

The leading role of crises in the regulation and development of entrepreneurship in the tourism market

Mikhail Shmarkov

Department of Tourism and Hospitality
Orel State University named after I.S. Turgenev
Komsomolskaya str. 95, 302026 Orel
Russian Federation
e-mail: turexpert888@yandex.ru

Larisa Shmarkova

Department of Mathematics, Informatics and Information Technologies
Orel State University of Economics and Trade
Oktyabrskaya str. 12, 302028 Orel
Russian Federation
e-mail: shmarkova_lara@mail.ru

Lyudmila Gubareva

Department of Vocational Training and Business
Orel State University named after I.S. Turgenev
Komsomolskaya str. 95, 302026 Orel
Russian Federation
e-mail: gubareva16@yandex.ru

Abstract Our paper examines the content and aspects of improving the system of legal regulation of the activities of tourist organizations in the Russian Federation in conjunction with market changes, the chronology of the adoption of legal norms, as well as their role and influence on the organization of tourist activities. We find that the state's introduction of a sequence of concrete measures was a reaction to manifestations of large-scale crisis phenomena. The action of the introduced measures, first of all, was aimed at protecting the legitimate interests of consumers of tourist services, providing conditions for a more sustainable functioning of the tourism market and levelling the effects of crisis phenomena. As a result, over the last decade, the conditions and technologies of conducting tourist activities, the norms of social responsibility of the main players in the tourism market (tour operators and travel agents) have changed significantly.

According to the chronology of key changes, we highlight the stages of development of the tourism market, indicate and describe the events that were catalysts for the changes and caused the crises, as well as justify the need to improve legislation in the field of tourism. According to the results of the analysis of crisis events taking place at present, we identify the gaps in the current legislation on the regulation of the activities of agency networks and subagents of tour operators. Moreover, we propose some novel directions for improving legislation. The paper employs system analysis, comparative analysis and statistical methods as form of a research analysis.

1 Introduction

The development of the Russian tourism market was accompanied by a number of crisis which, in itself, induced some phenomena. The majority of them were the bankruptcies of tour operators which were the result of not only ill-considered actions of the main players, but also the lack of effective legal regulation of their activities. The crises manifested themselves on a large scale and led to large financial and reputational losses for travel agencies, touched the interests of tens of thousands of consumers, entailed a threat to their security. Each time, in a new aspect, the problem of levelling the effects of crisis phenomena, the development and adoption of measures for the legal regulation of entrepreneurial activity in the tourism market was actualized. Measures of state regulation, as a rule, were taken on the fact of the manifestation of crises. Step by step, new laws were developed, the action of which in aggregate formed the newest legal space in the field of tourism activities. Thus, it was the crises that played the leading role in determining the content of the necessary measures for regulating tourism activities, and their sequence marked the trajectory of the newest stage in the formation of a business regulation system in the tourism market. A number of

events that are currently taking place again draw attention to the inadequacy of existing regulatory measures for resolving problem situations in the activities of agent networks and subagents of tour operators. These new problems require analysis and development of adequate measures aimed at their regulation and prevention in the future.

A number of studies have been enlightened in the development of the modern tourism market in the Russian Federation (Sarancha 2015; Shmarkov 2016; Shmarkov and Shmarkova 2016; Shmarkov et al. 2017a; Shmarkov et al. 2017b; or Shmarkov 2018), but the problem of state regulation of tourist activity in the scientific literature illuminated. The researchers analysed the results of only individual measures of legal regulation of tourist activities, for example, in terms of providing guarantees for international tour operators, such as financial support and compensation fund for urgent tourist support, in terms of improving the legal protection of tourists leaving the Russian Federation (Kuzakhmetova et al. 2016); among others, the need to improve travel insurance mechanisms is justified (Kuzakhmetova and Zolotareva 2014; or Ivanova et al. 2017).

