

ECOTOURISM IN LEGAL FRAMEWORK – EXAMPLES FROM SERBIAN LEGISLATION

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Abstract: *Ecological tourism in protected areas requires the visitors to act in a more disciplined manner than at other tourist destinations. They have to be aware of the importance of protection and sustainable use of environment and to have the knowledge about essential ecological processes and natural values. The implementation of precautionary measures is the most efficient way to prevent the deterioration of protected habitats and their endangered wildlife from the risks caused by tourist visits. The authors of this paper critically analyse current legal framework of the Republic of Serbia pertinent to various aspects of ecological tourism, highlighting its advantages and disadvantages and suggesting potential steps for its improvement. Moreover, they suggest introduction of a new term “eco-tourist” i.e. the visitor of protected natural sites who, as the holder of specific rights and obligations, is expected to possess a special permission or approval to perform certain activities on these areas, issued by an authorized state body.*

Keywords: *ecotourism, legal provisions, prevention, sustainable development, environmental protection.*

Introduction

The International Ecotourism Society (2015) defined ecotourism as "responsible travel to natural areas that conserves the environment, sustains the well-being of the local people, and involves interpretation and education". This (sub)type of sustainable tourism (Donohoe & Needham, 2006; Kiper, 2013) must be nature-based, sustainable and implemented with strict protection of natural values (Buckley, 1994; Blamey, 2001). Ecotourism is organized on a concept of active nature conservation, and cooperation and inclusion of local communities (Butler, 1999; Neil & Wearing, 1999; Québec Declaration on Ecotourism, 2002; Mowforth & Munt, 2008). It is important, during its activities, not to compromise the state of natural ecosystems and biodiversity (Eriksson & Lidström, 2013).

Because of its specificity, ecotourism is most common in the areas protected by environmental laws (Fennell, 1999). In that sense, ecotourists are "individuals engaging in activities clearly differentiated as ecotourism

that are more environmentally aware and active than other consumers" (Weaver & Lawton, 2007). Actions of ecotourists need to be oriented on minimum or zero environmental impact. The pattern of sustainability has to be incorporated in all activities of ecotourism (Kiper, 2013).

The legal organization of eco-tourism is based on two levels. The first one is international, and their implementation depends on the number of signatory countries. The second level is national and vary from state to state, but their norms strive for the same goals, especially if these countries have ratified the same international legal documents.

Serbia's Potentials for Ecotourism

Well-preserved nature is one of the fundamental competitive advantages for positioning of Serbian tourism on the international tourist market and there is no doubt that the development of ecotourism in Serbia should be based upon the natural values of its numerous protected areas (Popesku, 2002).

There are 462 natural areas in Serbia under some regime of environmental protection. Five of them are national parks (Đerdap, Fruška Gora, Kopaonik, Šar planina and Tara), 16 are landscapes of exceptional features, 67 are nature reserves, 16 are nature parks, 316 are natural monuments and 42 are areas of cultural and historical importance (Institute for Nature Protection of Serbia, 2019). Among them is one biosphere reserve in south-western Serbia within the inner zone of the Dinaric mountain system, Golija-Studenica Biosphere Reserve, officially approved by the MAB Board in 2001 (UNESCO, 2017). Many of these sites represent attractive tourist destinations and special natural reserves. The size of total protected area in Serbia comprises 6.19% of its territory (5471,76 km²) and the spatial plan of the Republic of Serbia claims that it should be enlarged so that it covers up to 12% of the country's territory by 2021 (Spatial Plan of The Republic of Serbia from 2010 to 2020, 2010).

Serbia also has rich cultural heritage, some components of which are included in UNESCO World Heritage List, such as: Gamzigrad-Romuliana, built by ancient Roman Emperor Caius Valerius Galerius Maximianus, in the late 3rd and early 4th centuries (on the list from 2007)¹, medieval fortress Stari Ras and Sopoćani Monastery (on the list from 1979)² and Studenica Monastery (on the list from 1986)³.

