

LEGAL REGULATION OF TOURIST ACTIVITIES: RETROSPECTIVE ANALYSIS, CURRENT STATE AND PROSPECTS OF DEVELOPMENT

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The article is dedicated to the study of the issues of formation and development of tourist activities in Russia in the pre-revolutionary, Soviet, post-Soviet and modern periods of history, the analysis of problems of legal regulation of relations in connection with the implementation of tourist activities in current conditions, as well as the legal assessment of the prospects of such regulation. In the article, the factors determining the development of certain types of tourism, the directions of formation of public policy for the development of tourism in different historical conditions, the models of legal regulation of tourist activities combining organizational-public influence and private bases of regulation of the provision of related services have been provided for each historical period. The main tourist relations associated with the provision of tourism services are of private nature. Taking this into consideration, it should be stated that a special law under study, in spite of many changes, still has disadvantages associated with the terminology used, still full of declarative rules and rules of indirect action. This is not conducive to implementing many positive provisions aimed at protecting the rights of tourists, preserves a number of inconsistencies towards civil law on consumer rights protection, and does not adequately regulate contractual relations between tourists and travel agents (tour operators). The novelty of research is determined by the fact that the author proposed the periodization of the stages of development of tourism legal regulation. In addition, based on the analysis of the current legal regulation of tourism, proposals have been made to improve tourism legislation.

Keywords: tourism, tourist activities, tourist service, tourist, travel agent, tour operator.

1. INTRODUCTION

Over the last years in Russia, considerable attention has been paid to the development of tourist activities as a branch of economy. The prospects of Russian tourist complex development largely depend on the strengthening of state legal regulation of the tourism sphere on a nationwide scale, which must be combined with a modern strategy of promoting regional tourist services.

The state orientation on the development of a free market economy has led to extremely rapid growth of the market of tourist services, which are the specific consumer product of steady demand, providing, upon the experience of countries with developed tourism, substantial revenues to the state budget.

The development of tourist relations causes the necessity of development of legal means of regulation of tourist activities. In particular, at the present stage of development of the Russian economy the solution of problems of the rights of

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citizens-consumers (tourists) when rendering tourist services is of great importance.

It should be noted that “relations in the sphere of tourist activities represent complex public relations regulated by the rules of civil, administrative, tax laws, etc. However, the majority of rules regulating tourist activities are from the civil law” (Tolstova, 2004).

During the Soviet period, the legal framework in the sphere of tourist activities was represented only by departmental acts that were obviously insufficient. The expansion of the market of tourist services demanded from the legislator of a new approach to the regulatory and legal registration of tourist relations in the form of federal legislation. This led to the adoption of the Federal Law as of November 24, 1996 No.132-FZ “On Bases of Tourist Activities in the Russian Federation”, which marked a new milestone in the development of legal regulation of tourist activities.

In the contemporary period, the legal regulation of tourist activities is incomplete and contradictory, which causes difficulties in enforcement.

2. METHODS

In our opinion, the study of the historical experience in the sphere of legal regulation of tourism activities will contribute to the objective consideration of existing complex problems. A retrospective analysis of the regulatory control of tourist activities will allow to summarize the legal experience of the past and use it at the present stage. In connection with this, the historical and legal analysis of the process of formation and development of the tourist legislation in Russia seems to us appropriate and relevant.

Based on the historical and theoretical tradition of studying the problems of branches of jurisprudence, we will consider the questions of occurrence and genesis of legal regulation of tourist activities in Russia by providing historical stages. The peculiarities of the state policy and legislation in the sphere of tourism allowed us to identify the following periods: pre-revolutionary, Soviet, post-Soviet and modern periods.

3. RESULTS

Let us consider the stages of formation and development of legal regulation of tourism in Russia. Moreover, it must be assumed that the need for legal regulation became apparent only with the emergence and development of mass tourism. In this connection, in the pre-Soviet period we can only talk about the state regulation of certain social phenomena related to tourism, such as: the organization of geographic expeditions, training abroad, the establishment of medical and health centers for the victims of military conflicts, etc. Legal regulation of tourism in our country appeared in Soviet Russia. But the majority of USSR regulatory legal acts have been devoted to the development of health resort tourism.

It is only in the modern period of development of economic relations in Russia, when we can talk about the creation of a full-fledged, expanded legal framework governing relations in the sphere of tourism.

