



Law on the Rights of Partys in the Tourism Accommodation Business: An Exploratory Study from Vietnam

Nguyen Thanh Phuong, Tran Thanh Khoe, Tran Thi Thu Van*

Nam Can Tho University, Can Tho, Vietnam

Email: nguyenthanhphuong099@gmail.com

Nam Can Tho University. No 168, Nguyen Van Cu Ext Street, An Binh Ward, Ninh Kieu District, Can Tho City, Vietnam

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ABSTRACT:

Conducting tourist accommodation business is understood as the business of marketing or providing accommodation or lodging to paying guests. The 2017 Law on Tourism has provisions relating to the rights of business and service providers as well as paying guests. However, the Law still has some shortcomings. Specifically, there are no specific regulations regarding the cases where tourist accommodation establishments have the right to turn down guests; no regulations requiring accommodation businesses to provide warning information about potential risks, dangers, handling and prevention and no regulations concerning protecting the rights of tourists and guests in the case a travel agency is dissolved goes bankrupt, etc. Therefore, the article aims to point out the shortcomings and proposes some solutions to put them right.

Keywords: tourist accommodation, tourists, parties' rights, 2017 Tourism Law

1. Introduction

The business of tourist accommodation services contributes to a certain source of income for the country. However, in the discussion topic "Tourism development in Vietnam: Looking back from the tipping point - trends, challenges and policy priorities for Vietnam's tourism industry", the World Bank (WB) states that Vietnam has focused only on expanding the scale, number and scope of accommodation establishments to meet the needs of tourists and anticipate the growth trend of tourism (Nguyen Trung Khanh, 2020). The problem is that most accommodation establishments are set up spontaneously and operate in a non-standard manner and for the profit, leading to the instability in the business environment. Worse, many accommodation establishments are actually motels but operate as hotels when their quality is not commensurate with the costs that guests pay. This greatly affects the legitimate rights and interests of guests.

In order to keep the tourist accommodation business in order and ensure the rights and obligations of the parties in the relationship between the accommodation provider and the paying guest, at the third session, the XIV National Assembly of the Socialist Republic of Vietnam approved passed the Law on Tourism in 2017, which consists of 9 chapters, 78 Articles created on the basis of inheriting the provisions of the 2005 Tourism Law. Accordingly, the glossary explains and clarifies the term "tourist accommodation establishment", the types of tourist accommodation establishments, conditions for conducting business of tourist accommodation services, rates tourist accommodation establishments, announces and inspects the quality of tourist accommodation establishments, revokes the Decision on recognition of the class, changes the classes of tourist accommodation establishments and stipulates the rights and obligations of organizations and individuals providing tourist accommodation services, etc., in Chapter and clarifying these flaws and puts forward some solutions to put them right.

2. Concept of rights of parties in tourist accommodation business

According to the Law Dictionary, the term "right" is understood as "Things that the law recognizes and guarantees to perform for individuals and organizations" (Institute of Legal Sciences, 2019). In other words, rights are regulations that individuals and organizations can enjoy, do, and are subject to, which means no one can prevent or restrict them. In the business of tourist accommodation, rights will be characterized by voluntariness, free will and equality among the participants in the relationship, aiming to satisfy material and spiritual needs of the parties. On this basis, it can be deduced that the power of the parties involved in the business of tourist accommodation belongs to the group of civil rights, arising in the civil field between individuals and organizations that provide accommodation services and the other party, who are guests in need of the services.

In legal science as well as in practical law in our country, there are no specific definitions related to the concept of civil rights. Within certain limits, only the concept of "rights" is mentioned. "The rights of the parties in the tourist accommodation business is a legal scientific concept that refers to the things

that the law allows the parties to conduct the business of tourist accommodation. Tourist accommodation service users can be guaranteed and allowed by law, in a certain order, to perform within the limits, arising in the civil field, to satisfy material and spiritual needs of the parties, according to which the parties can enjoy, do, and claim without any restrictions”.

3. Current status of legal regulations on the rights of parties in tourist accommodation business activities

3.1. Rights of organizations and individuals providing tourist accommodation services

Under Clause 1, Article 53 of the 2017 Tourism Law, the law stipulates the rights of organizations and individuals providing tourist accommodation services to the following scope:

“a) to turn down tourists who violate the law, the rules of the tourist accommodation establishment or when the tourist accommodation establishment is no longer able to meet the requirements of tourists;

b) to cancel service provision contracts for tourists who violate the law or the rules of the tourist accommodation establishment.”