1 UNESCO. (2019). *Gamzigrad-Romuliana, Palace of Galerius*. Retrieved from <http://whc.unesco.org/en/list/1253>

2 UNESCO. (2019). *Stari Ras and Sopoćani*. Retrieved from <http://whc.unesco.org/en/list/96>

3 UNESCO. (2019). *Studenica Monastery*. Retrieved from <http://whc.unesco.org/en/list/389>

Purpose of research

The purpose of this research is to highlight the umbrella laws relating to ecotourism in the Republic of Serbia and to point out their norms and necessity for improvements in the legal framework for ecological tourism through the analysis of their norms and recommendations. In addition to binding legal documents, plans and strategies are also very important, because they concretize the ways in which legal provisions must be implemented. In particular, the need to strengthen preventive measures for the protection of natural and cultural values is emphasized, as the prevention is the smartest and most cost-effective way to invest in protection (United Nations & World Bank, 2018).

Materials and Methods

Conventions, treaties, laws and administrative documents are national and international legal sources that regulate the ecotourism. These legal texts as research materials are analyzed. The primary method used in this paper is normative (theoretical) legal approach (Chynoweth, 2008). This approach is enriched with the findings of interdisciplinary research and critical analysis. By this normative method current selected legal sources relating to ecotourism can be explained. Because various entities are related to ecotourism and are regulated by national legal documents, a comparative research was used, in order to systematize the sources of law (McConville & Chui, 2007). Another, problem and policy-based research was applied with the aim to highlight current legislative solutions related to sustainable ecological tourism and environmental protection and in that context, as an intention to recommend amendments to the law, a law-reform research was applied (Dobinson & Johns, 2007).

RESULTS

Sources of International Law relevant to Ecotourism in Serbia

General Observations

There are several sources of international law containing provisions relevant to various aspects of ecotourism. For the purpose of this research, the following are singled out as the most important: 1. European Cultural Convention (1954); 2. Recommendation concerning the Safeguarding of Beauty and Character of Landscapes and Sites (1962); 3. International Charter for the Conservation and Restoration of Monuments and Sites (Venice Charter) (1965); 4. Convention Concerning the Protection of the World Cultural and Natural Heritage (World Heritage Convention) (1972); 5. Convention on the Conservation of European Wildlife and Natural

Habitats (Bern Convention) (1979); 6. World Charter for Nature (1982), 7. Hague Declaration on Tourism (1989); 8. Convention on Biological Diversity (1992) and 9. Agenda 21(1992). Some of them have been ratified by the Republic of Serbia as an independent state, whereas the others had been previously ratified by Socialist Federal Republic of Yugoslavia and, after the dissolution of the federation during the nineties, inherited by its former member states, including Serbia.

Apart from these legal documents, there is a set of international legal sources setting general principle of sustainable development in tourism as an industry branch, and therefore in ecotourism as a subtype of sustainable tourism. The most important international documents relevant to sustainable development in tourism are: 1. Charter for Sustainable Tourism (1995), 2. Agenda 21 for the Travel and Tourism Industry – Towards Environmentally Sustainable Development (1996), 3. Berlin Declaration on Biological Diversity and Sustainable Tourism (1997), 4. Global Code of Ethics for Tourism (1999), 5. Québec Declaration on Ecotourism (2002), 6. Climate Change and Tourism: Responding to Global Challenges (Davos Declaration) (2007) (Maksin et al., 2011), 7. Future We Want (2012), 8. World Charter for Sustainable Tourism + 20 (2015), 9. Promotion of sustainable tourism, including ecotourism, for poverty eradication and environment protection (2018).

All the above-mentioned international legislations have in common the regulations of different human activities affecting natural or cultural heritage. After ratification, these documents have become parts of national legislation, and have greater legal power than national laws, apart from the Constitution. The Constitution of the Republic of Serbia (2006) sets this hierarchy between international and national legal framework, which means that respecting and implementing ratified international conventions represents an obligation of the highest priority.

Here are presented analyzes of some previously listed legal documents relating to ecotourism, primarily European, which have an impact on the national legislation of the Republic of Serbia, and the very fact that Serbia aspires to join the European Union.

European Cultural Convention

European Cultural Convention was adopted in Paris in 1954 with the intention to provide the conservation of important components of cultural heritage of European states. As one of the successors of Socialist Federative Republic of Yugoslavia, that ratified the Convention in 1989, Serbia inherited the status of party to it. However, the Republic of Serbia

reaffirmed the status of signatory by ratifying the Convention as an independent state in 2009⁴.