3.1. Tourism development in the pre-Soviet period

The history of tourism development in Russia, especially in the pre-Soviet period, shows that at that time state tourist organizations were not established and tourism development was based solely on the activities of enthusiasts and entrepreneurs.

“In Russia, tourism development as a segment of economy began at the end of the 19th century. During this period, travel agencies began to appear. They arranged excursions and showed visitors the sights and, respectively, received income” (Egorov, 2015).

Until that time, we can only talk about the beginning of structural public impact on tourism and what priorities were the basis for the formation of the state policy in this sphere.

Since the beginning of the reign of Peter I up to the 80-ies of the 19th century, the formation of tourism sector was due to a number of circumstances.

1. Active conquest of maritime spaces. Marine expeditions are actually a kind of tourist travel. “At that time, the state set the following goals: strengthening of state power, the formation of international and national water transport routes, and the invasion of new territories” (Zolotareva, 2013). In addition, a focus of the state policy on the formation of Russia as a maritime power has given rise to the need to prepare the appropriate staff. On November 22, 1696, Peter I issued a decree “On Sending Stolniks to Europe in the Amount of 61 People to Study Navigation”. In January 1697, he also made an instruction for stolniks “Articles on Navigation Training”, which included a detailed foreign education program.

In the following years, this practice was continued successfully (Zolotareva, 2013). In this regard, the analogy with modern educational trips organized by tourist agencies can be traced, which, in turn, allows to consider foreign trips for mastering marine science as the first Russian experience of educational tourism.

2. Wars, which highlight the problems of health care of military men. When Peter I issued a decree ordering “... to look for spring waters, which can be used for treating various diseases”, no one thought that this would be the birth of such type of tourism as wellness tourism. On the basis of this Decree, in 1719 the first resort was opened in Russia (Kvartalnov, 2001). By the end of the 18th century, Caucasian Spas became a center of the study of natural medicinal resources.

3. A large number of geographical expeditions were held in the period since the second half of the 18th century till 80-ies of the 19th century. The goals of these trips were diverse. Firstly, this was the invasion of new territories, expanding the sphere of influence. Secondly, there were educational purposes: familiarity with cultural achievements of different peoples, their religion; skills of territorial movements were being formed, which contributed to the dissemination of geographical knowledge of countries. It should be stated that the expedition equipment was financed from both public and private sources. However, if commercial profit was expected to be gained, it was caused not by deriving profit from a travel agency for a particular group of people, but by the advantages which were offered in connection with the spread of influence of the state and private capital on new territories.

The formal expression of political will was to adopt royal decrees which were aimed not at the development of traveling as an activity, but at solving other issues or organizing trips.

As noted above, in Russia the formation of the tourism industry within its modern understanding began with the organization of sightseeing tours since the end of the 19th century. Until 1910, sightseeing trips were spontaneous, and, as a rule, students participated in such trips. After 1910, district and provincial councils turned their attention to tourism development and began to make allocations for tours.

In 1915 in Petrograd, the First All-Russian Congress on the improvement of national medical areas was held. In the resolution of the Congress materials, it was noted that “tours across Russia can distract a significant number of Russian people from travelling and receiving medical care abroad. This will save a great deal of money that is exported abroad”. The Congress recognized that the development of tourism and excursions is a matter of national importance, as travelling across Russia will stimulate industrial and commercial enterprises and “such trips of foreigners to Russia will attract foreign production capital” (Dolzhenko, 1988).

Thus, in that period mass tourism emerged: at the level of local government small funds for excursions were allocated, the need for tourism business as a sector of economy was recognized.

3.2. Legal regulation of tourism in the Soviet period

Regulatory support of tourism in the Soviet period was determined by the fact that the sphere of tourism services was developed under the conditions of the administrative-command system of the USSR.

After the October Revolution and prior to the adoption of the USSR Constitution in 1936, the state adopted legal acts in the sphere of tourism in the form of decrees. During this period, the following decrees were issued: “On Nationalization of

Resorts" (1918); "On Therapeutic Areas of National Importance" (1919); "On Organization of Holiday Hotels" (1919); "On Health Resort Treatment Principles" (1919).

