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Methodological substantiation of the penalty for the damage to the resort recreational potential

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Abstract

The purpose of the study is to develop a methodological substantiation of the penalty for the damage to resort recreational potential. The study revealed the lack of a single system for solving the problem of preserving and developing the recreational potential of the territories. According to the results, a penalty calculation methodology was developed. The application of the methodology will solve the inconsistency between the administrative liability and the damage to the recreational potential of the territory and act as a preventive measure, which will make it possible to compensate for the losses of the resort and exercise effective control over its safety and development.

Keywords: Penalty, Administrative liability, Tourism market, Protection of recreational resources, Loss of the resort.

Justificación metodológica de la pena por el daño al potencial recreativo del resort

Resumen

El propósito Del estudio es desarrollar una justificación metodológica de la pena por el daño al potencial recreativo del resort.

El estudio reveló la falta de UN sistema único para resolver el problema de preservar y desarrollar el potencial recreativo de los territorios. Según los resultados, se desarrolló una metodología de cálculo de penalizaciones. La aplicación de la metodología resolverá la inconsistencia entre la responsabilidad administrativa y el daño al potencial recreativo Del territorio y actuará como medida preventiva, lo que permitirá compensar las pérdidas del complejo y ejercer un control efectivo sobre su seguridad y desarrollo.

Palabras clave: Sanción, Responsabilidad administrativa, Mercado turístico, Protección de recursos recreativos, Pérdida del resort.

1. INTRODUCTION

Nowadays, most tourists prefer areas with the greatest recreational potential when choosing their destination. The recreational potential and socio-economic significance of the area is determined by its positive effect on human health. The regions that have resorts with recreational potential should be focused on their preservation. In Russia, the search for the approaches to solving the problem of preserving the recreational potential is relevant due to the increasing importance of the domestic tourism market. There is a higher demand due to the foreign policy and a number of restrictions in this area.

The most valuable recreation resources are landscape, climatic, beach, speleological, cultural, historical and archaeological resources, as well as healing mineral waters. To preserve and expend them, special protection and development programs are developed; in addition, recreation facilities are created – parks, ponds, squares,

alleys, artificial beaches, etc. These areas are designed to restore the internal resources of the human body.

In the process of socio-economic development and transformation of infrastructure, there are various kinds of violations. They lead to the exposure of resort areas to negative factors that reduce their recreational potential. At the present stage, there is a violation of basic environmental laws; environmental pollution occurs due to various emissions, untimely or improper disposal of waste, leakage of substances due to accidents and non-compliance with the norms of their transportation and storage, etc.

Parks, national parks and the “hundred-meter zone” are built over; the objects of cultural heritage are destroyed; the facades of ancient buildings are distorted in the process of restoration and redevelopment and adapted to various economic objects. As a result, the historical centers of cities are being modified due to the distortion of the original appearance of ancient buildings, the chaotic construction of high-rise buildings, the abundance of information signs, posters, etc.

The violations of construction periods should be noted when centering on the construction of facilities in historical city centers, the hundred-meter zones and other important areas. Insufficient attention is paid to the protection of natural monuments – they are littered, spoilt, partially destroyed and built over. Inadequate treatment and

reconstruction of cultural monuments lead to the loss of their original appearance. Many facilities are in a critical condition and not accessible for tourists. For example, the Republic of Crimea loses potentially interesting tourist attractions and tourist routes that run through them due to its negligent attitude to the historically significant objects.

Inadequate response to these problems has negative consequences: a decrease in the recreational value of the area leads to a decrease in the demand for tourism, medical, recreational and related services; reduced tourist flow and lower income from relevant activities. Preservation of recreational areas is regulated by separate legislation providing for liability. Modern legislation regulates this problem only in some aspects – there is no single system for its solution. A number of issues are not reflected in the legal and regulatory framework.

Thus, there are no measures to suppress existing violations and their further recurrence. Administrative liability defined by law for the recreational potential damage does not have an economic basis and the necessary effect for the preservation and development of the area.