Moreover, the analysis of the causes and chronology of changes in tourist legislation is also of particular scientific interest. The collection and systematization of this information for further use in the practice of organizing tourist activities. Sources for their analysis are information presented on the official websites of tourist organizations and communities, websites of information analytical agencies and professional portals in the field of tourism (“Turdom”), in industry magazines and newspapers (“Turprom”, “Hotline.travel”), own the experience of the authors of reference and management of tourist activities for 10 years.

2 Crises as sources of improvement of the system of state regulation and development of tourist activities

The tourism industry in the Russian Federation, as an independent branch of economic activity, was forged in the 1990s, when the first commercial tourism organizations appeared. The federal law of November 24, 1996 No. 132 “On the Basics of Tourism Activities in the Russian Federation” defined the basic terms used in the field of tourism and the provisions governing the activities of tourist organizations. Thus, norms were defined and the basics of regulating activities in the field of tourism were introduced.

The further stage of its development is characterized by a rapid expansion of the tourism market, an increase in tourist flows and the number of tourist organizations that actively expanded their activities and improved its technologies and methods.

Until 2007, according to Article 5 of the Federal Law of November 24, 1996 No. 132-ФЗ “On the Basics of Tourism Activities in the Russian Federation” (as amended on November 24, 1996), tour operator and travel agent activities in the Russian Federation were subject to mandatory licensing, information about which entered into the Federal register of tour operators and travel agents. The abolition of licensing of tourist activities in 2007 led to the need to establish a new administrative filter for tourist organizations. The Federal Law of 05.02.2007 No. 12-ФЗ “On Amendments to the Federal Law “On the Basics of Tourism Activities in the Russian Federation” amended the conditions for the implementation of tour operator activities, which obliged tour operators to enter into civil liability insurance contracts for non-performance contract on the sale of the tourist product, or to provide bank guarantees, that is, to have financial security. Control over the tourism business was entrusted to the Federal Agency for Tourism (Rosturizm), which began to maintain the Unified Federal Register of Tour Operators (EFRT). At the same time, the activities of travel agency organizations were no longer subject to licensing. Simplification of the conditions for their entry into the market has accelerated the development of the tourism industry, but time and crisis phenomena have revealed the strengths and weaknesses of the measures taken by the state in 2007.

The events of the fall of 2010 became a serious test for the mechanism for regulating the activities of tour operator organizations - the suspension of activities and the subsequent bankruptcy of the leader of the tourism market, the tour operator “Capital Tour” due to the accumulation of a large mass of borrowed funds (about 1.3 billion rubles). As a result, more than 5,000 people who bought tourist products worth more than 265 million rubles suffered, while the tour operator’s liability was insured for 100 million rubles. company “Innogarant”. The amount of insurance coverage was not sufficient to fully compensate for the losses of the affected customers. However, the first shock of such a scale and unexpected for the tourism market did not lead to the improvement of legislation.

The next shock of the tourism industry occurred a year and a half later. The refusal to issue a loan to the tour operator “Lanta-Tour Voyage”, necessary for the continuation of the activity, became the reason for its suspension and the subsequent bankruptcy of the company. The loss caused to tourists exceeded 194 million rubles. with insurance coverage of the tour operator’s activity in the amount of 100 million rubles provided by the insurance company Ingosstrakh. Many tourists who were abroad found themselves in a difficult situation and did not have the opportunity to re-pay hotel services and purchase tickets for their

return trip home (in some hotels they were detained without issuing documents). The top leadership of the Russian Federation was forced to intervene in a difficult situation.

The events that have taken place have demonstrated the need for revising the regulation of tourist activities. The result of the improvement of the legislation was the adoption of the Federal Law of 03/05/2012 No. 47-ФЗ "On Amendments to the Federal Law "On the Basics of Tourism Activities in the Russian Federation" and certain legislative acts of the Russian Federation". In particular, paragraphs 11.1-11.5 were introduced, defining the essence of the functioning of the association of tour operators in the field of outbound tourism - the association "Tour assistance", which began to manage the Compensation Fund, contributions to which were made by tour operators operating in the field of outbound tourism in the form of contributions (0, 1% of the amount of funds received from the sale of tourist products, but not less than 100,000 rubles.). By adopting these amendments, the state has increased the social responsibility of tour operators to their customers. Now tourists, who turned out to be abroad during the suspension of the tour operator's activities, had the opportunity to apply for help to the association "Tourist assistance". This step marked a new stage in the development of the tourist market. The priority task was to ensure respect for the rights of tourists in the event of a crisis.