In 1927 in the USSR, there appeared documents that laid the foundation for the legal regulation of tourism. This was due to the fact that the government chose the social orientation of its activities as a priority. Enforcement of the workers' right to rest and leisure has become one of the main tasks of the USSR.

Prior to the World War II the state policy in the sphere of tourism was formed in two ways. The first direction was due to the health resort treatment: by the beginning of 1940 in the USSR, there were 3,600 health resorts and health hotels, leading resort areas were reconstructed and expanded, including the Black Sea coast of the Caucasus. The second direction involved trips which represented amateur mass expeditions. At the same time, an organizational impact was initially exerted by the formation of non-governmental organizations, and then public-management structures began to form (for example, in 1936 the Tourism Excursions Department in the All-Union Central Soviet of Trade Unions (AUCSTU) was created). It should be noted that tourism issues fell under control of the USSR Trade Unions.

In the postwar period, there was an active process of reconstruction of destroyed tourism objects, and only by 1959 the number of tourist establishments reached the pre-war levels. The prospects of development of planned and amateur tourism in the 1950s were determined in a special AUCSTU Resolution on Tourism Issues as of September 26, 1950. In this Resolution, for all trade unions and voluntary sports organizations it was pointed out that tourism should take the lead in their work and special attention should be given to local tourism.

In 1960, self-supporting health resorts, resort clinics and holiday hotels, with the exception of children's leisure facilities and tuberculosis resorts, were transferred to trade unions (Zolotareva, 2013).

Legal regulation of tourism in the 70-80-ies is also characterized by the absence of a special law. The rules governing relations in the tourism industry are contained in the regulations adopted by various agencies. The main among them were as follows: Regulation on Resorts (1973); Terms of Establishing a Travel Agency and Tours of the Tourism and Excursion Council (TEC) system, approved by the TEC Resolution as of May 14, 1989, Protocol No.15; Resolution on Referring Hotels to the Ranks; The AUCSTU Presidium Decree as of September 30, 1977, Protocol No. 14 "On Measures to Develop Local Tourism and Excursions Among Workers"; The AUCSTU Presidium Decree as of November 15, 1976 "On the Standard Provision of Urban Tourist Club of the Tourism and Excursion Council"; Rules of the Organization and Conduct of Amateur Tourist Hiking and Traveling on the Territory of the USSR (1983); The TEC Resolution as of June 10, 1975, Protocol No. 10 "On the Trip Application Log".

An extensive program to improve activity holidays has been developed in the CPSU Resolution, the USSR Council of Ministers and AUCSTU “On Further Development and Improvement of Tourist and Excursion Business in the Country” (1980) and in “Order of the TEC and the USSR Ministry of Civil Aviation” as of August 27, 1986, No. 3938/4; 26.1.7-897 “On Further Development of Tourist and Excursion Services in the Country in the Period of 1986-1990 and for the period up to 2000” (Kvartalnov, & Fedorchenko, 1989).

Thus, in the Soviet period of development of the tourism industry, the government considered tourism as mass amateur vacation, i.e. as a guarantee of the enforcement of the workers’ right to rest and leisure. Health-resort tourism develops under the control of trade unions. It should be said that, on the one hand, trade unions operated as public organizations and, on the other hand, they covered one hundred percent of the population and their decisions were binding. This suggests that in the period under review the focus was on the social side of tourism and its material base was not considered as part of the state’s economy. Based on these pre-conditions, a legal framework of tourism were formed – trade unions were the main policy makers in this sphere, since they performed the function of protection of workers’ rights, including in the sphere of recreation and health care of Soviet citizens.

3.3. Pre-conditions for the formation of new Russian law on tourism

The breakup of the Soviet Union led to the collapse of a well-functioning regulatory system of international and national tourism. In 1992, the National Committee of Foreign Tourism was abolished; in January 1992, the Ministry of Physical Culture and Tourism became its successor. TEC AUCSTU was reorganized into Tec-Intour OJSC. The situation was not in favor of civilized development of tourism in the country. The tourist space was temporarily not under control.

Russian specialists in the sphere of tourism, policy makers and law enforcers faced a lot of problems, the main of which was the imperfection of the legislative base of tourism: the existing regulations did not meet the realities of the time, and new ones were not adopted. Such situation gave rise to a lot of disputes and “unregulated” issues. Such situation was unacceptable both for consumers and tourist product providers, who were tired of the unpredictability of the transition period.