The 2017 Tourism Law has established institutions to ensure that tourism accommodation providers exercise their rights. As for the limits of rights of organizations and individuals conducting business of tourist accommodation, there are still some shortcomings:

Firstly, tourist accommodation establishments have the right to "turn down tourists who commit offences". This provision is not really clear. It is because offences can be committed in many different fields and contexts. For example: an offence of dumping and disposing of garbage at the wrong place; not complying with the rules of the tourist area, etc. The fact that the Tourism Law does not specify such offences will lead to inconsistent applications. For example if a tourist refused to comply with the rules and regulations of a resort, would the owner of this tourist accommodation establishment have the right to turn down this tourist or not? This provision is not stipulated in the Tourism Law.

Secondly, a tourist accommodation establishment has the right to turn down tourists if they "violate the rules of the tourist accommodation establishment". This is thought to be the case, in accordance with the regulations of the accommodation establishment. However, this provision is still quite broad and can expand in scope, affecting the rights of tourists. Take as an example the rules laid down by the CK SaiGon Hotel. This establishment imposes many different rules, but it refuses to serve its guests in the case it suspects that its guest is doing an "illegal" activity" (CKSaigonCentral Hotel Rules, 2022). Or take a look at the rules imposed by the Regulations Nha Trang Hotel, with an act that causes damage to the hotel's property, the guest must compensate for it. With guests' offences such as gambling, drug use, illegally taking into the hotel prohibited and restricted items such as weapons, poisonous medicines and explosives will be punished by law and fined by the hotel (InterContinental Hotel Regulations, 2022). Through these examples, it is clear that the accommodation establishment's refusal to serve guests includes cases of violation of the law prescribed by law. The additional reference to the case that the hotel rules should be limited to the phrase "violate the law". It is because being based on the rules imposed by the accommodation establishment will easily lead to the expansion of the scope, in some cases the accommodation establishment may use this provision to turn down guests. For example, an accommodation establishment can turn down a guest because it thinks that this guest is at risk of spreading disease (Trinh Nguyen, 2019) or because this establishment only welcomes foreign guests, not domestic ones (¹ Thai Binh, 2020). or as in the case of the Cat Dai Loi 2 Hotel in Sam Son Thanh Hoa Beach area. This establishment refused to continue serving its guests because they went out to eat without consulting the hotel owner (Lam Anh, 2018).

Third, the tourist accommodation service business has the right to "Cancel the contract of service provision for tourists who commit violations of the law, violate the rules of the tourist accommodation establishment". Compare this content with Article 423 of the Civil Code 2015 stipulating the conditions for cancellation of civil contracts as follows: *“A party has the right to cancel the contract and is not required to pay compensation in the following cases:*

a) The other party's breach of the contract is the cancellation condition agreed upon by the parties;

b) The other party seriously violates the contractual obligations;

c) Other cases prescribed by law.”

From the real-life examples mentioned above, it is found that the conditions for a tourist accommodation provider can cancel the contract when the other party, who is a service user, violates the provisions specified in the contract. This infringes the rights and obligations of the service provider. Because of this, the service provider will have the right to terminate the service provider contract. However, it is not reasonable to see that in Clause 1, Article 53, the accommodation establishment has the right to cancel the contract for the provision of services with the tourist who has committed offences. It is because if committing offences is not in breach of the contract and the rights and interests between the parties in the service provision contract, the service provider's cancellation of the contract flouts the current civil law (Nguyen Thanh Phuong, 2023).

3.2. Tourists' rights to use accommodation services

Under Article 11 of the 2017 Tourism Law, the rights of tourists are specified as follows:

1- *To use tourism services provided by tourism business organizations or individuals or travel on their own.*

2- *Requesting organizations and individuals doing tourism business to provide information about tourism programs, services and destinations under signed contracts.*

3- *To be given favorable conditions for exit, entry, transit, customs, residence and travel in the Vietnamese territory in accordance with the provisions of law and international treaties to which the Socialist Republic of Vietnam is a member.*

4- *To have their legitimate rights and interests guaranteed under the contract entered into with the organization or individual doing business or providing tourism services.*

5- *To be treated equally; be assured of the safety of life, health and property when using tourism services; Have their honor and dignity respected; be provided with rescue services in case of emergency.*

6- *Complaints, denunciations and lawsuits against acts of violating the law on tourism.*

7- *To make proposals to organizations and individuals managing tourist resorts, tourist attractions, tourist service providers and competent state agencies on tourism activities.*

