

# PUBLIC POLICIES FOR SUSTAINABLE TOURISM: HISPANO-BRAZILIAN PERSPECTIVE

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## ABSTRACT

The promotion and development of tourism for decades has triggered a phenomenon of mass tourism, with harmful effects on the resident population in tourist areas (mainly the difficulty of access to hosting), particularly on natural resources and the environment. The (imperative) need for tourism policies to be sustainable is forcing the consideration of measures hitherto unthinkable, which go through limiting the number of visitors in their different manifestations. The main objective of this article is to analyze the causes of tourist massification, which include strictly numerical promotion of the number of visitors or the incentive to holiday tourist housing; likewise, the impact of massification on housing prices, the expulsion of the resident population or the social conflicts and tourism-phobia that are generated. The method followed for this article consists of an analysis of the sociological and anthropological changes experienced mainly in Spain (and the rest of Europe) and Brazil, and a review of the existing regulations, in order to verify whether they are still useful for the intended purposes, or, on the contrary, they should be subject to revision. As the reader will see below, the latter is the result achieved, always with the perspective of reconciling tourism as an economic activity and environmental preservation. In conclusion, the implementation of environmentally sustainable tourism policies is suggested from the point of view of territorial management, taxation, limitation of tourist rental, and access to public domain spaces, among others.

**Keywords:** Massification, environment, quota system, tourism

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*POLÍTICAS PÚBLICAS DE TURISMO SUSTENTÁVEL:  
PERSPECTIVA HISPANO-BRASILEIRA*

*RESUMO*

*A promoção e fomento do turismo ao longo de décadas tem desencadeado um fenômeno de massificação turística, com efeitos nocivos para a população residente nos territórios turísticos (principalmente a dificuldade de acesso à hospedagem), especialmente para os recursos naturais e o meio ambiente. A necessidade (imperativa) de que as políticas de turismo sejam sustentáveis está forçando a gestação de medidas até então impensáveis, que passam pela limitação do número de visitantes em suas diferentes manifestações. Este artigo tem como objetivo fundamental analisar as causas da massificação turística, que passam pelo fomento estritamente numérico do número de visitantes ou pelo incentivo à habitação turística de férias; do mesmo modo, o impacto da massificação nos preços da habitação, a expulsão da população residente ou conflitos sociais e turismo fobia que são gerados. A metodologia seguida para este artigo consiste em uma análise das mudanças sociológicas e antropológicas vividas principalmente na Espanha (e no resto da Europa) e no Brasil, e uma revisão da regulamentação existente, a fim de confirmar se ela ainda é útil para os fins pretendidos, ou se, pelo contrário, deveria ser objeto de revisão. Como o leitor verá a seguir, este último é o resultado alcançado, sempre na perspectiva de conciliar o turismo como atividade econômica e a preservação do meio ambiente. Em conclusão, sugere-se a implementação de políticas de turismo ambientalmente sustentáveis do ponto de vista do ordenamento do território, tributação, limitação do aluguel turístico e acesso a espaços de domínio público, entre outros.*

**Palavras-chave:** *massificação; meio ambiente; sistema de cotas; turismo.*

## INTRODUCTION

Tourism is fundamentally an economic activity, which accounts for 8.1% of the Brazilian GDP and 12% of Spain's GDP. In terms of employment, tourism represents 3.5% of the active population in Brazil and 14% of the Spanish people.

However, the economic dimension is not the sole dimension of tourism, which has other protective components required from public authorities: the historical, cultural and sports heritage, religious celebrations such as Holy Week, and all this without belittling the legal dimension (tourism hiring, lodging, transportation, legal relations over distance by technical means) (BAUZÁ MARTORELL, 2014).

Thus, administrative intervention in tourism has traditionally been carried out through the promotion of activities and policies of seasonal adjustment and diversification of the tourism offer, with the aim of increasing the number of visitors in any country year after year.

In this sense, the construction of tourist facilities (conference centers, winter facilities, areas of sporting events, etc.), coupled with fiscal stimulus measures and subsidies (rural tourism), has been a constant in recent decades.

Similar to what has been happening with the actions to promote cruise tourism (investments in port infrastructure), tourism has been promoted through the creation of tourism agencies abroad<sup>2</sup>, or the regulation of holiday tourist housing (ENCARNACIÓN; PALOP; GOLOBARDES, 2018; GARCÍA SAURA, 2019).

Thus, the first item to take into account with regard to tourism policies is the promotion of tourism, considering mainly its contribution to economic growth and job creation.

Consequently, we must start from the working hypothesis of the growth of tourism as a purely economic activity, and then, from this premise, to analyze how the legal system can put a limit on tourism, with a view to environmental protection.

2 In Spain, TURESPAÑA is the public entity, linked to the Ministry of Industry, Commerce and Tourism through the State Secretariat of Tourism, responsible for marketing Spain as a tourist destination in the world. Turespaña develops its activity abroad through a network of 33 Councils of Tourism, which represent a strategic asset of the Spanish tourism sector, by its interface function with the professional issuer sector, opinion leaders and the traveler of origin. Functionally organized in 8 geographic areas, largely overlapping with different types of markets, these Tourism Departments operate in 47 outbound tourism markets, in accordance with the respective Annual Operative Plan, which includes the activities to develop in collaboration with the Autonomous Communities and other public promotion entities.

