

# SYSTEMATIZING THE LEGAL FRAMEWORK REGULATING ROMANIAN TOURISM – PROPOSAL FOR AN INNOVATIVE PUBLIC POLICY

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**Abstract:** *The numerous Romanian standards and legal regulations, as well as their particularities in the field of tourism lead us to formulating systematising proposals for the existing legal framework in the field of tourism. As a result of reviewing legal regulations of public administration applied to Romanian tourism activities, we observe that there are numerous legal regulations that embrace the field of tourism; moreover, according to an analysis of the nature of these regulations applied in tourism, we notice that it is particularly the state and the public authorities that have regulatory roles in tourism, more precisely the protection role against abnormalities and abuses caused in tourism and the role of developing tourism. We identify the flexibility and heterogeneity as being the important particularities of legal regulations in the field of tourism. We consider as opportune the proposal regarding the systematisation of the existing legal framework in the field of tourism, by creating and elaborating a “Code of tourism”, an instrument that shall re-unite the laws and regulations applicable to the tourist industry for an accessible and easy identification, both from the juridical and institutional points of view.*

**Key words:** *tourism, legal framework, legal regulations, systematisation.*

## 1. Introduction

The numerous Romanian standards in the field of tourism and the particularities of legal regulations in this field make us formulate a proposal of systematisation of the legal framework existing in tourism.

Reviewing as follows the legal regulations that the public authority applies on Romanian tourism activities, we notice a multitude of legal regulations that embrace tourism.

## 2. Analysis of the present Romanian legal framework in the field of tourism

The analysis of the Romanian existing legal framework in the field of tourism contains two types of approaches: the analysis of the Romanian standards and legal regulations and the analysis of the nature of regulations in the field of tourism.

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### 2.1. Analysis of the Romanian Standards and legal regulations in the field of tourism

*The Regulation for tourism organisation and activities* was applied by the Government Ordinance no. 58 of August 21, 1998 regarding the tourism organisation and activities in Romania, approved with amendments and completions by Law no. 755 of December 27, 2001, with further amendments and completions, placing tourism as a priority field within the national economy and ensuring the legal framework of its organisation, coordination and development.

This legal document is complex, comprising the definition of the terminology specific to tourism, provisions regarding the tourist patrimony registration and certification, tourist resorts certification and protection, definition declaration of protected areas, homologation of ski slopes and tourist paths. The Ordinance defines the roles of speciality central public administration, local public administration and the Consultative Council of Tourism, professional associations and NGOs in the field of tourism. Furthermore, it comprises provisions regarding training, specialization and certification of personnel employed in tourism, authorization and classification of tourist accommodation units, certification of tourism agencies, internal and external tourist promotion, as well as provisions regarding rights and obligations of economic agents operating in tourism.

However, by taking this regulation into account as an attempt to formulate a Framework-Law of tourism, we consider that this legal act is not sufficiently complex, it presents outdated concepts – especially as regards tourism skills distribution at the level of public administration, a case in which specialists

in the field need a new Framework-Law of tourism to be elaborated so as to reflect the present image of this field in the context of its harmonisation to the main European trends. To conclude, we underline the necessity to elaborate a new Framework-Law of tourism.

*The Regulation for classifying tourist accommodation units, certifying tourism agencies and conferring tourism certificates* is provided by the following legal acts:

- Government Decision no. 1267 of December 8, 2010 regarding the issue of classification certificates, tourism licences and certificates aimed at protecting tourists. According to the provisions of the legal act presented above, the tourist accommodation units, irrespective of their ownership and organisation, are classified according to their constructive features, offered equipment and services, whereas the economic organisation can undertake bidding and selling services and tourist service packages within Romania only if conferred upon a tourism licence and its appendices issued by the central public administration body in charge with tourism, if necessary.
- Order no. 1051 of March 3, 2011 of the Minister of Regional Development and Tourism regarding the approval of the Methodology for issuing classification certificates, tourism licences and certificates.