8- *To be compensated for damage as required by law.*

Regarding the provisions related to the rights of tourist, it is necessary to discuss a number of issues related to flaws in legal regulations as follows:

As regards the provisions related to the rights of tourists, it is necessary to discuss a number of flaws in the Tourism Law as follows:

Firstly, the law does not have the uniformity and symmetry between the rights and obligations of the two parties, the accommodation establishment and the guest. It is because, in principle, if the law stipulates the rights and obligations of an accommodation establishment, it is advisable to establish the rights and obligations of the accommodation service user, instead of integrating the rights and obligations of this subject into the provisions related to the rights and obligations of tourists. This is not really reasonable. Have a look at Clause 3, Article 3 of the 2017 Tourism Law, which states that "A tourist is a person who travels for either tourism or for other purposes combined with tourism, except for those travel to study or work". As such, for cases of going to medical treatment, going to cooking school, going on a business trip, etc., it is necessary to use accommodation services, then the law can guarantee the legal rights and interests of the above-mentioned subjects such as guests? Do you use accommodation services when traveling? Obviously, the law only stipulates rights and interests for tourists without mentioning rights and interests for users of accommodation services (Nguyen Thanh Phuong, 2023).

Secondly, tourists have the right to complain, denounce and sue for violations of the tourism law. This is thought to be a specific provision, ensuring the legitimate rights and interests of tourists in general and guests using accommodation services in particular. However, tourists who are short-term guests, when detecting violations, will not proceed to denounce or sue, because these actions need time to implement. In fact, when there are complaints related to the quality of accommodation establishments, failure to display prices, and "overcharging" have not been dealt with in a timely manner. Authorities only announce that they will find out about these cases after tourists publicize the violations on social networks (The Quang, 2020). Although in Article 14 of the 2017 Tourism Law, there are provisions on agencies' dealing with related issues in the field of tourism. However, these provisions focus on tourists' complaints without mentioning what agency is responsible for resolving tourists' complaints. In these cases, tourists' legitimate interests are not protected. Therefore, in order to promptly deal with violations in the tourism sector, there should be Tourism Inspectorate. In this aspect, developed countries have their own inspectors and tourist police to protect tourists' interests. Meanwhile, in Vietnam little attention has been paid to this issue (Hoang Viet, 2020).

Third, the 2017 Tourism Law still lacks relevant provisions to protect tourists in case tourists go out of the country and encounter emergency situations. The measures to protect tourists inside and outside the contract have not been detailed. At the same time, the international settlement of Tourism Disputes has not yet been specified. Basically, in order to determine the legitimate rights and interests of the parties in the accommodation business, it is necessary to consider many different regulations such as: Commercial Law, Enterprise Law, Tourism Law, Civil Code Law, Law on Environmental Protection, Law on Complaints, Law on Denunciations..., Accordingly, the Law on Tourism has not yet fully adjusted the issues related to the rights and obligations of the parties in the accommodation service business. At that time, if there is a comparison with the Tourism Laws of countries around the world, it is found that there is a broader provision. Leading for this issue in Thailand, issues related to rights and obligations and disputes in the tourism sector have been regulated directly by the Law on Tourism instead of having to be compared and reviewed through many documents. laws like in Vietnam. In addition, when compared with member countries of UNWTO and the United Nations complying with ICPT, the International Code for the Protection of Tourists (ICPT) has been applied. The General Assembly adopted in December 2021 at its 24th session in Madrid (Spain). This rule sets out a minimum set of international standards for the protection of travelers in emergency situations and the consumer's rights.

Accordingly, the content of the ICPT include 5 chapters, directly addressing private tourism stakeholders, tourism businesses to encourage these entities to comply with the principles of ICPT, including:

Chapter One: Definition and Explanation

Chapter Two: Supporting international tourists in an emergency situation

Chapter Three: Protecting the tourist in the contract

Chapter Four: International Settlement of Travel and Travel Disputes through Alternative Dispute Resolution Methods

Chapter Five: Mechanism for compliance and application of the recommendations of the International Code for the Protection of Tourists (Admin Idr, 2021). Through the above provisions, it is found that the 2017 Tourism Law still lacks provisions to support international tourists in emergency situations, and protect tourists under contracts

3. Some solutions to protecting rights of parties in tourist accommodation business

Towards the goal that the Tourism Law will fully cover the rights of accommodation establishments and ensure the interests of guests, the 2017 Tourism Law needs to be amended as follows:

Firstly, with the group of rights of accommodation establishments, the law needs to be more specific with cases where they have the right to turn down guests, if a guest's violation of the law affects the business activities of the accommodation establishment such as using social networks to distort or post misleading information about the accommodation establishment, seriously affecting its interests, or using banned substances at the accommodation establishment, or in cases where the guest is prohibited from leaving the place of residence, but the accommodation establishment discovers that this guest is currently using the service at the accommodation establishment, it has the right to refuse to provide the service, instead of the provisions that are still general in nature as those that violate the law will be refused to be served as the present provisions.