“In spite of its enormous tourist potential, Russia occupied a very modest position in the international arena, when compared with the European countries, where they paid attention to the legal regulation of tourism long before. In a number of European countries – the Federal Republic of Germany, France, Italy, Portugal – special laws in the sphere of tourism and international traveling have been adopted. In other countries, issues on the legal regulation of tourism and traveling were also fixed in the framework of national legislation” (Tolstova, & Uvarov, 2008).

Russia, which had no experience in the regulation of tourist activities in the market economy, turned to the practice of the European Union countries, which should certainly be regarded as a positive aspect.

At the same time, it must be noted that a number of discretionary rules were borrowed without regard to Russian legal realities and institutions: the limits of coincidence and discrepancy of subjects of regulation have not been properly evaluated, a place of provisions of an “imported” regulatory act in the system of sectoral and cross-sectoral regulation and its interrelation to the other acts have not been defined, the information on practical application of the law being compared has not been studied.

Already in the early 90-ies, the projects of the Federal Law on Tourism have been actively developing. However, the formation of the legal base of the Russian tourism did not begin with the law.

On April 24, 1994, the Decree “On Additional Measures on Tourism Development in the Russian Federation and on Ordering the Use of State Property in the Sphere of Tourism” was adopted by the Russian Federation President. For the first time a regulatory act of this level stated as follows: “Full support of tourism development in the Russian Federation should be recognized one of the priority tasks of the state”.

The Presidential Decree as of December 2, 1995 “On the Reorganization and Development of Tourism in the Russian Federation” approved the Concept of Reorganization and Development of Tourism in Russia. The concept provided an independent analysis of the state of the tourism industry. The causes of the failure of the Russian national tourism have been stated. Moreover, tourism was included in “the list of the main lines of the Russian economy”. But more recently, the list of priorities of the structural economic policy included such sectors as fuel and energy complex, the conversion of the military industrial complex, transport, communications, telecommunications, housing, science. The same Presidential Decree provided for the establishment of the legal framework of tourism with the use of world experience. From this position developed the Federal Target Program “Development of Tourism in the Russian Federation”, approved on February 26, 1996 by the Resolution of the Russian Government that was ordered by the State Committee for Physical Culture and Tourism.

The program was a launch pad for the tourism industry (Shpilko, 1996), giving rise to the actual state regulation of tourist activities.

“This is the first comprehensive targeted program, developed in connection with the requirements of the time. The very fact of its release indicates a change in the state’s attitude to the development of tourism as a very competitive sector of economy and a special kind of social activities.

The program is based on the laws and other legal acts that have established new rules of economic activities in Russia. It also takes into account the decisions

and recommendations of the World Tourism Organization, other international documents and regulations in the sphere of tourism, agreements on the development between the Russian Federation and other states” (Tolstova, 2005).

In the development of this program, previously adopted federal targeted programs, such as “Development of Specially Protected Eco-resort Region of the Russian Federation – Caucasian Mineral Waters” were taken into account. By this time, the republics of Altai, Tuva, Dagestan, Yakutia, the Koryak Autonomous Area also had their own programs of tourism development.

The main objective of the Program is to stimulate the development of national and international tourism in the Russian Federation, to form a modern highly effective and competitive tourist complex.

Thus, tourist activities in Russia gradually became an object of the state’s attention, a subject of regulatory control with the use of regulatory acts adopted by the Russian Federation President, the Russian Government under the action of new market laws.

3.4 The current state and prospects of development of legal regulation of tourist activities

The Federal Law as of November 24, 1996 No. 132-FZ “On Bases of Tourist Activities in the Russian Federation” is a special legal act regulating tourist activities in the Russian Federation nowadays (hereinafter – the Law). Since the Law came into force with the aim of improving the legal regulation of the tourist sphere, it has repeatedly been amended. In addition, changes to the Law are aimed at eliminating discrepancies towards the civil law. Nevertheless, it must be noted that in the current edition the Law is still full of contradictions, incorrect wordings and legal flaws. Many of the provisions of the Law, including those relating to the regulation of relations, arising between a tourist and a provider of tourism services, are still contrary to the civil law.