*The Regulation for commercializing tourist service packages* is stipulated by the Government Ordinance no. 107 of June 30, 1999, republished in 2008 and approved with amendments by Law no. 631 of November 16, 2001, regarding the harmonization of legislation to that of the member states of the European Union, on tourist packages sold and supplied within Romania, irrespective of their location.

*The commercialization of tourist service packages* is made according to the

*Framework-Contract of commercialization of tourist service packages*, approved by Order no. 516 of April 12, 2005 of the Minister of Transports, Constructions and Tourism.

*The Regulation for insuring tourists in case of tourism agency bankruptcy or insolvency* is stipulated by Order no. 235 of June 6, 2001 of the Minister of Tourism, according to which, economic agents commercializing tourist service packages are obliged to conclude insurances with insuring companies regarding the insurance of reimbursement of repatriation expenses and/or sums paid by tourists, in case of tourism agency insolvency or bankruptcy.

*The Regulations for tourists protection in accommodation units* are comprised in different normative acts, presented as follows:

- Government Decision no. 237 of February 08, 2001 that regulates the approval of norms regarding tourists' access, record and protection in tourist accommodation units.
- Government Decision no. 306 of March 08, 2001 that imposes the use of indiscriminate tariffs and prices for Romanian and foreign tourists and visitors by economic agents in the field of tourism and cultural bodies.
- Government Decision no. 805 of August 23, 2001 that establishes some information measures on maximum tariffs for accommodation services in the tourist accommodation units with functions of tourist accommodation forms of unorganized tourism.

*The Regulation for quality enhancement of hotel services* is comprised in the provisions of Government Decision no. 668 of 2003 regarding the approval of the National Programme of quality increase in hotel services and Q brand launching, considering as necessary the elaboration and approval of the Methodology of

approval of quality quantification criteria and conditions for hotel services, for conferring the Q brand so as to apply the mentioned legal act.

*Tourist resorts certification and assessment and accreditation of national centres of tourist information and promotion* are regulated by the Government Decision no. 852 of August 13, 2008 regarding the approval of certification regulations and criteria for tourist resorts, adopted so as to protect, preserve and capitalize tourist resources, being certified as a tourist resort within a locality or area disposing of natural and anthropic resources and fulfilling cumulatively, for one of the categories, the criteria mentioned in the appendix to this legal act; the certification is made by the ministry in the field of tourism at the demand of local public administration and it is approved by Government Decision.

Accreditation methodology and criteria of national centres for tourist information and promotion were approved by Order no. 1096 of September 3, 2008 of the Minister for Small and Medium Sized Enterprises, Commerce, Tourism and Liberal Professions, accreditation made by the ministry in the field of tourism at the demand of local and county councils which they are subordinated to.

*The Regulation for leisure activities in tourist resorts* is stipulated in the Government Decision no. 511 of May 31, 2001 regarding some organizational measures of leisure activities in tourist resorts, and establishes that leisure activities shall be provided only in especially developed areas that are authorized to function according to the certification conferred by mayors, according to legal regulations in vigour, with prior notice from the ministry in the field of tourism so as to ensure tourists protection and quality tourism development in tourist resorts.

*The homologation of mountainous tourist paths and leisure ski slopes* are regulated by the following legal acts:

- Government Decision no. 77 of January 23, 2003 regarding the imposition of some prevention measures of mountainous accidents and the organisation of rescue activities in the mountains, which comprises regulations on the development, homologation and maintenance of mountainous paths, prevention measures of mountainous accidents and the organisation of rescue activities in the mountains,
- Government Decision no. 263 of February 22, 2001 regarding the development, homologation, maintenance and exploitation of ski slopes and leisure paths, republished in 2008, that aims at ensuring tourists' protection and skiers' security on leisure ski slopes and paths by homologating leisure ski slopes by the minister in the field together with the county councils which form special commissions and consult the representatives of professional associations in the field and the local council in charge of the ski slope or path under homologation, made at the demand of the administrator of the ski slope or path,
- Minister of Tourism's Order no. 491 of October 5, 2001 in order to approve the Regulation regarding the homologation, development, maintenance and exploitation of leisure ski slopes and paths.