## 1 RESULTS OF THE UNLIMITED GROWTH OF TOURISM

The bet placed by tourism has triggered results in Europe that are incompatible with sustainability, mainly in the form of mass tourism, great agglomeration and influx of visitors, whose presence in such magnitudes affects the lives of the resident population.

Indeed, the following distortions derived from the unlimited growth of tourism can be enumerated:

### 1.1 Massification

An undisputed fact in recent years regarding tourism is the massification of tourist destinations, which is explained by the lower cost of tourist transportation and accommodation, as well as by the use of technical means.

In fact, in Europe there are cities that are truly saturated by tourism, such as Venice, Dubrovnik or Amsterdam, among others. In general, massification is a real event, which affects the natural resources of a territory (drinking water, energy, waste generation, etc.), while making spaces impassable.

The influx of tourists, seen from a strictly economic point of view, can be considered an advantageous result; however, as compared to the environmental point of view, it is easy to infer that this perspective that comes from poorly understood tourism cannot be admitted, under penalty of generating social and environmental imbalances.

As mentioned, the technical means are related to massification, as they have contributed to a radical transformation of the legal relationship between tourism supply and demand, which no longer needs mediation (travel agencies), instead, the user of tourist services hires directly with the provider, knows the opinions and evaluations of other users and, through a mobile device, organizes a trip and moves anywhere (MARTÍNEZ NADAL, 2019).

Outside Europe, the situation is equally worrying. The media frequently publishes the closure of beaches because of mass tourism: the Faroe Islands in Denmark, after a 10 % growth in the number of visitors; the Everest base camp, given the large amount of accumulated garbage; the island of Boracay, in the Philippines, was closed for six months in 2018 because it was classified as a “septic tank”; the beach of Maya Bay, Thailand,

famous for appearing in a feature film with actor Leonardo Di Caprio, is closed from 2018 to 2021 so that coral reefs can recover<sup>3</sup> and, therefore, a long list of cases and assumptions, which show that the gathering of visitors – far from being a potential threat – constitutes a real and effective damage to the ecosystem and the natural environment.

## 1.2 Tourist housing and housing prices

In recent years and under the protection of digital platforms and Internet portals, the tourism sector discovered a lodging type other than the traditional hotel and extra-hotel accommodation (tourist apartments, bungalows, villas, rural tourism and tourism camps). We refer to tourist housing, which consists of renting a residential house for short periods (BAUZÁ MARTORELL, 2018).

This type of accommodation would not have been possible without the collaborative economy platforms (those that refer to owners who exchange stays in houses) or in hosting mediation portals, allowing in any case the hiring of tourist stay in housing, with the advantage of knowing the opinion of previous users.

Tourist housing has allowed an exponential growth in the number of visitors, who are seen in city centers with a suitcase looking for a postal address. At the same time, it has transformed the owners of these houses into tourist entrepreneurs, who practice an economic activity subject to taxation and quality control of the services they provide.

Without prejudice to the legal challenges for tourist housing, as is the case of the overlap of residential use and tourism in the same property<sup>4</sup>, truth is that this type of lodging is associated with massification, as mentioned above, as well as increase in the price of housing.

Indeed, a homeowner gets a higher income by renting the property touristically as compared to yearly rental, according to the urban leasing regime. This means that the number of houses offered for conventional rent is remarkably restricted and that access to housing becomes very expensive, sometimes impossible for a family economy within normal limits.

<sup>3</sup> Preferente. Issue of September 3, 2019.

<sup>4</sup> The house is located in an area that is assigned a residential use, so the municipal planning has provided the necessary infrastructure for a population in permanent residence (parking, garbage collection, drinking water supply, electricity, etc.). The introduction of tourist use in a property (think of horizontal property) or in an area where the detailed regulation provides for residential use, supposes the generation of a dysfunction (a tourist's schedule is far from the resident population, subject to working hours and a few hours of rest). Therefore, this problem is not solved further than some single judicial pronouncement (BAUZÁ MARTORELL, 2018).

In some limited territories (we are referring to the Spanish island of Ibiza), where the tourist season causes the displacement of private workers and civil servants from the mainland, there is talk of housing emergencies, in which there are certain episodes that are not free from jocularly (rental of balconies and terraces, vehicles on public roads for overnight stays, etc.).

The increase in the price of housing thus becomes a consequence of the disorderly growth of tourism and the inefficiency of the housing market.

### **1.3 Expulsion of the resident population**

An inevitable consequence of the increase in housing prices is the expulsion of the resident population from the historic centers of the cities, where tourist residences are concentrated.

This circumstance occurs for two reasons: because the owners move to other areas in order to rent their houses and obtain generous rents; or because the resident population in contract rent cannot afford the rents that homeowners demand compared to the tourist rental.

In any case, city centers are depopulated of a resident population and become purely tourist areas (at one point they were classified as theme parks). Traditional businesses disappear, giving way to franchised establishments and in general the population living in these areas is only transitory, in no case permanent<sup>5</sup>.

### **1.4 Restructuring of tourism economy**

Digital platforms have caused substantial changes to the tourism model, which has moved from the conventional mediation system to a direct relationship between the supplier and the applicant for tourism services.

According to this legal relationship, tourist mediation has lost all its *raison d'être*, so that resale travel agencies are no longer appreciated, but in any case, they had to adapt to the new scenario of technical media, be they Online Travel Agencies (OTAs) (FLECHA BARRIO, 2016) or online centers for tourist reservations (BAUZÁ MARTORELL, 2014). No one disagrees that this new mode of distance contracting brings legal

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<sup>5</sup> The documentary *El síndrome de Venecia* clearly explains this circumstance. See <https://www.youtube.com/watch?v=WVTEfMLBW4s>. Access on: Oct. 1, 2019.

challenges, to which current positive law does not always provide solutions and, consequently, requires adaptation (FLAQUER RIUTORD, 2015).