The text of European Cultural Convention obliges its signatories to “regard the objects of European cultural value placed under their control as integral parts of the common cultural heritage of Europe” and to “take appropriate measures to safeguard them and to ensure reasonable access thereto”. Also, each contracting party is obliged to “specify the territories to which the provisions of the Convention shall apply by addressing to the Secretary General of the Council of Europe a declaration which shall be communicated by the latter to all the other Contracting Parties”. By prescribing these duties of contracting parties, the Convention actually establishes one of the key elements of legal framework necessary for legal protection of cultural values within specific geographic areas, such as, for example, Studenica Monastery⁵ complex, which is a cultural World Heritage site and a popular tourist attraction situated in Golija-Studenica Biosphere Reserve (UNESCO, 2017), allowing the tourists to visit them, but obliging the parties to protect these locations and their cultural heritage from unwanted external impacts.

Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention)

Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention), adopted by the Council of Europe in 1979, represents one of the most significant international documents pertinent to the conservation of environmental values. The essence of this document consists of the norms that oblige its signatories to preserve wild flora and fauna and their natural habitats (Article 1 Paragraph 1 and 2) as well as to take appropriate legislative and administrative steps necessary for the conservation of natural habitats (Article 5 and 6), all of which represent values that are highly appreciated in ecotourism.

Convention on Biological Diversity

Convention on Biological Diversity was adopted in 1992 in Rio de Janeiro. The objectives of the Convention include: “the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources” (Article 1).

4 For more details see: Act Confirming the Ratification of European Cultural Convention, Official Gazette of the Republic of Serbia – International Treaties § 42 (2009).

5 For more details see the official website of Studenica Monastery: <http://manastirstudenica.org.rs/>

The implementation of the Convention is accomplished through the application of measures for conservation and sustainable use of biodiversity. These measures include: 1) identification and keeping up with the conditions of biodiversity and processes and activities that produce significant negative impact (which means applying the principle of monitoring); 2) *in-situ* conservation, by establishing the system of protected areas as well as by managing biological resources in a sustainable manner, controlling the introduction of new species, revitalizing ecosystems and/or endangered species of wild flora and fauna; 3) *ex situ* conservation, through the organization and maintenance of capacities for this type of conservation, 4) sustainable use of biodiversity and its components, in accordance with the principle of sustainable use of natural resources (Joldžić, 2010), through the integration of conservation and sustainable use of natural resources in the decision making process on national level and the adoption of stimulating economic measures, 5) research, education and raising awareness of general public on environmental issues 6) respect for the environment and minimizing negative impacts on biodiversity, through the application of the principle of impact assessment (Joldžić, 2010).

National Legislation of Serbia Necessary for Sustainable Development in Ecotourism - General Observations

Set of activities that includes a close contact and a high level of interaction in ecotourism is rather complex, may affect different areas of life and can be hardly regulated by a single legislative act. Therefore, legal provisions relevant to ecotourism are most commonly found in laws dedicated to the following issues: protection of natural values (such as the Environmental Protection Act, 2004 and the Nature Protection Act, 2009), protection of cultural heritage (such as the Cultural Goods Act, 1994) as well as in laws setting general rules for the functioning of tourism as an industry branch (such as the Tourism Act, 2009). The implementation of laws regulating these issues cannot be fully accomplished without the application of some other sources of law, protecting particular components of the environment such as, for example: the Air Protection Act, 2009, the Waters Act, 2010 and the Forests Act, 2012. It also relies on the implementation of some administrative acts, such as rules, regulations or decisions pertinent to different environmental issues that have been adopted by relevant state bodies, such as, for example, the Ministry of Agriculture and Environmental Protection or the Ministry of Trade, Tourism and Telecommunications⁶.

6 Ministries of the Republic of Serbia Act, Official Gazette of the Republic of Serbia § 44 (2014) and Act Amending Ministries of the Republic of Serbia Act, Official Gazette of the Republic of Serbia § 14 (2015).

Legal Protection of Environment

Being closely interrelated with different components of the environment, sustainable development in ecotourism has to be planned and conducted in accordance with a solid legal framework providing comprehensive environment protection for all elements of environment. For example, Environmental Protection Act prescribes a mechanism of legal protection for "protected natural goods" as preserved parts of "nature of exceptional values and characteristics". As goods of general interest, they are given special protection (Article 3). Although this law does not mention ecological tourism, in particular, it is prescribed that the competent authorities and users of tourism services (which includes all types of tourism as well as ecotourism) must comply with the principles of sustainable development.