Thus, the analysis of the provisions of the Law does not allow to speak clearly about the legal nature of the contract for the provision of tourist services. The use of the term “tourist product” rather than “tourist service” (as it was often suggested in the legal literature) suggests the idea that the legislator still considers the contract, on the basis of which tourist services are provided, as a Retail Sales Contract, that certainly contradicts the provisions of the Civil Code of the Russian Federation. The use of the concept “tourist product” also cannot be considered correct, since a system of objects of civil rights does not include such object as a tourism product. In addition, certain rules contained in Article 1 of the Law worsen the situation of a tourist as a consumer in comparison with the rules of the Law of the Russian Federation as of February 7, 1992 No. 2300-1 “On Protection of Consumer Rights”, resulting in a lack of adequate legal protection of tourists.

Currently, there is the following positive trend: the current version of the Law has made significant adjustments to the order of building relationships of the parties to the contract for the provision of tourist services. “The legislator has clearly defined that a contract on the tourism product sales is concluded between a tourist (and (or) other customer) and a travel agent, but responsibility for the actions of persons who directly provide services that are part of a tourist service package, is borne by a tour operator (i.e. an entity which forms a tourist service and is in a contractual relationship with carriers, hotels and other enterprises of the tourism industry)” (Tolstova, 2008).

The Law significantly tightened the requirements for legal entities engaged in tour operator activities, as well as for travel agents that provide a tourist service formed by a foreign entrepreneur (the legislator imposes the same requirements on them). A person promoting and selling a foreign tourist product (travel agency activities) should now conform to the requirements for persons engaged in tour operator activities (financial security, responsibility before tourists, etc.). This can lead to the confusion, which the legislator tried to avoid, distinguishing tour operator and travel agency activities in the Law on Amendments.

The current Law in the latest edition is replete with declarative rules or rules with indirect effect, which makes it impossible to implement many positive provisions laid down therein.

The Law drawbacks include inadequate regulation of contractual relations arising on the tourist consumption of a tourist service, which is essential. Insofar as four articles of Chapter 39 of the Civil Code of the Russian Federation “Fee-based services”, regulating the broad scope of services rendered, are not enough to account for the specifics of certain types of services, including tourist services, it seems appropriate to include in the Law a separate chapter “Contract of fee-based provision of tourist services”. This chapter should contain a legal definition of the contract of fee-based provision of tourist services, establish a procedure for its conclusion, fix the rights and obligations of the parties to the contract – an agent (tour operator (travel agent) and a customer (tourist) – and the responsibilities of the contractual parties for improper fulfillment or non-fulfillment of contractual terms. Such detailed regulation is needed due to the features of the contract of fee-based provision of tourist services and a lack of provisions of the Civil Code of the Russian Federation when regulating relations between a tour operator (travel agent) and a tourist (client), resulting in the provision of tourist services.

Changing socio-economic conditions, the experience of the tourist market, as well as the results of law enforcement show the need for major changes to the tourism legislation. In this regard, it is necessary to adopt a fundamentally new Federal Law “On Tourism and Tourist Industry in the Russian Federation”, which, developing the ideology of the current law, would have made changes and additions to the scope of legal regulation of tourism in order to eliminate the above-mentioned drawbacks.

4. DISCUSSION

The analysis of the current tourism legislation allows to conclude on the need to further improve the rules regulating the provision of tourist services. The Law “On Bases of Tourist Activities” in the latest edition is replete with declarative rules or rules with indirect effect, which makes it impossible to implement many positive provisions laid down therein.

In particular, the Federal Law “On Bases of Tourist Activities in the Russian Federation” lacks full regulation of contractual relations arising on the tourist consumption of tourist services, which is essential. Insofar as four articles of Chapter 39 of the Civil Code of the Russian Federation “Fee-based services”, regulating the broad scope of services rendered, are not enough to account for the specifics of certain types of services, including tourist services, it seems appropriate to include in the Law a separate chapter “Contract of fee-based provision of tourist services”. This chapter should contain a legal definition of the contract of fee-based provision of tourist services, establish a procedure for its conclusion, fix the rights and obligations of the parties to the contract – an agent (tour operator (travel agent) and a customer (tourist) – and the responsibilities of the contractual parties for improper fulfillment or non-fulfillment of contractual terms. Such detailed regulation is needed due to the features of the contract of fee-based provision of tourist services and a lack of provisions of the Civil Code of the Russian Federation when regulating relations between a tour operator (travel agent) and a tourist (client), resulting in the provision of tourist services.