*The authorization of tourist beaches and leisure water activities* is regulated by the following legal acts:

- Government Emergency Ordinance no. 19 of February 22, 2006 regarding the use of the Black Sea beaches and the control of activities undertaken on the beaches, approved with amendments by Law no. 274 of July 7, 2006 with

further amendments and completions, adopted so as to conserve beaches and ensure adequate protection to tourists,

- Order no. 1204 of March 26, 2010 of the Minister of Regional Development and Tourism approving the Methodology of tourist beaches authorization,
- Government Decision no. 452 of April 18, 2003 regarding the leisure water activities, establishing the conditions of undertaking leisure water activities in national navigable waters, with the aim of ensuring tourists' protection and security and environment protection; in order to undertake profitable leisure water activities, the bearer of the leisure water area must be in the possession of a tourist authorization certificate issued by the ministry in the field of tourism and an operation certificate issued by the mayor houses, according to the documents the bearer registered in his quality as a solicitor,
- Order no. 292 of September 12, 2003 of the Minister of Transports, Constructions and Tourism regarding the approval of the Methodology for undertaking leisure water activities that establishes the criteria, conditions, issuing procedure of the leisure water activities certificate, as well as the criteria regarding the development, equipment and supply of leisure water areas and regulations regarding the undertaking of such activities.

*The notification of urbanism documents for tourist areas and resorts and of technical documents for constructions with tourist purposes* is regulated by Government Decision no. 31 of January 24, 1996 regarding the approval of the Methodology for the notification of urbanism documents for tourist areas and resorts and of technical documents for constructions with tourist purposes. The specialty notification of the Ministry of Tourism proceeds and conditions the issue

of construction demolition certificate for tourist objectives, whereas it intends to meet the following objectives:

- a) correlation of urbanism and field plan of tourist areas and resorts to the demands of their tourist development and to features specific to planning in the field of tourism, aligned to internal and international standards;
- b) tourist patrimony capitalization and protection through developing sustainable and qualitative tourism in accordance with the strategy and national programme in the field;
- c) increase in the competitiveness of the Romanian tourist demand according to performance criteria specific to constructions with tourist purpose.

*The Regulation for tourism guide certification* is stipulated by:

- Government Decision no. 305 of March 8, 2001 with further amendments and completions, regarding tourism guides certification and employment,
- Order no. 637 of April 1, 2004 of the Minister of Transports, Constructions and Tourism regarding the approval of the Methodology for conditions and criteria for selection, schooling, certification and employment of tourist guides.

*The Regulation for the holiday ticket system* is comprised in the following legal acts:

- Government Emergency Ordinance no. 8 of February 18, 2009 regarding holiday tickets, which are value vouchers that can be given by employers to their personnel according to individual employment contracts so as to recover and keep their labour capacity,
- Government Decision no. 215 of March 4, 2009 regarding the approval of the Methodology for holiday tickets.

## **2.2. Analysis of the nature of Romanian regulations in the field of tourism**

Analysing the nature of regulations in the field of tourism, we observe that there are

the state and public authorities which particularly have regulatory roles in tourism, more precisely the protection role against abnormalities and abuses caused in tourism and the role of developing tourism.