Another economic activity in the tourism sector that loses specific strength in the system as a whole is that of tour guides, whose intervention is limited as the tourist – supported by technical means – becomes autonomous and does not need such services.

In fact, due to the amount of information circulating on Internet about routes, places of interest, historical explanation, timetables, prices and tariffs, etc. or by assessments made by other users, digital media fully replaces the tour guide, so that tourism is not organized anymore by perfectly delimited groups around the guide; instead, tourists access areas of interest individually (even if they are in a group) (MUNAR BERNAT, 2008).

## 1.5 Restructuring of tourism management

The technical means, despite having directly contributed to the massification of visitors, have made new types of control of tourist activity available to tourists, sometimes more effective and feared than any administrative sanction.

In effect, the purely economic sanction relativized its effects on commercial traffic; although Administrative Procedure Laws generally provide for the infraction not to be profitable (the financial penalty amount cannot be less than the benefit that generates the infraction) (NIETO, 2012), the truth is that the offender faces fine with the idea that the infraction has an effect on the result only, and that, in any case, the number of infractions committed compensates for the sanction received. On the other hand, public disclosure of the infraction, as it affects potential customers, can be more problematic; hence the procedural regulations – including that of the tourism sector – provide public records of infractions, which any citizen can consult and thus have an idea of the degree of quality of the tourist services offered by an agent<sup>6</sup>.

Given the current sociological reality, customers do not always consult the administrative record of tourist sanctions, as they have at their disposal the comments and opinions that other previous customers make on social media, or on the same technical platforms for tourist mediation.

<sup>6</sup> Art. 115 of Law 8/2012, of 19 July, on Tourism in the Balearic Islands, provides for the annotation of definitive penalties in the respective island registry of companies, activities and tourist establishments. The annotations are canceled in the letter or at the request of a party after one, two or three years have elapsed, depending on whether they are sanctions for minor, serious or very serious infractions, since their final imposition or when the sanctioning resolution is annulled by final decision in litigation-administrative proceedings. The registry is obliged to issue a certificate of the sanctions registered to interested parties who request it (BAUZÁ MARTORELL, 2017, p. 139).

These means are, therefore, much more effective than administrative sanctions, as they are known in real time anywhere in the world and can lead to a noticeable decrease in demand for tourist services.

An occasional example of what is being discussed was the publication on social networks of the complaint of some users in a restaurant on a beach in Formentera. Upon receiving the invoice, which was huge, they had the option to request the complaints book, with the safeguard that a complaint cannot be made for price reasons, with a no refund policy. One of the pages of the complaints book would have been addressed to the Tourist Board, which would have filed an administrative procedure that would take a long time, without prejudice to the administrative and judicial resources that it would have given rise. Eventually, the procedure would have fallen by the wayside.

Instead, users decided to post a photo of the invoice on Twitter, entitled *Tourist trap*. The message went viral, with thousands of visits and retweets, while at the same time it made the front page of the local press.

Therefore, the Tourist Board was obliged to adapt their tourism activity control formulas in order to be attentive to comments and opinions that pour into the social media, also sorting out objective comments from purely subjective opinions, which sometimes seek to damage the reputation of other competitors in the sector (MARTÍNEZ NADAL, 2015).

Likewise, and without prejudice to what we will say in terms of tourist holiday accommodation, Management can only exercise control over the offer of tourist accommodation through Internet pages.

Consequently, we cannot fail to affirm that the technical means oblige to restructure the Tourism Management, which can no longer operate exclusively with conventional means.

## **1.6 Social conflicts**

The massification of tourism generates evident social conflicts. Where there is overcrowding, there are also interaction problems resulting from the consumption of scarce resources and the saturation of public services, which lower their quality and increase the waiting time.

One of these conflicts, already mentioned above, is the overlap of residential uses and tourism in the same property, which leads to the inconvenience of mixing two very different styles: temporary and transient (tourist), and permanent and stable (residential). Needless to say that the



hours of one and the other are also very different, and in the former there may be emission of noise while in the latter resting is expected for a working day ahead.

In addition, massification attracts opportunist thieves in greater proportion, increasing the crime rate by thefts and robberies against a population, as it increases the number of visitors, which carry money in cash in bags and suitcases.

In this case, it is recurring in many European cities that already suffer from these problems of coexistence, with the expression of protests in the name of the right to rest and slogans like “the city for those who dwell in it” and the like.

### **1.7 Tourism-phobia**

An additional step to the problems of coexistence is tourism-phobia, understood as a manifestation of total aversion to tourism, with actions ranging from graffiti on facades to the display of messages in ports and airports that are contrary to tourism, when not performing acts of vandalism that create annoyance and discomfort for the visitor.

Certainly, tourism-phobia cannot be relativized in the first place by an elementary matter of courtesy, without forgetting the contribution of tourism to GDP, as mentioned above (HUETE; MANTECÓN, 2018; MILANO, 2018).

In any case, it is an indication that, despite the unmitigated criticism of the manifestations of hatred towards tourism, massification is causing discomfort to the resident population.