Natural goods that are attractive destinations in ecotourism are not protected only by the state and its bodies but also by companies, scientific institutions expert organizations, NGOs and individuals (Article 4). The first step in protecting natural resources important for ecotourism is the cooperation of these entities in preventive measures of protection. For example, The Environmental Protection Act implies that tourism operators and agencies providing services of ecotourism are obliged to apply protective measures in accordance with the law whenever they conduct any kind of activities that might change the characteristics of the visited destination (Article 5). The Act obliges all entities, including companies (in this case, tourism operators and agencies), to work on raising ecological awareness, which means that tourism operators and agencies dealing with ecotourism are also expected to educate their employees and tourists (Article 6). All tourist activities must be organized in compliance with The Principle of Prevention and Precaution (Article 9). In addition, tourism operators and agencies involved with ecotourism need to acquire approval for their work from relevant state bodies (Article 15).

The activities that endanger the environment, natural balance and biodiversity, hydrographic, geomorphological, geological, and cultural values or degrade the qualities and characteristics of natural goods must not be conducted at protected sites (Article 17). Similar mechanism of protection is applied on public natural goods. The only difference is that the law allows certain changes to be made on these goods, but only if the maintenance of their natural, physical, medical or aesthetic values is guaranteed in accordance with relevant legal provisions (Article 18). There are several articles of the Law especially dedicated to prevention (Article 33 – 38) which prescribes, *inter alia*, the attitude towards protected natural goods.

Legal Protection of Nature

Nature Protection Act adopted in 2009 provides legal protection for various components of environment. The majority of them may be affected by the activities performed within ecotourism, including: biological diversity, wildlife species, natural habitats and ecologically significant areas, habitats of migratory species, ecosystems (particularly forests, mountains, wetlands and other vulnerable ecosystems), geological diversity, speleological objects and landscapes.

These legislative documents are expected to protect and upgrade biological, geological and landscape diversity, to provide their sustainable use and promptly prevent all human activities that might cause negative impacts on nature (Article 2). The law proclaims, among others, “the principle of a high degree of nature protection” and “the principle of sustainable use of natural resources” which says that natural resources can be used “only to the level and in the manner that do not endanger the diversity and functioning of natural ecosystems and processes”, which is, in its essence, the rule of sustainable use of natural resources (Article 5).

Another way of mandatory preventive measure is found in Article 8, which provides that any subject performing the activities that affect nature, including tourism operators and agencies providing the services of ecotourism, has to form plans and projects for its business and to deliver these documents to relevant state body and obtain its evaluation and approval. If relevant state bodies estimate that the submitted plans and programs may produce a significant impact on the conservation of the area under environmental protection, they may refuse to give their approval (Article 10).

Nature Protection Act establishes three levels of protection of natural goods (Article 35), which is of particular importance for ecotourism, since the level of protection actually determines the accessibility of a particular site and the activities that may be conducted within. For example, it is not allowed to build almost any kind of objects at sites classified within the first level of protection and the activities that may be conducted at these sites are limited by the law. However, controlled visits to educational, recreational and cultural purposes can be made in these areas. This also includes the visits made within well and precisely organized ecotourism. The second level allows certain objects to be built at protected sites, including objects intended for tourist accommodation, objects for nautical tourism and tourist infrastructure. The third level allows some interventions with the aim of restauration, revitalization and general improvement of protected areas, development of countryside and innovation of rural households, restauration of objects representing cultural and historical heritage and examples of

traditional architecture, conservation of traditional crafts of local people, selective and limited use of natural resources and areas and building necessary infrastructure, all of which are relevant to ecotourism.

Although certain restrictions are prescribed in the regime of strict (1.), active (2.) and post-operative protection, they need to be strengthened in order to raise the quality of preventive protection. In the regime of strict protection (1.), the high risk for preventive protection is a prescribed controlled visit for recreational and general-cultural purposes. As this part of the protected area is of the highest quality and preserved nature, these actions should be prohibited, in order to minimize possible risk and stronger preventive protection.