In the development of current tourism legislation the following principles should be applied:

1. Legislation in the sphere of tourism should take into account the underlying processes of society and economy development. It may not be casuistry, i.e. keep the focus on the solution of up-to-the-minute problems.
2. Legislation in the sphere of tourism should not include declarative laws, the basic content of which is reduced only to the proclamation of goals and objectives of the regulation of corresponding relations. Laws should be direct-acting as much as possible and comprehensively regulate certain relations in tourism.
3. The principle of historicism is fundamental to all legislative activities in the sphere of tourism. Attempts that do not take into account the rule-making experience of the Soviet period of development of our state inflict major damage on the quality of laws. Unfortunately, in the development of the Federal Law “On Bases of Tourist Activities in the Russian Federation” interesting and useful rules of the USSR tourism legislation and best proposals of law scholars on legislation improvement have not been taken into account.

4. “Stability, predictability and actuality of the tourism legislation can be achieved with the participation of both qualified lawyers and leading specialists (academics and practitioners) of the tourism industry in its development on the basis of parity” (Pisarevsky, 2002).
5. Driving for unconcerned borrowing of foreign legal institutions inflicts no less harm on the quality and efficiency of the Russian law. As a result, there is an effect of legal rejection of a foreign rule out of a mass of regulatory acts.

5. CONCLUSION

In this article, we considered the peculiarities of legal regulation of tourism at different historical stages.

The pre-Soviet period is characterized by the lack of tourism in the modern sense, as a mass social phenomenon. In connection with it, we reviewed the following: firstly, circumstances, which caused the beginning of formation of the tourist sphere; secondly, first attempts of public influence on travelling. The end of the pre-Soviet period was marked by the appearance on the market of the first specialists who derived commercial benefits from the organization of excursions. Although, certainly, here we cannot talk about the establishment and functioning of the tourism industry and its legal regulation.

In the Soviet Russia, for the first time in its history a number of regulatory legal acts regulating tourism were adopted. The features of the legal regulation of tourism in the USSR are derived primarily from the social orientation of activities of the Soviet State.

Analyzing the legal regulation of tourist activities in the Soviet period, we conclude on the absence of systematic legal control of tourist activities. Before tourism was recognized one of the sectors of economy, generating real income to the state budget, “in Russia there were neither laws on tourism, tourism service rules nor standard contracts that would define the responsibility of a travel agency before the client” (Chebotar, 1997). The lack of legal regulation of tourist activities identified spot development of tourist relations in the Soviet period and targeted distribution of only one of the types of tourism, requiring the least attention of state authorities – amateur tourism.

In the early 90-ies of the last century, tourist activities became an object of special attention from the state, a subject of regulatory acts of the President of the Russian Federation, the Russian Government, adopted under the action of the new market laws.

In these circumstances, there is an urgent need to develop specific legislation to regulate this relations, taking into account their specificity, to protect the rights of their participants, with a view to ensuring the priority of consumer’s interests in the market of tourist services, to create the most favorable conditions for the proper

provision of tourist services in accordance with their specificity and features, to develop a special conceptual apparatus that would allow to reflect these features.

The Federal Law “On Bases of Tourist Activities in the Russian Federation” is a special legal act regulating tourist activities in the Russian Federation nowadays. However, many of the provisions of this Law, including those relating to the regulation of relations, arising between a tourist and a provider of tourist services, are contrary to the current civil legislation of the Russian Federation. In particular, relations in the sphere of provision of tourist services are defined in the law on tourist activities as a kind of retail sale. In addition, certain rules contained in Article 10 of the Law, worsen the position of a tourist as a consumer in comparison with the rules of the Law “On Protection of Consumers’ Rights”. This implies the lack of adequate legal protection of tourists.

In conclusion, it should be emphasized that the process of developing a legal framework for the relations arising from the contract of provision of tourist services is far from complete. Lack of full legislative regulation of these relations leads to negative consequences and infringement of the legitimate rights and interests of the parties.

We suppose our study will be in demand in the process of improving legislation on tourist activities and in the implementation of activities on the provision of tourist services. We indicated some existing problems in this sphere, many of them have not been mentioned in this article. In this regard, the authors intend to continue to study these issues in further research activities.

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