## **2 SUSTAINABLE TOURISM POLICIES**

The results of an unlimited growth in tourism require the development and design of tourism policies in terms of sustainability, making the environment a transversal element of any public policy.

In this sense, economic growth is either sustainable or it will not be. There is no alternative. For this reason, public authorities in Europe have started to apply corrective measures to promote tourism, which we can list in the following terms:

## 2.1 Urbanism and spatial planning: load capacity

In general, in urbanism and spatial planning, load capacity is defined as the potential number of people that a given space or location can accommodate, depending on urban, environmental, landscape, infrastructure parameters, etc.

The different autonomous soil laws<sup>7</sup> and their complementary regulations have led to the introduction of parameters and indicators in terms of load capacity, as a general limit of the territory. Private tourism indicators are part of this concept of load capacity, seeking harmonization of the residential population density with that of visitor population, in line with environmental vectors and the availability of resources (drinking water, electrical energy and gas, garbage collection, etc.)<sup>8</sup>.

Spatial planning is conceived in the different Autonomous Communities through general territorial plans and sectorial master plans. Among the latter, tourism plans establish the load capacity and maximum limits for the visiting population. Consequently, a first limitation of tourism goes through these sectorial master plans (BLASCO ESTEVE, 2010).

Island territories are especially sensitive to this problem, as they combine tourist influx and territorial limitations. In the case of the Canaries, Law 19/2003, of April 14, which approves the General Management Guidelines and the Canary Islands Tourism Management Guidelines, expressly covers the regulation of the Canary Islands tourism management guidelines, in which Chapter IV regulates growth conditions.

Among the objectives of these limitations or restrictions, Guideline 24 justifies selective growth based on the creation of new qualified products that diversify the offer, and have the capacity to innovate the market, attract other demand segments, compete with other destinations, and contribute to the growth of the local economy and the archipelago.

At the same time, the Law is very clear when it comes to determining that the need to order and scale housing growth is part of the requirement to reduce direct and induced environmental and territorial effects, in a fragile environment, as well as to moderate growth according to absorption capacity of the local society and the availability of infrastructures and services, as well as to meet the strategic and priority character that these Guidelines ascribe to the renovation of the existing tourist park, given its

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7 On the effects of Judgment of the Constitutional Court 61/1997, see Fernández (1997).

8 On load capacity in urban and tourist matters, see Salom Parets (2017).

greater degree of sustainability, as it constitutes an efficient reuse of the existing urban and real estate heritage.

Next, Guideline 25 expressly refers to the load capacity and understands that any decision to transform the land for tourism must be established and technically based on the load capacity of the affected tourist area, understood as the set of factors that allow tourist use of an area without an unacceptable decrease in the experience obtained by the visitors, an excessive pressure on its tourist resources, an ecological change on the resident society, who then starts to have the equipment, services and general infrastructures required for the development of the activity and the population of services that it demands. This capacity should be considered and analyzed by urban planning as a determining factor in the sectorization of soil with tourist destination. All of this under the criteria of the global tourist load capacity and the specific criteria determined by the planning of the island.

The determination of the load capacity is part of a stand-alone document within the planning instruments, and is based, at least, on the following relevant factors:

- a) Ecological capacity, which will identify and evaluate the changes that the implementation of the tourist activity in question can produce in ecosystems.
- b) Social capacity, which will examine the effects on the resident population in its urban, housing, and labor market conditions and cultural environment as well as its effects on education, health and social care services available.
- c) Capacity of the landscape, defined as the potential of the landscape to assume the planned actions without changing its qualities and characteristic elements.
- d) Capacity of accessibility and other existing infrastructures to meet the functioning and supply of the area, and the possibility of absorbing the impacts that can be deduced from the availability or expansion of said infrastructures.
- e) Market capacity, considering the potential for growth in demand in view of the new offer, in order to prevent the generation of imbalances between supply and demand from harming the competitiveness of the destination and the operators.
- f) Availability of technological, professional and labor resources

necessary for the construction and exploration phases of the planned tourist enterprises, estimated in the event of application of measures and systems suitable for the environmental conservation, energy and water savings, and correct waste management.

- g) Availability of tourist resources, assessed in relation to planned tourist products, based on a valued inventory, aiming to estimate the tourist orientation of the area and the correspondence between resources, tourist products, type of demand and proposed tourist activities.
- h) Allocation to existing natural resources in the areas proposed for urban activity, in a setting of environmental, landscape and functional influence, based on the inventory and valuation of resources and on the availability of measures for their conservation. In order to enhance the natural resources involved in the action, the following will be considered in any case as sensitive elements:
  1. Coastal spaces, whose extension for this protection purpose is established as the 500-meter-wide coastal strip, measured from the seafront.
  2. The reliefs and horizons that define the characteristic landscapes of each island.
  3. The characteristic orographic and scenographic natural formations, such as cliffs, ravines, coasts, volcanic cones and calderas, among others.
  4. Productive agricultural soils and those that characterize the territorial image.
  5. The vegetation, and especially the groves.

Finally, and specifically in terms of limits on growth, Guideline 26 refers to municipal planning instruments, which also allow the introduction of restrictions on the growth of tourism. Thus, the Standard obliges the planning of the island territory to declare as exhausted the support capacity of the territorial zones, deduced from the analysis of the factors listed in the previous Guideline, and the said declaration may affect specific zones or nuclei of an island or its entirety. The effects of the declaration will be the following:

- a) Within the declared scope, the number of tourist spaces in relation to the existing offer cannot be increased.
- b) In tourist areas included in the declared scope, the number of residential locations cannot increase, unless expressly provided otherwise in the island plan, with due justification.