The great risk to the active protection regime (2) is the construction of hydroelectric power plants, solar power plants and bio-fuel power plants, and tourist accommodation facilities, which, although limited construction, can significantly endanger the protected natural area, and the risk is even greater due to the vicinity of the area under the first protection regime.

What is very controversial and prescribed by this law as permitted for limited construction in a proactive protection regime (3), is the exploitation and primary processing of mineral resources, the construction of facilities for the management of waste, the construction of settlements and expansion of their construction areas and the use of chemicals. Such activities pose a great risk to the protected zones.

Legal Protection of Cultural Heritage

The precondition for appropriate protection of cultural heritage, cultural values and cultural goods is to determine the scope of these terms. One of the terms used to describe cultural parts of one country's cultural heritage that is under special regime of protection is the term "cultural goods". For example, Serbian Cultural Goods Act defines cultural goods as "objects and creations of material and spiritual culture of general interest that are given special protection in accordance with the law" (Article 2). Depending on their material, artistic, cultural and historical features, cultural goods can be immobile (cultural monuments, special cultural-historical complexes, archaeological sites and renowned places) and mobile (historical works of art, archive materials, film materials and antique and rare books).

When it comes to their significance, cultural goods can be systematised within these categories: cultural goods, cultural goods of great importance and cultural goods of exceptional importance (Article 2). The category of one cultural good determines the level and the strictness of its legal protection. The criteria for classification of cultural goods must be

precisely enumerated and explained by the law, and the evaluation of one cultural good's importance should be entrusted to a competent state body comprised of experts in art, history and culture. It is positive that this law stipulates that the area surrounding an immobile cultural good is also given the legal protection of the same level as the one that is granted to the immobile cultural good within (Article 3).

As a very important preventive step in protection of cultural heritage, it is important that all stakeholders be good informed. In order for a clear insight into one country's cultural heritage to be possible, all cultural goods should be enlisted in registries kept at relevant state bodies. The principle of transparency requires these registries to be public, allowing anyone to become familiar with their content (Article 6). Providing accessible information about cultural goods is of essential importance for education of all subjects involved with ecotourism and enables them to prepare themselves and adjust their behaviour and activities to the level of protection of a particular cultural good (Article 30 - 41). The law does not mention, in particular, the use of cultural property for tourist purposes. This is regulated by the Tourism Act, in which cultural goods are considered as tourism products (Article 3).

General Rules for Tourism

Laws setting general rules and principles for the functioning of tourism as an industry branch have some importance for ecotourism. For example, current Tourism Act contains general principles that are applied to all kinds of tourism (Article 2). Nowhere in this law, which is the umbrella law for arranging the field of tourism in the country, the term ecotourism is mentioned. Moreover, the term sustainable tourism, in particular, is not specified, but the sustainable development of tourism and sustainable use of tourist place. Only under these terms could it be said that refer to sustainable tourism, and within it, ecotourism. The principle of sustainable development holds a special place and the law states that sustainable development of tourism has to be conducted in compliance with the economic development, conservation of natural and cultural goods, preservation and development of the local community (Article 2).

Tourism operators and agencies need to form a "program for tourist product development", including circular tours, medical tourism, tourist visits to mountains and lakes, nautical tourism, rural tourism and tourism comprising some other, specific, tourist interests (Article 11). If the tourist area represents at the same time the area of protected natural or immovable cultural property, the protection regimes and internal order must be applied

in accordance with the laws regulating tourism and natural environment (Article 14).

The rights and obligations of those who use cultural goods for the purposes of tourism are precisely arranged by the law. This particularly refers to legal persons (i.e. companies providing accommodation or organising various tourist activities, tourism operators and agencies) and individuals (Article 59) (tourist guides, tourists, members of local communities) that may produce an impact on cultural goods through their activities.

Apart from wise, responsible and legal use of cultural goods for the tourist purposes, there is one more factor related to cultural heritage that has an important impact on sustainable development of tourism – tourist interpretation of cultural heritage. Although it is not directly regulated by the law, tourist interpretation of cultural heritage is of crucial importance for its protection. It represents a specific type of communication that enables the visitors to better understand and perceive the value of cultural heritage and raises their awareness of the importance of the protection of cultural values (Maksin et al., 2011).