In 2013, the tour operator GTI Travel left the market, which did not cause major problems for both tourists and travel agents. It was the first "civilized" departure of the tour operator due to the non-extension of the credit line in the amount of 12 million Euros.

The effectiveness of the measures taken was confirmed in 2014, when 13 famous tour operators left the market during the summer season. The created fund was effectively used by the Association "Turpomoshch", however, due to the scale of the crisis, it became empty (UTRO 2014). The mechanism of insurance of civil liability of tour operators was also tested, the amount of losses caused by the actions of some tour operators exceeded the amount of insurance coverage, and tourists again suffered losses. The subsequent amendments introduced by the Federal Law of 29.06.2015 No. 155-ФЗ "On Amendments to Certain Legislative Acts of the Russian Federation" concerned the identification of persons responsible for paying expenses related to the provision of emergency assistance to Russian citizens abroad. The solution of the issue was entrusted to the tourists themselves by entering into a voluntary insurance contract.

Having survived the 2015 summer season without strong shocks, in September the tourism market faced a new large-scale crisis caused by the cessation of Transaero Airlines. As a result, the travel agent market expected a series of bankruptcies of tour operators, in particular, they predicted the bankruptcy of the tour operator Biblio Globus, whose strategic partner for most of the mass tourism destinations was Transaero. However, the assumptions were not confirmed. But from this point on, a new stage began in the development of the tourism market and the improvement of tourism technologies. The bankruptcy of a major airline pushed tour operators to search for new partners, but an alternative of this magnitude could not be found. This fact has become a driver for introducing innovative reservation systems into the activities of tour operators based on the use of dynamic packaging tools (Shmarkov et al. 2017b), allowing agents and tourists to independently determine the set of tourist services, for example, to include a suitable air transport from free sale.

Active discussion in professional circles of the problems and prospects for the development of the tourism industry resulted in the adoption of the Federal Law of 02.03.2016 No. 49-ФЗ "On Amendments to Certain Legislative Acts of the Russian Federation in order to improve the legislation regulating tourist activities". The adopted amendments changed the name of the Compensation Fund to the Reserve Fund and established a differentiated scale of deductions for tour operators.

Moreover, Article 11.6 was introduced into the Federal Law No. 132-ФЗ defining the features of the formation and use of the Personal Responsibility Fund of tour operators operating in the field of outbound tourism. From January 1, 2017, tour operators are obliged to make annual contributions to the Personal Liability Fund (hereinafter referred to as FPO) in the amount of one percent of the total price of the tourist product in the field of outbound tourism realized in the previous year. The amendments provide for the possibility of increasing the size of the annual contribution to the FPO, as well as the opportunity to immediately form it in the maximum amount, which is not less than 7% of the total price of the tourist product. When these conditions are met, the financial support of the tour operator's responsibility was not required. Article 11.6 also specifies the conditions for the transfer of contributions to the fund for newly created organizations or for organizations that have not previously carried out activities in the field of outbound tourism, the amount of which is determined to be 100,000 rubles. This condition was effectively used by tour operators in order to minimize their costs for the formation of the Personal Responsibility Fund. As follows from the analysis of practice, large tour operators often work in specific areas (regions of the world) in the format of several legal entities. Such a division allows them to apply a simplified taxation system and minimize costs. So this time, after the adoption of the amendments to the Federal Law, many tour operators of the organization chose the path of "least resistance", continuing to work under the old brands, but in the format of new legal entities, thereby minimizing the size of their contributions to the

reserve fund. For example, at the moment the tour operator “Pegas tourist” in the Unified Federal Register of Tour Operators (hereinafter referred to as EFRT) is represented by twenty legal entities, of which sixteen operate in the field of outbound tourism.