1. *The Protection according to the law against abnormalities and abuses in tourism* aims at fixing abnormalities generated by tourist activities that can threaten public order and abuses within private law rapports, more precisely:

a) *The Protection according to the law of public order* generated regulations regarding ensuring public safety, peace and cleaning, aspects that the public administration is in charge of. In Romania, water and mountainous sport practices which could harm public safety were regulated (Government Decision no. 511 of 2001 regarding some organisational measures of the leisure activities in tourist resorts, Government Decision no. 452 of 2003 regarding the undertaking of leisure water activities, Minister of Transports, Constructions and Tourism's Order no. 292 of 2003 regarding the approval of Methodology for undertaking leisure water activities, Government Decision no. 263 of 2001 regarding the development, homologation, maintenance and exploitation of leisure ski slopes and paths, republished, Minister of Tourism's Order no. 491 of 2001 regarding the approval of Regulations on development, homologation, maintenance and exploitation of leisure ski slopes and paths). Night leisure activities that can disturb public peace were regulated both by the central public administration (Government Decision no. 1267 of December 8, 2010 regarding the issuing of classification certificates, tourism licences and certificates) and by the local public administration, according to Decisions taken by the Local Council regarding the operating programme of public food units, respectively the organization of musical

activities or other crowds of people. Regulations on ensuring public cleaning were adopted at the level of the local public administration and at the level of the central public administration as well, especially those regarding environment protection against tourist pressure, creation of natural parks and protected areas.

b) *The Protection according to the law of tourist consumer* generated specific regulations of tourists' protection in Romania: organisation of lifeguard activities (Government Decision no. 1021 of 2002 regarding the approval of regulations on lifeguard and first-aid activities organisation on beaches and pools), rescue activities organisation (Government Decision no. 77 of 2003 regarding measures to prevent mountainous accidents and organisation of rescue activities in the mountains), regulations on indiscrimination (Government Decision no. 306 of 2001 regarding the use of indiscriminating tariffs and prices for Romanian and foreign tourists and visitors by economic agents in the field of tourism and cultural bodies,), information regulations (Government Decision no. 805 of 2001 regarding some information measures on maximum tariffs for accommodation services in tourist accommodation units with functions of tourist accommodation at unorganised tourism), regulations on comfort assurance (Government Decision no. 1267 of December 8, 2010 regarding the issuing of classification certificates, tourism licences and certificates, the Minister of Regional Development and Tourism's Order no. 1051 of March 3, 2011 regarding the approval of the Methodology for issuing classification certificates, tourism licences and certificates), regulations on personal protection assurance (Government Decision no. 237 of 2001 regarding the approval of regulations on tourists' access, record and protection in tourist

accommodation units), regulations on the assurance of rights and obligations obedience and knowledge (Government Ordinance no. 107 of 1999 regarding the commercialization of tourist service packages, republished, Law no. 631 of 2001 regarding the approval of Government Ordinance no. 107 of 1999 regarding the commercialization of tourist service packages, Minister of Transports, Constructions and Tourism's Order no. 516 of 2005 regarding the approval of the commercialization Framework-Contract of tourist service packages), regulations in the field of hygienic and sanitary safety (Mutual Order of Minister of Tourism, Minister of Health and Family, Minister of Public Administration and Minister of Waters and Environment Protection no. 330/262/109/327 of 2002 regarding the disinfection and deratization of tourist accommodation units in beach resorts), regulations for tourists' insurance (Minister of Tourism's Order no. 235 of 2001 regarding tourists' insurance in case of tourism agency insolvency or bankruptcy) etc.

c) *The Protection according to the law of tourist profession* needed regulations so as to ensure honesty, competence and solvency of service providers in the field, protection of the commercial sector against abusive and disloyal competition and nonprofessional providers and last, but not least, tourists' protection. Tourism organisation and activities in Romania were regulated by Government Ordinance no. 58 of 1998 that was approved with amendments and completions by Law no. 755 of 2001, with further amendments and completions. The activity of tourist accommodation units, of tourism agencies and the issuing of tourism certificates was regulated (Government Decision no. 1267 of December 8, 2010 regarding the issuing of classification certificates, tourism licences and certificates, the Minister of

Regional Development and Tourism's Order no. 1051 of March 3, 2011 regarding the approval of the Methodology for the issue of classification certificates, tourism licences and certificates). Furthermore, the profession of tourism guide was certified (Government Decision no. 305 of 2001 regarding tourism guides certification and employment, with further amendments and completions, the Minister of Transport, Construction and Tourism's Order no. 637 of April 1, 2004 regarding the approval of the Methodology for conditions and criteria of tourist guides selection, schooling, certification and employment).