Conclusions with Recommendations

Ecotourism can cause serious negative effects on natural ecosystems (Orams, 2001). In order to prevent the abuse of ecotourism in the name of ecotourism, this form of tourism has to be controlled by the law on national as well as international level. On national level, it includes three groups of legal documents. The first one comprises environmental laws. The second one includes laws dedicated to the protection of cultural values, whereas the third group consist of laws regulating tourism. Administrative acts adopted with the purpose to enable full implementation of the aforementioned laws are also significant for proper and lawful performance of ecotourism activities.

Some innovative legislative solutions are suggested in order to provide the respect of sustainability and development in ecotourism, as a way to provide more efficient protection of values affected by ecotourism.

For the proper development of ecotourism, it is very important that economic benefits are felt primarily by the local community. Since this is not the situation today (Yfantidou and Matarazzo, 2017), it is necessary that the attention of the decision-makers be directed to that side in terms of the development of such programs.

Special attention must be paid to tour operators due to their essential role in promoting the values for which ecotourism exists and the importance of sustainability in it (Buckley, 1994; Welford et al., 1999). It is therefore

important to legally regulate the role of tour operators and stimulation. This should be done in the Tourism Act.

Regarding the analysis of Serbian national legislation in the field of ecotourism, it was shown that there is a need for new regulations that are roofing and changes or amendments to existing ones.

The lack of the Environmental Protection Act is the granting of great competencies and responsibilities to the line ministry, the autonomous province authority and the local self-government unit. This practice can more easily lead to misuse of position and corruption, although it is stipulated that they exercise their competencies in accordance with the law. This "hole" in the law could be avoided by the adoption of members that stipulate the compulsory participation of independent experts, scientific and professional public in the process of defining preventive measures for the protection of natural assets. These professional bodies should also be included in the process of amending the Article 35 of the Nature Protection Act, to redefine exactly which objects can be built in certain protection regimes, or what must be completely forbidden to build and operate. Also, throughout the process of ecotourism in Serbia, special attention must be dedicated to the implementation of the principles of the International Guidelines for activities related to sustainable tourism development in vulnerable terrestrial, marine and mountain ecosystems (Popesku, 2002).

Further, it is necessary to define "ecotourism" either in the Tourism Act or in the Environmental Protection Act, because of its specificity, and because as an economic branch, it has a great influence on the quality of environment and the state of (protected) natural goods.

Defining the term "ecotourist" in current national legislation and prescribing a set of specific regulations pertinent to this type of visitors of protected natural and cultural venues might contribute to a more secure guarantee that these vulnerable sites will be protected. It is necessary to define the ecological tourism in the Environmental Protection Act, because, as an economic branch, it has a great influence on the quality of environment and the state of (protected) natural goods. Ecotourist can be defined as any consumer s interested in vacations in natural area, especially protected, who wants to learn about nature and wishes to conduct nature-based activities while on vacation (Wight, 2001).

Tour operators, agencies and guides have to be highly aware of the importance of nature protection, which means that they need to have the knowledge about essential ecological processes and natural values. Also, they need to be stimulated for the promotion of the importance of environment protection and sustainable use of natural values. In order to

ensure this behaviour of tourist workers, it must first be legally regulated. Legal regulation would also have to apply to tourists, whose behaviour should be more restrictive in protected areas, that is, when they are defined as eco-tourists. In that sense, it would be necessary for ecotourists to have a special permit to visit vulnerable areas, which are under special regimes. It is desirable that these provisions are found in the Tourism Act.

Besides the legal framework, as the first level of organization of ecotourism, in particular concerning the preventive protection of natural and cultural values; there is also another one, which refers to plans, strategies and various techniques. This level details the ways in which all ecotourism activities must be practically implemented. First of all, rising the awareness about the ecological processes, negative impacts on nature and a human role in it, is the most important way and strategy for improvement of the ecotourism. According to the Strategy of Tourism Development of the Republic of Serbia for the period 2016 - 2025 (2016), the use of tourist area should be considered the crucial principle of tourism management. In this manner, activities have to be oriented towards cooperation between local communities, tourists managements and ecotourists. The cooperation between all relevant stakeholders is the second most important way for all levels and steps of improvement of the ecotourism.

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