When the recreational potential (attractiveness) of the area decreases, a gap between the expected profit (the level of previous years) and the actually obtained is formed. That is, the resort suffers losses. Any negative impact on the recreational potential of the area

can reduce its demand and decrease budget revenues. Therefore, the research on the identification of the damage to the recreational potential of resort areas is relevant. Based on this, the purpose of the study is to develop a methodological substantiation of the penalty for the damage to the resort recreational potential.

The most significant studies devoted to the assessment of the damage caused are the studies by M. A. SARANCHA. The author used his own methodology to study the recreational potential (SARANCHA, 2006; 2008). The article by IGNATIEVA M. N., LITVINOVA A. A. AND IGNATIEV V.A. presents the classification of the methods for assessing the economic damage (IGNATIEFF ET AL., 2009). KRUTOVA D.S. presented a similar work. She examined the main elements of the economic damage as a result of various factors (KRUTOVA, 2016). The main criteria for the economic assessment of the compensation for the ecological system damage are presented in the work by BADALYAN L.KH., KURDUKOVA V.N. AND GAZGIREEVA KH.D. (2006).

SHUBTSOVA L.V. AND BELOKHVOSTOVA N.V. highlight the main problems of the resort recreational potential development and consider the effectiveness of various penalty systems (SHUBTSOVA AND BELOKHVOSTOVA, 2016). Another important indicator of the recreational potential is the satisfaction of tourists and the indigenous population with the area. For example, sanctions and strikes can seriously affect tourist and hotel destinations, attractions and

enterprises, creating a negative image of the resort (SEYFI AND HALL, 2019).

The analysis of the modern literature on external costs (T. TIETENBERG (2014), S. J. Callan, J. M. Thomas (2007), A. ROMA (2006), T. SUNDQVIST (2002) demonstrates similarity of the assessment of external effects in relation to the recreational potential, since there is a common object of study, namely the process of their internalization. ANDERSON ET AL. (2017) suggest that the penalty rate reduction will contribute to the decrease in violations and risk behavior. SU ET AL. (2019) pay more attention to the psychological component of the violation associated with the recreational potential rather than the economic one and emphasize the importance of the environmentally responsible behavior.

Scientists have not separately considered the theoretical basis for assessing the damage to the resort recreational potential. However, this topic is related to the concept of external costs or externalities. It should be noted that the issue of developing a methodological substantiation and creating a penalty system in order to increase control over the preservation and development of the resort recreational potential has not been considered in domestic and foreign literature, which allows us to talk about the relevance of the work done. (SADEGHI ET AL, 2017).

2. METHODOLOGY

As part of the study, the analysis and synthesis of the legal and regulatory framework of the Republic of Crimea and the Russian Federation were carried out: the Code of Administrative Offenses of the Russian Federation; the Law of the Republic of Crimea No. 5-LRC, No. 26-FL, No. 29-LRC, No. 51-LRC, No. 50-LRC, No. 53-LRC, No. 65-LRC, No. 68-LRC, No. 76-LRC, No. 107-LRC, No. 112-LRC; Yalta Municipality Improvement Strategies; Yalta Socio-economic Development Strategy for the period until 2030; the Code of Administrative offenses of the Russian Federation No. 195-FL of December 30, 2001 (MAMBILE & MACHUVE, 2018).

The data of the Ministry of Resorts and Tourism of the Republic of Crimea on the number of tourists visiting the territory were also used. The territory of the Yalta city was monitored to identify violations. A penalty calculation methodology was developed based on the introduction of a multiplying coefficient for the entire territory, as well as the revision of liability for the damage to the natural and climatic component of the area.

It is proposed to use the recreational potential assessment of the area as a basis for determining the multiplying coefficient – a composite indicator characterizing the quality of natural and climatic resources, historical, sports, sanatorium and therapeutic values of the

area, as well as the degree of its infrastructure development in relation to the whole region.

3. RESULTS AND DISCUSSION

The analysis of the legal and regulatory framework demonstrated the lack of a single system of control over the maintenance and development of the recreational potential of the area, as well as the lack of economic substantiation for the penalty calculation.