In particular, the island planning should justify the growth forecast of

tourist lodging that it establishes, in relation to the material existence or financial envelope for the implementation of general infrastructure and services sufficient to cover the needs of the resident and existing tourist population, such as that generated by the expected growth of tourism, requiring the opinion of the competent administrations. In any case, the availability and capacity of public health and education services for the expected increase in demand will be a limiting factor for its development.

## 2.2 Taxation: tourist fee

The taxation of tourist stays is a deterrent to visit tourist spaces. In economic theory, prices have always been a corrective factor in demand.

Not in vain, the “Study on the regulation of housing for tourist use in Spain”, prepared by the Spanish National Markets and Competition Commission on July 19, 2018, when assessing the restrictions by zones or neighborhoods to residences for tourist use, expressly considers that “an instrument more congruent and less distorted from competition than zoning to internalize the cost of negative externalities derived from congestion in some areas would be the intervention through a fee or tax on the stay in tourist accommodation, without differentiation of accommodation type”.

In Spain, only two Autonomous Communities collected this tax: the Balearic Islands and Catalonia.

Focusing on the first and without prejudice to remote antecedents (BAUZÁ MARTORELL, 2019), the current regulation of the tax is materialized in Law no. 2/2016 on the tax on tourist stays in the Balearic Islands and measures to promote sustainable tourism. The law was developed by Decree 35/2016 of June 23, which develops the Law of tax on tourist stay and measures to promote sustainable tourism.

Law 2/2016 sets the imposition of tax for stays, per day or by fractions, with or without overnight stay, that taxpayers do in the Balearic Islands in the following tourist establishments:

- a) Hotel establishments, i.e. hotels, urban hotels, apartment hotels and inland tourism accommodation.
- b) Tourist apartments.
- c) The various types of rural tourism accommodation, i.e. rural hospitality and agritourism.
- d) Hostels and refuges.
- e) Inns.

- f) Establishments operated by residential tourist companies, except for residential accommodation units.
- g) Hostels, residential hostels, boarding houses, budget hotels, guesthouses and tourist camps or camps.
- h) Tourist holiday homes, houses that are marketed for tourist stays and houses that are marketed for tourism that can be registered in accordance with the laws that regulate them.
- i) The remaining establishments and dwellings to which the regional regulation grants the qualification of tourist.
- j) Houses that are subject to tourism trade that do not comply with the requirements for that purpose established in the regional regulations and that, therefore, are not subject to registration in accordance with the current tourist legislation.
- k) Tourist cruise ships calling at a port in the Balearic Islands. Thus, cruise starts or arrivals with departure or final destination in the Balearic Islands are not included.

Among the main novelties of the regulation that operates this law is the inclusion of taxing cruise ships, a purpose that was the object of a requirement by the General Administration of the State.

For the other ones, the third final provision of Law 13/2017, of December 29, on the General Budgets of the Autonomous Community of the Balearic Islands for 2018, increased the tax quota by 100%, generally fixed at four euros per person and day.

The destination of the resources collected with this tax is the preservation of the environment. Thus, the Law creates the fund to promote sustainable tourism as a financing instrument for approved projects and to promote sustainable, responsible and quality tourism in the Balearic Islands archipelago. This fund is fed by the full collection of the tax on tourist stays in the Balearic Islands.

The resources of this fund are used to finance, in whole or in part, investments and other expenses that, in the execution of approved projects, are targeted to the following actions:

- a) Protection, preservation, modernization and recovery of the natural, rural, agricultural and marine environment.
- b) Promotion of seasonal adjustment, creation and activation of viable tourism products in low season and promotion of sustainable tourism in the low season.
- c) Recovery and rehabilitation of the historical and cultural heritage.

- d) Promotion of scientific research, development and technological innovation (I+D+i) projects that contribute to economic diversification, the fight against climate change or related to tourism.
- e) Improving training and the quality of employment. Promotion of occupation in low season. Actions in housing policies aimed at promoting access to housing, and especially to social rent, with energy sustainability criteria. In all of these actions, environmental projects are prioritized. In any case, approved projects must be environmentally, socially and economically sustainable<sup>9</sup>.

### 2.3 Rental limitation for tourists

In general, tourist rental was regulated with the legislator's intention to limit this practice, because of the problems we analyzed previously.

Limiting rent to tourists is not an easy task, as it meets the prohibition of restrictive competition practices.

In fact, in Spain, the National Commission for Markets and Competition in its Study 3/2018, of July 19, 2018, draws attention to the fact that regulatory limitations do not translate into discrimination against tourist residences with regard to hotel accommodations, but they should be especially motivated.

In this sense, there are many Supreme Court rulings that, on the one hand, confirm that certain limitations are in accordance with the Law because they are not discriminatory, or that they annul concrete precepts of rules that limited tourist rent without any justification. We refer to Federal Supreme Court Judgment 1237/2019, of September 24, 2019 (rec. 2861/2018), on the regulation of the Community of Castilla y León, of December 12, 2018 (rec. 4959/2017), or December 10, 2018 (rec. 234/2016).

In the specific case of the Balearic Islands, Law 6/2017, of July 31, which amends Law 8/2012, of July 19, concerning Tourism related to the sale of tourist stays in housing, addressed this issue introducing notable limitations for the marketing of tourist stays.

