourism. Today, the WTO defines sustainable tourism as tourism that combines all resources in such a way that all needs, in particular, economic, social, and aesthetic, are met while preserving basic environmental processes, cultural integrity, life support systems, and biological diversity. This is directly indicated by the study of J.A. Campos-Soria *et al.* (2021). That is, there is a symbiotic relationship between tourism and the environment, and each depends on the other. Overall environmental management in the tourism sector should consider not only the environmental regulations imposed on tourism businesses and destinations but also the behaviour of tourists.

### Conclusions

As a result of this study, it was found that the revival of the tourism industry in Ukraine is inextricably linked with the creation of an appropriate “favourable climate”, which should be reflected in the updated national legislation. Its further development should be directly influenced by Ukraine’s European integration and international obligations.

Analyzing the Ukrainian legislation and comparing it with the international one, the authors of the article

concluded that today the tourism legislation of Ukraine is characterised by a complex multi-level structure. It is based on regulations adopted by the UN and WTO. These documents regulate almost all areas of the organisation of tourist activities of the member countries of these international organisations, including Ukraine. In addition, Ukraine actively cooperates with other states in the field of cultural exchange and tourism, which is mediated through the conclusion of bilateral and multilateral international treaties. However, there is still no legal mechanism for compliance with international standards in this area.

As for the national tourism legislation itself, according to the association agreement, Ukraine must bring it in line with EU requirements. This primarily concerns the Framework Law of Ukraine “On Tourism”, which should become the basis for creating favourable conditions for the development of the industry and properly ensuring the rights of tourists. Unfortunately, the Draft Law of Ukraine of September 29, 2020 No. 4162 “On Amendments to the Law of Ukraine ‘On tourism’ and Some Other Legislative Acts on the Basic Principles of Tourism Development” does not fully meet these requirements. In addition, to organise funding for the relevant industry, the EU legislator applies a programme-target method. This should be considered in the process of determining the prospects for the development of tourism in Ukraine, especially in the post-war period. Therewith, the Strategy for the Development of Tourism and Resorts for the Period until 2026, approved by the order of the Cabinet of Ministers of March 16, 2017, No. 168-R, should be declared invalid. Ultimately, in modern conditions, its provisions lose their relevance. The authors of this study concluded that further development of tourist relations is impossible without the development and adoption of the concept of the state target programme for the development of the tourism industry of Ukraine in the post-war period, followed by the adoption of the corresponding state target programme. Such a document must have a long-term implementation period, real financial content; be implemented jointly by central and local executive authorities, and be approved by the Law of Ukraine.

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## Основні тенденції розвитку туристичного законодавства України

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### Анотація

Статтю присвячено теоретико-правовому аналізу основних тенденцій розвитку туристичного законодавства України. Актуальність обраної тематики полягає в наявності підстав уважати туристичну галузь перспективною з огляду на можливий позитивний соціальний та економічний ефект для України, у разі якщо держава врахує фактори, необхідні для такого приросту. Мета цієї статті – аналіз основних тенденцій розвитку туристичного законодавства України та міжнародного законодавства як частини національного. Для досягнення поставленої мети застосовано методи аналізу, синтезу, історико-правовий та порівняльно-правовий. Така методологія дала змогу проаналізувати та зіставити міжнародну та національну нормотворчу базу через призму історико-правового досвіду та зробити висновки щодо сформованих основних тенденцій законодавчого розвитку в досліджуваній сфері. Результати дослідження такі: на сьогодні туризм в Україні залишається неперіоритетною галуззю (таке твердження засновано на загальній тенденції до стагнації туристичної сфери в Україні), є непривабливим для іноземного туриста (це зумовлено об'єктивними причинами, серед яких не тільки зовнішні загрози, що існують на сьогодні, а й мізерні показники, зафіксовані ще до початку пандемії та збройної агресії з боку РФ) та працює здебільшого на внутрішнього споживача, що підтверджують дані Державної служби статистики України. Ситуація склалася, зокрема, через низку чинників, які наведено в цій статті (з урахуванням досвіду зарубіжних країн), та недостатнє врегулювання на законодавчому рівні туристичних відносин, що докладно проаналізовано в роботі. Стаття може бути корисною для подальшого розкриття проблематики, що існує в обговорюваній сфері, та підґрунтям для дискусії в наукових колах на тлі занепаду індустрії

**Ключові слова:** туризм, туристична галузь, міжнародний туризм, внутрішній туризм, національне законодавство

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