According to the amendments, tour operators received the right to attribute the costs associated with the payment of contributions to the FPO, the cost of the tourist product, which led to its appreciation. In the face of declining solvency of tourists, tour operators are forced to look for mechanisms to reduce the cost of the tourist product and began to test new practices:

- reduction of commissions of travel agents on average from basic 10% to 8% and even 6%;
- the introduction of "promo" and other special tariffs with a fixed lower commission (6-7%), which significantly reduced the profitability of the agency business.

The following innovations were related to the adoption of the Federal Law of 02.03.2016 No. 49-ФЗ “On Amendments to Certain Legislative Acts of the Russian Federation in order to improve the legislation regulating tourist activities”, which obliged tour operators and travel agents to adhere to the standard form of an agreement on the implementation of the tourist product. October 31, 2016 by order of the Ministry of Culture of the Russian Federation No. 2386 "On approval of standard forms of an agreement on the sale of a tourist product concluded between a tour operator and a tourist and (or) another customer, and an agreement on the sale of a tourist product concluded between a travel agent and a tourist and (or) another customer" adopted standard forms of agreements on the sale of a tourist product between a tour operator and a tourist, as well as between a travel agent and a tourist. From 13.04.2017, the use of standard forms has become mandatory for all tourist organizations.

The next round of crisis development began in 2018, when Polar Tour suspended its activities, selling a tourist product as a subagent of other tour operators. The company positioned itself as a tour operator, regularly participated in international tourism exhibitions, used an automated website for tour operator activities, and had an extensive agent network. The agency market has encountered new problems, the success of which has depended on who acted as a contractor with clients:

- if the company “Polar Tour” itself, then all the claims and claims of the victims should have been presented to it itself. But then, from a legal point of view, “Polar Tour” was supposed to be a tour operator included in the EFRT, have financial guarantees, make contributions to the Compensation Fund and FPO, and then the Association “Turpomoshch” would be involved in resolving the situation;
- in cases when the executor under the contracts with customers was the tour operator that formed the tour product, later implemented by Polar Tour, the responsibility fell on him.

In fact, as a result of the suspension of the activity of the “Polar Tour” subagent, which had no financial support, the problems encountered by the tourists, the travel agencies or the tourists themselves had to decide according to the terms of the agreement on the sale of the tourist product.

The next shock for the agency market and consumers was a message about the suspension of sales of tour products by the tour operator Natalie Tours, which had been operating in the tourism market for more than 20 years. In press releases it was reported that the tour operator had problems in working with host companies, and she was forced to cancel all bookings. Tourists who had issued air tickets for regular flights could make a planned trip only on condition of re-payment of accommodation services. The company’s management did not announce a suspension of activity for two months, which did not allow affected clients to contact the insurer of the tour operator. The liability of legal entities working on behalf of the tour operator in the field of outbound tourism was insured by the insurance company SPAO Ingosstrakh in the amount of 50 million rubles each. As of September 18, 2018, Ingosstrakh received 5,219 applications in the interests of 12,555 people from legal clients of Natalie Tours, and the damage promised to exceed 1.1 billion rubles.

Almost at the same time, the announced suspension of the activities of the tour operator DSBW-TOURS was reflected in the market less noticeably. At the end of the summer season of 2018, due to “the prevailing unfavourable market conditions”, the tour operator Danko ceased operations. Responsibility of tour operators was insured in the amount of 50 million rubles, which was sufficient to compensate the cost of services not rendered to all customers.