2. *The Protection according to the law of tourism development* is manifested by the creation of laws to regulate tourist activities by the public powers (Government Ordinance no. 58 of 1998, regarding tourism organisation and activities in Romania, with further amendments and completions, which was approved by Law no. 755 of 2001, with further amendments), as a result of considering tourism as an important source of income at the national level, as a lever within regional development, and last, but not least, as a social necessity. Moreover, the regulation of paid holidays, subsidies given to retired persons as balneal treatment tickets, created so as to introduce tourism in the social field, the introduction of holiday tickets, have all determined the development of important bodies and legal rules.

### **3. Particularities of legal regulations in the Romanian field of tourism**

The particularities of legal regulations in the field of tourism are determined by the specificity factor in the originality of legal regulation features that regard this field, identifying flexibility and heterogeneity as important particularities of the legal regulations in this field.

Flexibility is one of the particularities of legal regulations in the field of tourism, as they must be integrated within less definite and less constant notions, theories, rules than those of other fields, in order to keep up with the dynamics of the tourism activity. The legal instruments must be able to translate the necessities of some compliant economic policies and adapt to the evolution and complexity of production and consumption specific to tourist activities.

Heterogeneity is another feature of the legal regulations in the field of tourism, as tourism according to its nature, is heterogeneous. Heterogeneity manifests itself at the level of objects, sources and nature of all the legal acts in this field.

### **4. Systematisation proposal of the present legal framework in tourism**

As a consequence of all the issues presented above, we consider it appropriate the systematisation proposal of the legal framework existing in tourism, by creating and elaborating a "Code of tourism", an instrument that shall unify all the legal stipulations applicable to tourism, making the identification easier and accessible both legally and institutionally.

This "Code of Tourism" shall contain a legislative part and a regulatory one.

The legislative part of the "Code of Tourism" shall consist of the following titles:

Title I. – will be on the general organisation of tourism, especially on the assignment of tourism skills among the state, the territorial communities and institutions resulted through the public-private partnership;

Title II. – regulation of activities and occupations in tourism,

Title III. – regulation of the activities of accommodation units, infrastructure and development in the field of tourism, respectively, the status of tourist resorts

and national centres for national tourist information and promotion.

Title IV. – taxation in tourism and grouping of regulations regarding the financing of tourism activities and access to holiday, rest and treatment.

The regulatory part of the “Code of Tourism” shall respect the principle of coding taken from the legislative part, underlining the necessity of ensuring harmony and hierarchy of its right to abolish contrary provisions. This part shall also comprise regulations regarding the procedure of enforcement, the establishment of exercising activities of journey and accommodation organization and commercialization, as well as including regulations from other fields crossing the field of tourism.

This “Code of Tourism” shall systematize the legal framework existing in the field and shall comprise all the legal regulations and also other regulations connected to tourism so as all further completions should be accessible rapidly, in a competent and coordinated manner.

### 5. Conclusions

To conclude, there are numerous legal regulations that embrace the field of tourism; moreover, according to an analysis of the nature of these regulations applied in tourism, we notice that particularly the state and the public authorities have regulatory roles in tourism, more precisely the protection role

against abnormalities and abuses caused in tourism and the role of developing tourism.

We consider as appropriate the systematisation proposal of the legal framework existing in tourism, by creating and elaborating a “Code of Tourism”, instrument that shall unify all the legal stipulations applicable to tourism, making the identification easier and accessible both legally and institutionally.

The proposal to create and elaborate a “Code of Tourism” is formulated at an adequate moment, combining with the opportunity of involvement of the Inter-ministerial Commission for Tourist Development in Romania – consultative body with no legal personality, created with the aim of coordinating and promoting public policies, as well as undertaking analysis and development actions in the field of tourism – body that shall coordinate the elaboration of this instrument.

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