Secondly, the concept of tourism business needs to be introduced in order to perfect activities related to aspects of tourism business in general and service business in particular. When comparing the issue with some countries in the world, it is found that most countries do not include the concept of tourism in the law related to tourism. Accordingly, in order to ensure the legitimate rights and interests of the parties, in countries such as Thailand, Singapore, and China, the concept of "tourism business activities" has been introduced. In general, tourism business activities are one of the important contents that the Tourism Law aims at. A guide to this issue can be found in the Tourism Business and Guide Act 2018 of Thailand, which states that "Tourism business means business related to the activities of guiding tourists for travel or tourism, for other tourism purposes by providing one or more services or facilities such as accommodation, meals, navigation or any other service specified by the Tourism Department" (Dao Thi Thu Hang & Nguyen thi ngọc Thùy, 2016).

Thirdly, Clause 2, Article 11 of the 2017 Tourism Law stipulates that tourists have the right to request organizations and individuals providing tourism services with necessary information. But it is not clear that accommodation service businesses must provide warning information about possible risks and dangers, handling and prevention directions, this information plays an important role with the interests of guests using accommodation services. It is the basis for guests to decide whether to use the services of that accommodation establishment, when in Clause 1, Article 37 of the Tourism Law, it only stipulates that "The tourism establishment must notify the "relevant agencies" of potential risks. From it, regarding the obligations of tourist accommodation establishments, additional conditions should be added: accommodation establishments must provide warning information about potential risks and dangers, instructions on how to handle and prevent them.

Fourthly, it is necessary to adjust and supplement provisions related to the responsibilities of the authorities that will be responsible for protecting the interests of tourists in general and guests staying at service businesses. accommodation, under which circumstances will be reasonably protected. It is necessary to add provisions to protect tourists and guests staying in the event of dissolution or bankruptcy of the travel agency, which will promote the protection of the legitimate rights and interests of the tour operators. inside the accommodation service business in the best way.

Fifthly, the interests of tourists need to be prioritized, as well as more explicitly institutionalized. It is necessary to determine at what limits the protection of tourists' interests, which relevant agencies will have the responsibility to protect the interests of tourists, ensure security and safety for them. From the above-mentioned issues, in order to protect the interests of tourists, it is necessary to amend provisions related to the responsibilities of relevant authorities responsible for protecting the interests of tourists and guests at accommodation establishments. It is necessary to include provisions to protect tourists and guests at accommodation establishments in the event that a travel agency is dissolved, or goes bankrupt, etc. In addition to the types of accommodation establishments listed in the 2017 Tourism Law, there are still many types of accommodation establishments that have not been specified and adjusted in this law such as hotels, hospitals and tourist accommodation trains. Therefore, when there are disputes related to rights and obligations between the parties in the accommodation business, the 2017 Tourism Law still cannot cover and adjust all the cases because many types of accommodation business are not specified in this act. Through this, it is necessary to adjust and update these types of accommodation to suit the real-life situation (Phung Thi Thanh Hien 2016, 33-34).

4. Conclusion

Like in many countries in the world, accommodation services have occupied an important position in the economy. In order for tourist accommodation activities to take place in a certain order, as well as for the purpose of sustainable tourism development, the State of Vietnam has introduced many amendments to the Tourism Law such as 2017 Law Tourism, Decree No. 45/2019/ND-CP of the Government on sanctioning of administrative violations in the field of tourism, document 363/VBHN-BVHTTDL in 2022 unifying Decree on sanctioning administrative violations in the field of tourism issued by the Ministry of Culture, Sports and Tourism with the expectation of creating a solid legal framework, towards the sustainable growth of the economy. Through the issues analyzed above, it is found that the law has made certain progress when regulating issues related to tourism in general, rights and obligations of the parties in the tourist accommodation business in particular. However, there are still certain shortcomings that need to be amended to make the Tourism Law suitable for the actual situation, towards the goal of sustainable tourism development in the future.

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