In principle, this regulation makes only the rental of the entire dwelling feasible, and art. 50.15 understands that tourist stays are incompatible with the formalization of housing contracts or with the coincidence of users in the same household who have formalized several contracts, without

<sup>9</sup> To understand this tax, see the extensive analysis carried out by FERNÁNDEZ GONZÁLEZ, 2017.

prejudice to the regulation of tourist stays in dwellings that come to be established.

Without prejudice to the previous one, this same precept of point 20 covers the modality of main dwelling rental, which consists of the sale carried out exclusively by individuals in their own dwelling and which is considered their main dwelling, regardless of the single-family or multi-family type, for a maximum term of 60 days within a year. In this modality, the coexistence of the people residing in the house and users is allowed, as long as this fact is clearly indicated in all advertising and the total number of people does not exceed the number of places included in the certificate of habitability or similar habitability certificate of the house.

From an urban point of view, the Balearic legislator goes beyond the distinction of use and as a rule with force of law, such as the Tourism Law, expressly admits that short-term tourist stays can be marketed in houses for residential use, provided that this commercialization is carried out by the owner or through operators or any of the tourist marketing channels under the terms provided for by the legal system (art. 50.1). This is when the Law requires that residences have a valid certificate of habitability, except for residences expressly excluded by sectorial regulations, e.g., of historical heritage (art. 50.2). In this area, too, the sale of tourist stays is prohibited in any dwelling on which a firm sanction has been applied for serious or very serious violations of urban law, provided that this legality is not restored (art. 50.4). Likewise, homes for residential use can only sell tourist stays for the maximum number of places allowed by the certificate of habitability (art. 52.1).

In terms of resources and enterprise, residences that are the subject of tourist trade must prove sustainability by obtaining, prior to commercialization, the energy certificate (art. 50.5), as well as systems for controlling water consumption and individual electricity and gas meters (art. 50.6).

A unique fact that affects competition law is zoning<sup>10</sup>. In this sense, according to the Balearic Law, the new declarations responsible for the beginning of the activity of commercialization of tourist stays in houses can only be presented and, therefore, proceed to a new tourist commercialization if these declarations refer to residential use located in areas expressly declared to be expressly fit (art. 50.4).

In all cases, the presentation of the declaration responsible for the beginning of the tourist activity related to tourist stays made in residential

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<sup>10</sup> On this issue of zoning, see Sola Teyssiere (2005).



accommodation subject to the horizontal property regime, or the typologies to be determined in regulations, allows the exercise of the activity for the period established in regulations and which, by default, is five years from the presentation to the Tourist Board. After the established period, it can only proceed with the tourist commercialization if all the requirements determined by law or regulation continue to be fulfilled, including that the area continues to be fit, for periods that can be extended for the same length of time.

During the month prior to the end of each period, if the house continues to fulfill all requirements determined by law or regulation, the owner of the house, or the businessman, can send a communication to the Tourist Board providing the marketing period for the same length of time, and stating that it continues to comply with regulatory requirements and has a certificate from the management body or the Tourist Board that proves that it can temporarily provide places for another period. If the deadline is over and the communication has not taken place or the house fails to comply with regulatory requirements then established, including urban planning, marketing activity of tourist stays must stop, the house must be written off, and vacancies must automatically return to the local management bodies or the Tourist Board.

Among the prohibitions, the Balearic Law prevents the tourist marketing of houses subject to or that have been subject to an official protection regime or at an appraised price (art. 50.8), or that are located on protected rustic land, unless the territory planning instruments establish otherwise (art. 50.18).

In terms of security, LTIB obliges the businessman of tourist stays to forward the identification of users to the General Directorate of Police (art. 50.11), which in turn must comply with the practices of coexistence and public order, as well as internal rules of the community of owners in cases of horizontal property (art. 50.12).

In this type-of-property scope, this precept in point 7 covers the possibility that the tourist dwelling is located in a listed or horizontal property building, although it declares the use of tourism to be illegal in cases where the statute of the owners' community determines that use for purposes other than residential housing is not possible.

The Balearic Islands are the territory with the highest tourist intensity index in the world. In 2017, 16 million tourists visited the islands, which means that if the average tourist intensity index is 100, the Balearic Islands

will register 6,572'61<sup>11</sup>. This requires the adoption of active policies to integrate the territorial and environmental element in the tourism sector. Even though seasonal rental is one of the driving factors of this tourist intensity index, zoning – directly linked to the load capacity of the tourist population (LÓPEZ BONILLA; LÓPEZ BONILLA, 2008) – becomes a key factor in tourism management.

In line with what we said in relation to the load capacity of a territory, the Law allows Intervention Plans in Tourist Scopes (PIAT) and, if applicable, Insular Territorial Plans (PTI), to establish the maximum global density of the population, delimit tourist and protection areas and scopes, set the size and characteristics, as well as set minimum or maximum parameters of surface, volume, buildable area and equipment. They can delimit saturated or mature tourist areas, according to the criteria established in that law. Likewise, they can point out the exceptions that, due to their location or special characteristics, advise so. They can also determine these parameters in relation to residential areas bordering tourist areas.