The existing problems are not fully formulated and reflected in legislation; there is no clear definition of liability. Local laws and statutory instruments do not provide for the special regulation of recreational areas. The main document determining the legal penalty is the Code of Administrative Offenses. When exercising control over the area, the emphasis is not placed on its uniqueness; the focus is on its special significance for the whole population as a source of restoration of physical and psycho-emotional health, as well as for foreign citizens in the future.

The legal and regulatory framework of the region does not operate with the concepts of recreational value and recreational potential: local recreational areas are distinguished within the region that is generally recreational – by analogy with industrial areas (LAW

OF THE REPUBLIC OF CRIMEA, 2014). At the same time, federal legislation preconditions amendments to local regulations, according to the characteristics of the area. A separate issue is the economic feasibility of the penalties. They are also established by the state while any damage to the recreational area has a greater negative impact than in other territories.

The solution of these problems should be a priority, especially when the creation of a year-round resort area is indicated as the development prospect of the peninsular and in particular, South Coast (YALTA SOCIO-ECONOMIC DEVELOPMENT STRATEGY, 2016). As part of the implementation of this program, the lack of a single system of control over the compliance with legislation in the field of preservation and expansion of the area potential is unacceptable. It is important to increase the competitiveness of the area, make it a popular tourist destination and preserve its uniqueness. This can be achieved by systematizing the legal and regulatory framework that has an economic substantiation.

The analysis of the Code of Administrative Offenses of the Russian Federation (2001) revealed that violations that damage the recreational potential of the area are not presented as a separate group and the liability is minimal in most cases. At the same time, the boundaries of administrative liability are wide enough: individuals hold liable to a fine of 0.1-20 thousand rubles; officials – 0.3-400 thousand rubles; legal entities – 5-1 thousand rubles.

The maximum penalty for individuals is 20 thousand rubles, for officials – 400 thousand rubles, for legal entities – 5 000 thousand rubles. The penalty system cannot compensate for the losses. In order to prove the inefficiency of the existing penalty system and to assess the damage caused to the recreational area, let us estimate the approximate “resort loss” resulting from the damage to the historical and cultural heritage (in accordance with the classification presented in the table below) through the example of the Yalta territory (the Republic of Crimea) and based on the statistical data for 2018 (Table 1).

Table 1: “Resort loss” as a result of inaccessibility of monuments in B. Yalta in 2018(The Ministry of Resorts and Tourism of the Republic of Crimea (2020))

| Indicator | | Loss |
|---|-------|--------------------------|
| the number of tourists | | 6,6 million people |
| the number of tourists staying in the South Coast | 44,2% | 2,9 million people |
| the number of monument inaccessible to tourists | | 8 monuments |
| the average ticket price to visit the monument | | 150-350 rubles |
| potential revenue from one monument | | 435-1015 thousand rubles |
| potential revenue from eight monuments | | 3,4-8,1 million rubles |

As a result of the territory check, eight historical and architectural objects that were in a critical condition and inaccessible to tourists were found. There were no restoration works until 2017, which led to the aggravation of their condition. In 2017, restoration works started at 2 sites; however, the buildings have only been partially restored and their inspection is not possible. Thus, the annual

loss of the resort, depending on the number of tourists arriving on vacation, can be 3-8 million rubles. It is obvious that the existing penalty amount that the offender has to pay cannot compensate for such losses.

The introduction of a new penalty system would become the main mechanism for the preservation and development of a unique recreational environment. For these purposes, let us draw up a table of possible violations that have a direct or indirect effect on the recreational potential (for example, the Republic of Crimea) (Table 2).

Table 2: Basic types of damage (based on the legislative acts of the Republic of Crimea (Federal Law No. 26-FL, 1995; Law of the Republic of Crimea, 2014b; 2014c; 2014d; 2014e; 2014f; 2015; 2015b; 2015c; 2015d))

| Type of damage | Description | Penalty |
|-----------------------|---|--|
| Natural and climatic | <ul style="list-style-type: none">- water and air pollution;- deforestation, building development or other damage to the preserved area;- destruction, harm to rare species of plants and animals;- damage to natural monuments;- destruction and pollution of sources (including mineral sources); | 500-50 000 rubles, based on the liable party |