Over the past decade, tourists have become “accustomed” to the bankruptcies of tour operators and perceive such facts as ordinary risk, but they do not expect the risks of terminating the activities of travel agencies. Many tourists are “attached” to personal agents and trust them. The practice of unfair actions of travel agents in the regions is rare. However, in October 2018, an event unexpectedly arrived that undermined the trust of tourists and travel agents. About its problems announced network “RossTour”, which included more than 700 travel agencies throughout Russia. The network had many unpaid requests, so a number of tour operators cancelled the passwords of network agencies access to reservation systems. In the mailings to

agents (in the first days of October), the network reported that the tours booked with a departure before October 4 are fully paid, and the rest of the applications will be decided on an individual basis. At the same time, RossTour changed the rules for paying tours for its agents. From 03.10.2018, agents began to pay applications directly to tour operators. Attempts by regional network agencies to cope with the problems that have arisen led to double losses. Repeated payment of applications directly to tour operators did not entail re-confirmation of applications, it became possible to return the money only through the courts. For departures that were to take place on October 6-7, the company's indebtedness on tours to tour operators was 15 million rubles.

Despite the network's agency status, its interests were represented by three legal entities: RossTur LLC, RT-Center Tour Operator LLC, R-Tour Tour Operator LLC, each of which had a liability insurance contract in the amount of 50 million rubles. As a result of the activities of RossTur LLC, 1,214 tourists were affected, and the amount of debt exceeded 51.5 million rubles. At the moment, it is known that LLC Tour Operator R-Tour has obligations to 2000 tourists with the amount of insurance coverage of 50 million rubles. and 100,000 rubles. listed in the FPO, which are obviously not enough for the payment of compensation to all victims.

The situation with the RossTour network, which is dramatically developing in the present days, has shown a high risk of this scheme of organizing travel agent activities. Lack of experience in resolving the problems encountered and gaps in the current legislation put at risk the observance of the legitimate interests of the clients of the RossTour network. It should be noted that network agencies are not the culprits in the current situation, since they fulfilled their obligations to the parent organization in time. The crisis was the result of an incorrect policy of the head organization of the network for the payment of realized tours. Interesting in this situation are the actions of the insurer of the European Travel Insurance Company network, which decided to check the legality of claims for insurance indemnity. This position indicates the insurer's intention to minimize the payments or abandon them, since there was a suspension of the activity not of a classic tour operator, but of a company that worked as a travel agent (booking centre). Thus, the new crisis revealed the next "white spots" in the legal support and regulation of tourist activities.

3 Main results

Our analysis of the content of legal regulation measures for tourist organizations revealed that the amendments adopted in 2007 partially reduced financial losses for consumers of tourist services and worked in cases of bankruptcy of tour operators in 2010-2012. However, the elimination of administrative barriers to the organization of travel agency activities led to the entry of one-day firms to the market and contributed to the uncontrolled development of agency activities.

The following regulations, as a rule, followed the manifestations of new crisis events in the tourism market. And only after the bankruptcies of the largest tour operators, Capital Tour and Lanta-Tour Voyage, an association of tour operators in the field of outbound tourism was created, the purpose of which was to protect the interests of Russian citizens who find themselves in a difficult situation during their trip abroad. The ensuing series of bankruptcies of tour operators in the summer of 2014 revealed an insufficient elaboration of mechanisms for the protection of affected tourists. The development of new measures took almost two years, during which the next crises occurred. The subsequent measures to regulate tour operators have led to an increase in the financial burden of tour operators and, as a result, to a decrease in the profitability of their travel agent partners. The driver for the introduction of innovative tools for the formation of tourist products into the activities of tour operators was the situation associated with the bankruptcy of a strategic partner, Transaero Airlines. It has been revealed that at the present time completely new crisis phenomena have emerged in the tourism market, already in the field of travel agent activity, dramatic events are developing today to suspend the activities of the largest tourist network RossTour. The study of aspects of the company's activity and its suspension points to the need for clearer state regulation of the activities of agent networks and subagents. There is an obvious need to introduce new amendments to the Federal Law No. 132-Φ3 specifying and regulating the activities of associations of tourist organizations.

The activities of network organizations accumulating the applications of multiple agents should be subject to compulsory liability insurance for inadequate provision of services, as well as annual audits by independent organizations of the correctness of spending funds received by the intermediary for paying for travel services booked through it. The chronology of the regulation of tourist activities in the context of turmoil is presented in Figure 1 that follows.