For what concerns us, it will be up to the PIATs to establish the criteria for delimiting areas suitable for the sale of tourist stays in residential homes. Based on these criteria, the City Councils must establish suitable areas for the sale of tourist stays in residences, incorporating the delimitation into the respective urban planning through the corresponding cartographic documentation<sup>12</sup>. Likewise, PIATs and, if applicable, PTIs, can determine on each island the maximum limit of tourist places in tourist accommodation and the maximum limit of places in residential houses that can be marketed for tourism, depending on the existing island resources, infrastructure, population densities and other relevant parameters in their area. In this case, the licenses for hosting must adjust to this figure<sup>13</sup>.

Article 50.3 of LTIB includes the so-called zoning of tourist rental, in that it only allows the presentation of new statements responsible for the beginning of the marketing activity of tourist stays in homes and, therefore, perform a new tourist market in the event that these statements refer to dwellings for residential use located in expressly declared capable areas, following the procedure laid down in art. 5, or provisionally delimited under the terms of art. 75 of LTIB.

11 Report by the Universidad das Ilhas Baleares of February 2019.

12 Due to the positive data of the Law, this cartographic delimitation will not be considered a structural change in the planning.

13 Until this value is determined or if it is not considered necessary to determine it, the maximum limit of vacancies per island must be determined by those that are legally existing plus those that are part of the grants managed by the management entities of tourist places or by the islands' tourism administrations, with the specifications provided for in art. 89 to the island of Menorca.

According to art. 75.2, an area is considered suitable for marketing of tourist stays in residential homes if, for reasons, with corrective measures that may be established and given the provisions of law or regulation in housing matters, the competent Administration, in order to carry out zoning, considers that this extraordinary use of the houses is consistent with the ordinary use that characterizes them.

In the next point, this same precept allows that, provisionally, while the island councils do not develop by PIAT or, if applicable, by PTI, the demarcation of areas suitable for the marketing of tourist stays in houses, island entities can declare and provisionally delimit, by agreement of the plenary, the areas suitable for the marketing of tourist stays for residential use, which can be differentiated by typologies of buildings. This agreement should be published in the Official Gazette of the Balearic Islands and shall rule until the City Councils establish the respective delimitation in the municipal urban planning.

## 2.4 Actions on the seabed

The protection of marine ecosystems becomes a key element for life on the seabed, especially water oxygenation, so that it automatically becomes part of the limitations of tourism.

Indeed, the mooring of pleasure boats on the seafloor, due to the drag involved in setting the anchor, seriously affects the preservation and growth of posidonia beds.

In Spain and according to the basic state legislation<sup>14</sup>, the Autonomous Community of the Balearic Islands approved Decree 25/2018, of 27 July, for the conservation of oceanic posidonia in the Balearic Islands, which protects an area of 650,000 square meters of the sea-bottom populated by this marine species.

In Spain and in accordance with basic state legislation, the Autonomous Community of the Balearic Islands has approved<sup>15</sup> Decree 25/2018 of 27 July, on the conservation of oceanic posidonia in the Balearic Islands, which protects an area of 650,000 square meters of sea-bottom populated by this marine species.

<sup>14</sup> Law 42/2007, of December 13, on Natural Heritage and Biodiversity; Law 41/2010, of December 29, Protection of the Marine Environment, and Royal Decree 139/2011, of February 4, for the development of the List of Wild Species under Special Protection Regime and the Spanish Catalog of threatened species.

<sup>15</sup> Prior opinion 64/2018, of the Consultative Council of the Balearic Islands, approved in session of July 11, 2018.

This Decree provides for the cartographic delimitation and the cataloging of posidonia beds (art. 3), as well as the regulation to anchor vessels, totally prohibited in posidonia beds (art. 7).

Art. 12 creates a fund, called Posidonia Fund, to be fed by contributions of the Autonomous Community of the Balearic Islands, other administrations, companies, associations and others, as well as compensatory measures for actions that affect the habitat and species. It is indicated that the management of the fund is under the Ministry of Environment, Agriculture and Fisheries, directly or through the instrumental entity to which this competence is ascribed.

Finally, this Decree contemplates a regime of sanctions for vessels that anchor on posidonia beds, as well as any significant changes to them, understood as any affectation, resulting in destruction or death, of oceanic posidonia as a species or habitat, through the permanent or temporary occupation of its space, deforestation, clearing, uprooting, destabilization of its substrate or other actions that involve deterioration of its natural conditions.

The decree in Annex II discusses a controversial issue, as the removal of posidonia that remains stranded in the coast. The standard defends the benefits of such traces for the conservation of beaches and the generation of sediments. However, this circumstance must be related to the functional difficulty that the remains of dead and rotten algae, with the strong odor, causes on the beaches of one of the biggest tourist destinations in the world.

## **2.5 Limitation of access to public spaces**

Another way to limit the presence of visitors and tourists in certain areas is to establish a quota system.

This is the case of Las Catedrales Beach, in Lugo (Ribadeo), which has an access and visit authorization system, through a website, which allows only 4,812 daily visits at Easter and from July to September. This restriction is based on the saturation problem that the Galician sand has suffered in recent times, which may represent a risk for an area that, besides tourism, has a great natural interest. The autonomous Administration's goal is to preserve the landscape, combining its tourist and environmental use, promoting alternative means of transport and promoting knowledge of its biodiversity, among others.

In application of Law 9/2001, of Nature Conservation, anyone who ignores the veto and decides to walk the existing walking paths can be

sanctioned with fines of 600 to 6,000 euros. The measure involves complying with the recommendations of geologists and experts at the University of La Coruña, who agree that the high cliffs of Las Catedrales are a particularly sensitive area, with priority habitats in the European Union that have so far been systematically trampled by thousands of visitors. In addition, the vegetation was degraded, allowing the filtering of rainwater that eroded caves, grottoes, cornices and protrusions, causing landslides.