| | | |
|--|---|---|
| Historical and cultural | <ul style="list-style-type: none"> - damage, pollution or destruction of historical and cultural heritage objects, as well as the adjacent areas; - barrier to access historical and cultural heritage objects; - distortion of the original appearance of ancient buildings in the process of restoration; their adaptation to various economic objects; - bringing objects of historical and cultural heritage objects to the condition that cannot be restored (including inaction and untimely maintenance) | |
| Sports and recreational | <ul style="list-style-type: none"> - beach pollution, building development, barrier to access beaches; - Blocking, pollution and destruction of paths, bicycle and walking trails, recreational facilities; various natural objects (rocks, bays, etc.); | <p>1 000–500 000 rubles, based on the liable party</p> <p>1 000–500 000 rubles, based on the liable party</p> |
| Damage to the areas of special control (city landmark) | <ul style="list-style-type: none"> - various types of damage to the objects of particular value (everything that makes the territory recognizable); - modification of the historical center of the city through the construction of high-rise, stylistically not coordinated, facilities that distort the aesthetic complex and interfere with the view; - various pollution of urban area; - chaotic placement of posters and signs; - Destruction and barrier to access sightseeing platforms. | <p>No separate regulation; described in general legal and regulatory documents: 1 000 – 500 000 rubles, based on the liable party</p> |

The table is based on the analysis of the regional legal and regulatory framework. It consists of four types of damage to recreational areas; the development of an effective penalty system should be based on them. The fourth group - damage to the areas of special control is the most significant for resort areas as it is their “landmark” – the most recognizable and visited objects that attract tourists to the region. The table shows that the fourth type of damage is not separately regulated while being of special interest to any entity whose main industry is tourism. That is, its regulation at the legislative level does not occur. The largest number of violations occurs in the latter group. This has particularly negative consequences for the welfare and development of the area.

The existing penalty amount does not provide proper protection of the area potential (neither psychological, as a tool to prevent possible illegal and harmful actions, nor economic, expressed in the compensation for the damage to the recreational potential of the area).

Therefore, based on the developed methodology, let us assess the recreational potential through the example of the city of B. Yalta. The choice of this territory is due to its increased importance. The largest share of the tourist flow is observed in B. Yalta. In addition, this territory is characterized by a large number of natural (about 25) and cultural heritage monuments (545), as well as a high concentration of recreational facilities, both along the coastline and the protected area.

Let us make a calculation using formula 1-7:

$$C_I = \frac{6,2}{283} + \frac{25}{283} = 0,1 \quad (8)$$

$$C_{II} = \frac{4}{283} + \frac{0,6}{283} + 5,15 + \frac{10}{283} = 5,2 \quad (9)$$

$$C_{cf} = \frac{5}{12} + \frac{2233}{8760} + 2,5 + 2 = 5,15 \quad (10)$$

$$C_{III} = \frac{545}{283} = 2 \quad (11)$$

$$C_{IV} = 5 \quad (12)$$

$$C_V = \frac{43}{72} * \frac{297}{72} = 2,5 \quad (13)$$

$$RP = 20 \quad (14)$$

The recreational potential of Big Yalta is 20 points. Based on this, let us take a multiplying coefficient of 2.0 and recalculate the existing amount of penalties (Table 4).

4. CONCLUSION

Thus, the study defines the main problems associated with the preservation and development of resort areas; economic invalidity of the existing administrative liability; the lack of a single penalty system to suppress violations and compensate for damages. The following stages of the practical implementation of the developed methodology and the penalty system have been presented:

1. Introduction of the concepts of recreational potential, damage to recreational potential, the areas of special control (or “landmarks” of the area) in regulatory documents; grouping of violations in accordance with the main types of damage to recreational potential, as well as their separation from other administrative offenses into a separate chapter or document.

2. Formation of a separately regulated group of the areas of special control and the development of the appropriate liability type.

3. Review of the penalty amount by introducing a multiplying coefficient in accordance with the developed methodology for the region as a whole; review of the liability for the damage to the natural and climatic component of the area, as the main element of tourist and recreational activities; determination of penalties for the damage to the areas of special control.

The methodology can be successfully implemented not only in the Republic of Crimea, but also in any other tourist destination as the problems discussed are relevant for all countries.

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