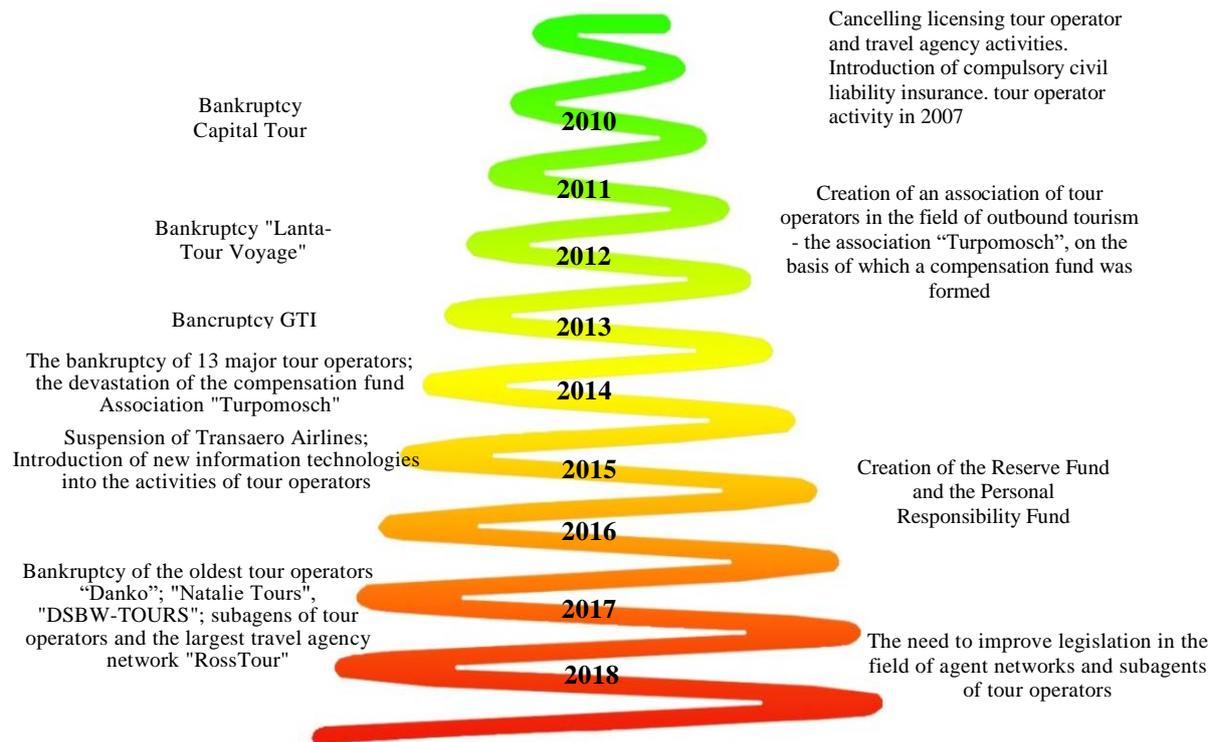


Fig. 1. Chronology of the regulation of tourist activities in the context of crisis events

Source: Own results

Thus, in the current market conditions, there is a need for a more specific definition of the principles of its operation of the tourist industry and the functions of various business associations. Particular attention should be paid to determining the status of subagens of tour operators and travel agency networks, clarifying the mechanisms for insuring their liability for the inadequate provision of tourist services. It is necessary to develop measures that provide more detailed regulation of the activities of organizations engaged in the resale of the tourist product. At the state level, it is necessary to develop a definition of their special status and mechanisms to ensure their responsibility.

It is also necessary at the legislative level to determine the timing of providing information to the tourist about the full payment of the tourist product from the travel agent to the tour operator and provide them with mechanisms to verify this fact. These measures will contribute to the establishment of "transparent" relations between participants in the tourist services market.

In addition, it becomes clear that the management and staff of tourism organizations must have professional education, and their activities are governed by professional standards that have not yet been adopted.