Not much different is the case of the Cies Islands, in the same Autonomous Community of Galiza. For environmental reasons and tourist saturation, especially vessels, the Management Plan for the use and management of the Atlantic Islands of Galicia Maritime-Terrestrial National Park establishes a quota of visitors to the Ons island (1,800 per day) and the Cies Islands (2,800 daily visitors).

The limitation of access to the Ons Island became a mandatory consequence after the limitation to the Cies Islands, since the former became the free alternative to the restrictions on the Cies, shifting the saturation from one island to others.

In the Canary Islands, the same happens with the Lobos Island, considered a Natural Park and in which the Master Plan for Use and Management limits the number of visitors to 200, while prohibiting the holding of camps.

In the Balearic Islands, the Cabrera island, declared a Maritime-Terrestrial National Park by Law 14/1991, of 29 April, has a Natural Resources Management Plan (approved by Royal Decree 1431/1992, of 27 November, whereby the Management Plan for the Natural Resources of the Maritime-Terrestrial National Park of the Cabrera Archipelago is approved), and a Master Plan for Use and Management (approved by Decree 58/2006 of July 1).

There are totally allowed activities (observation of fauna and flora, taking non-professional photographs without leaving the itineraries, as well as all those that do not alter the landscape and the natural and cultural values of the Park), activities that require prior authorization (the activity of professionals in filming, photography, video etc., diving, navigation and anchoring, acts of a massive nature, any commercial activity that must be carried out in a fixed establishment, and acting as an interpreter, tourist guide or informant within the Park) and, finally, there are activities that are expressly banned: disposing of garbage and waste, extracting any type of geological material, extracting or altering any archaeological object, collecting any type of material, live or inert, releasing, sowing, transplanting animal or plant species, lighting fire and smoking, anchoring

boats outside expressly authorized areas, camping throughout the National Park, making noise, carrying out any type of hunting activity, accessing the land at any point other than the demarcated port of Cabrera, circulating on the slopes and paths, free diving (apnea) during the months of May and June in coastal areas where the species *Scyllarides latus* lays eggs, sport fishing or using drones.

More specifically, there are restrictions and quotas for access to the Altamira Cave, where the Curator Council of the National Museum and Research Center of Altamira endorses the recommendations of the Monitoring Committee for the Preventive Plan for the Conservation of the Cave and maintains visits to it in a controlled and limited fashion, with access for five people and two guides per week. In this sense and although the main cause of the deterioration of the paintings consists of the infiltration of water by washing, the presence of people (CO<sub>2</sub> emission) has contributed to the deterioration since the cave started to receive 30,000 people a year in 1952, 60,000 in 1957, and as many as 175,000 in 1973. Between 2002 and 2005 the cave remained closed to the public.

Limiting access to public spaces is nothing new in Brazil. Territorial environments of a high landscape level such as the Fernando de Noronha Islands (Pernambuco) or Bonito (Mato Grosso do Sul) are examples of limiting human presence with exceptions for scientific purposes. Likewise, and since 1976, Brazil has been introducing restrictions, e.g. to the Paquetá Island (Rio de Janeiro). Administratively, the island constitutes a neighborhood in the municipality of Rio de Janeiro, so that art. 180 of Decree No. 322 of 1976 prohibits, among other things, the opening of new public spaces on the internal roads of the grouped buildings, the cutting of trees without prior municipal authorization, or the transit of motor vehicles of any kind and for any purpose, except those essential for the public service.

In addition, as a result of Decree 17.555/1999, the Paquetá Island was transformed into an Environmental and Cultural Preservation Area (APAC), conceived as a municipal urban instrument that seeks to preserve traditional physical structures such as buildings and other cultural references for the city: legends, traditional festivals, etc.

## CONCLUSIONS

The promotion of tourism, with a concomitant activity across all levels of Administration, has given rise to a massification of tourist spaces and territories, generating a series of distortions such as the difficulty of

access to housing, the expulsion of the resident population or the generation of social conflicts and tourism phobia. Overcrowding has resulted in lower costs and greater availability of leisure, but it is mainly explained by public policies to promote tourism through seasonal adjustment formulas (congress tourism, sports tourism, rural tourism, etc.).

The consequence of the above has been the hazard and deterioration of the environmental variable, so that tourism has impaired the use of the territory, especially that of the coast and coastline, as well as natural resources (water availability, energy, waste generation, etc.).

These derivations of tourist massification led the legislator to articulate tourism policy (hitherto, exclusively economic) in an environmental key, in a way that sustainability emerged as a transversal element of tourism. This change of tourism public policies has surprised tour operators (especially owners of hotel and non-hotel accommodations), who find their activities threatened due to the limitations introduced by the Administrations.

Not in vain in recent times, the legislative power refereed regulatory measures of tourism, such as a night tourist tax, the establishment of the load capacity of a territory, the direct and frontal limitation of tourist rentals, conservation of the seabed, or access to public spaces through quota systems. These are experiences that are known both in Brazil and in Spain and that do not prevent them from adapting to the social transformations they are going through.

In any case, these are revolutionary measures, never foreseen for years, but which were imposed by an imperative environmental need. It is up to the legal operators to monitor the evolution of the tourism-environment binomial to propose corrective measures and regulatory reforms.

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