4 Conclusions

Over the past decade, the tourism market in Russian Federation has developed intensively. Positive aspects of development were the high popularity of tourist services, the intensive growth of tourist flows, the development of technology, the improvement of forms of activity and the expansion of the market. At the same time, the high speed of development and a multitude of growth transformations did not allow for the timely formation of a fairly complete and integral system of legal regulation of tourist activities. A number of important measures of legal regulation were taken on the fact of the emergence of new problems and manifestations of crises, according to the results of the analysis of their consequences and in connection with the need to solve the problems encountered.

As a result, it can be stated that at present, in general, an effective legal regulation system has been formed in the format of the mastered practice of conducting tourist activities. However, market realities present new developments that require its improvement. It is necessary to move from *a posteriori* to *a priori* practice of development of legislation in the field of tourism based on the analysis of new forms of tourist associations and forecasting the results of their activities.

Our paper identified drivers and marked the chronology of the adoption of measures for the legal regulation of tourism activities in conjunction with market changes, revealed their content and objectives, as

well as the impact on the organization of tourism activities. Drivers was a chain of large-scale crisis phenomena that occurred in the tourism market. Accordingly, step by step, new laws and amendments to them were drafted, the effect of which in aggregate formed the newest legal space in the field of tourism. For the first time, the chronology of the regulation of tourist activities in the context of crisis events was formalized and characterized. It has been established that as a result of the sequence of improvement of legislation, the conditions for conducting tourist activities and the norms of social responsibility of the main players in the tourism market have significantly changed.

At the same time, new events draw attention to the lack of sufficient measures to resolve problem situations in the activities of agency networks and subagents of its regulation. The directions of improvement of legislation in the field of tourism and approaches to their organization.

Acknowledgements

We are grateful to the professional tourist portal “Trudom” as well as the industry magazine “Turprom” and the newspaper “Hotline.travel” for regularly providing relevant and useful information on the development of the modern tourism market, as well as being the platforms for their discussion by professionals of the tourist industry and law.

References

- Ivanova S, Klimova I, Rozanova T (2017) Regulatory issues facing tourism industry in contemporary Russia. 5th International conference on management and technology in knowledge, service, tourism & hospitality, pp. 115-120.
- Kuzakhmetova S, Sitdikova B, Shilovskaya, A (2016) International tour operators' responsibility guarantees in developing legislation in the Russian Federation. *Tourism Management Perspectives* 20:66-69. doi: 0.1016/j.tmp.2016.07.004
- Kuzakhmetova Y, Zolotareva A (2014) The fund of the tour operators' personal responsibility as one of the legislative initiatives on the topic of tourist rights' protection. *The Actual Problems of the Russian Legislation* 8:62–72.
- Sarancha M (2015) The problem of bankruptcies tour operators in Russia: the dynamics of the current situation and prospects of development. 2nd International Multidisciplinary Scientific Conference on Social Sciences and Arts, p. 907 – 914.
- Shmarkov M (2016) Tendencies of development of modern entrepreneurship in the tourism market. *Scientific notes of Gilgit* 4 (16):150-152.
- Shmarkov M (2018) Ensuring and improving safety standards in the formation and implementation of a comprehensive tourism product. *Education and science without borders: fundamental and applied research* 7:255-259.
- Shmarkov M, Shmarkova E, Shmarkova L (2017a) GDS systems as an innovative mechanism to improve the efficiency of business activities in the tourism market. *Bulletin of OSIET* 3(41):73-79.
- Shmarkov M, Shmarkova E, Shmarkova L (2017b) Tendencies of development of modern entrepreneurship on the market of tourist services. *Bulletin of Gilgit* 2(40):75-78.
- Shmarkov M, Shmarkova L (2016) Problems of development of modern tourism market and aspects of the enterprises. *Education and science without borders: basic and applied research* 3:305-309.
- UTRO (2014) Bankruptcy of tour operators devastated the Fund “Tour Assistance”. <http://dengi.utro.ru/news/bankrotstva-turoperatorov-opustoshili-fond-turpomoshch-98.html> Accessed 29 March 2019