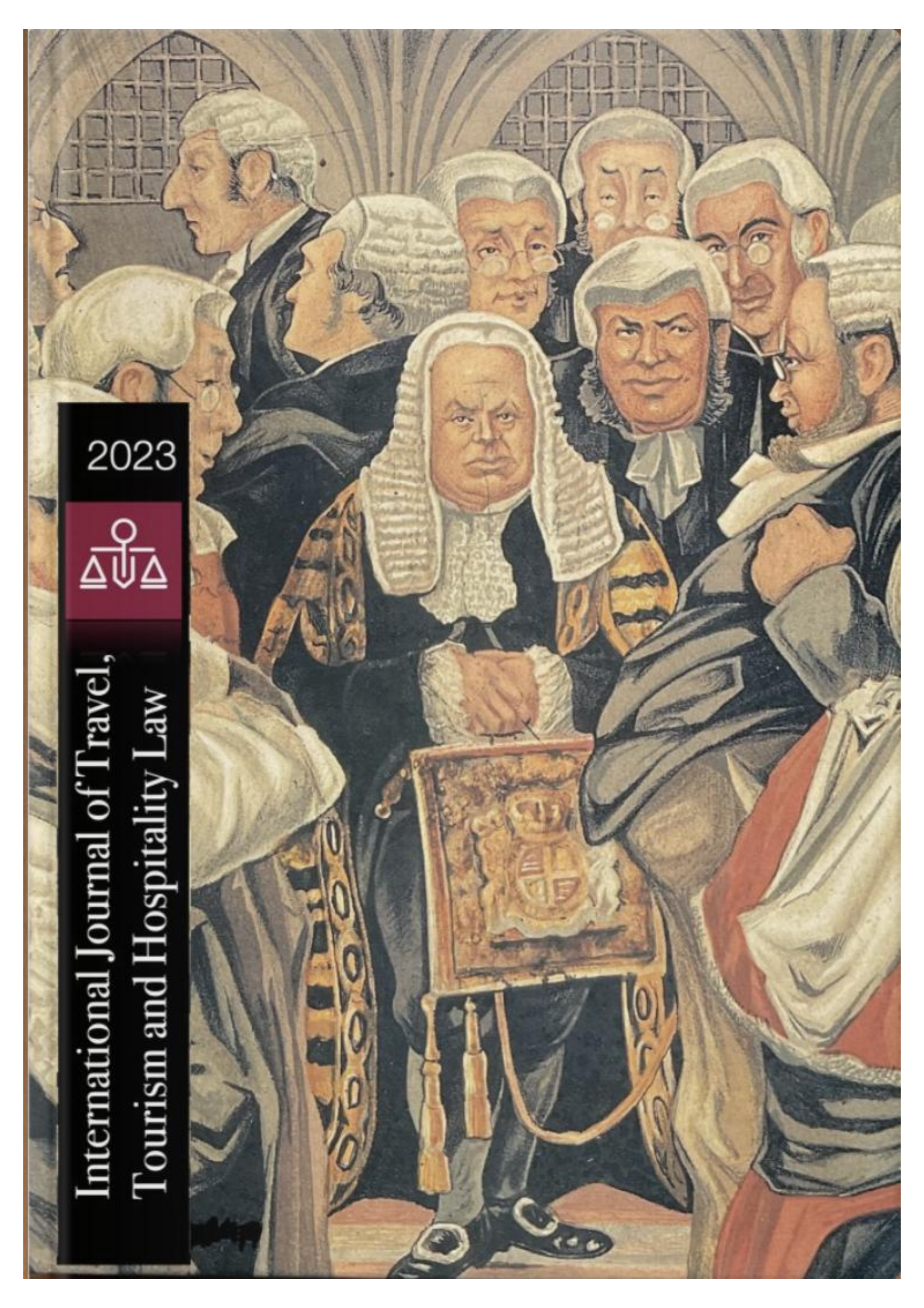




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A new Administrative Law for a new Tourism: now or never

Alejandro Corral Sastre¹

1. Introduction. Tourism issues before the pandemic. 2.1. Exponential growth. 2.2. Overcrowding and congestion: a breeding ground for “tourism”. 2.3. Gentrification and “touristification” of cities 3. Can we build a new tourism model from an exceptional tourism “zero”: an analysis from an ius administrativist perspective? 3.1. The health crisis: zero tourism 3.2. Tourism as the main industry affected: The change in the tourism model. 3.3. The role to be played by public administrations in changing the tourism business model. 3.4. Legal-administrative instruments for the implementation of the change of the tourism model. 3.5. Smart tourism as a solution to the problem of sustainability. Also in the health sector. 3.5.2. The use of information and knowledge technologies to digital tourism. 3.5.3. Digital tourism from the perspective of public administrations. An unfinished business. 3.5.4. Smart tourism: science fiction or inescapable reality? The necessity for structural change. 3.5.5. Proposal on the different tools that can be used by administrations for the intelligent control of the tourist offer. 3.5.5.a. Gathering information: Internet of things and smart cities as a preliminary step. 3.5.5.b. Massive data processing or Big data. 3.5.3.c. Smart tourism in the context of smart administrations 3.6. – Brief reference to the challenges of smart tourism: the necessary protection of fundamental rights. 4. Conclusion.

The need for a new tourism law is highlighted by the new challenges that have to be faced: gentrification, overtourism, sustainability and scarce resources, tourismophobia, in short, a whole series of circumstances that reduce quality in a broad sense.

As a consequence of the great tourism debacle resulting from the pandemic, the public authorities have developed policies aimed at increasing the number of tourists,

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Professor of Administrative Law. University CEU-San Pablo of Madrid. This work has been carried out within the framework of Project PID2020-120373RB-I00 on *Digital Identity, Fundamental Rights and Neurorights*, Ministry of Science and Innovation. State Plan for Scientific and Technical Research and Innovation. Spanish Government.

once again, without stopping to think about the possible consequences, which we already knew, on the other hand.

What is needed, however, are courageous policies to control access to the market in order to prevent further damage. Equipping public administrations with the appropriate digital tools to control demand and, if necessary, restrict supply. Complying, of course, with the principles set out in the Services Directive and its national transposition rules.

Keywords: Overtourism, Gentrification, Tourism-phobia, Digital Tourism, Smart Tourism, Administrative Law, Tourism control.

1. INTRODUCTION

According to economic estimates, the consequences of the pandemic in Spain have been particularly negative. Even worse than initially expected². Nor have the forecasts immediately after confinement been fulfilled, which has led many public administrations to adopt policies aimed at increasing the number of visitors and tourists, so as to compensate for the negative statistics, but without taking into account other circumstances.

It should be borne in mind that these forecasts are made on the assumption that the restrictions on activity would be lifted in the last quarters of 2021, so that the fall in GDP was more intense and the expected recovery started later, given that the restrictions have been maintained and even increased in the autumn, winter and the following spring, despite the fact that economic activity has not come to a complete standstill. In the latter part of 2021, uncertainty remained or even increased as, despite the high number of people vaccinated and immunized by the disease itself, cases continued to increase. In the summer of 2022, when these lines are being written, cases are still increasing, especially after the relaxation of certain measures such as the use of masks or the

requirement of vaccinations for travel between certain countries. The autonomous communities have opted to allow major tourist events to be held (San Fermín, major concerts in Madrid, the April Fair in Seville, etc.), without taking much care to require health measures to prevent the spread of the virus. I understand that these decisions benefit certain tourist sectors, there is no doubt, but in my opinion more caution would have been necessary when allowing certain celebrations, especially when we are talking about an economic sector that is particularly volatile in crisis situations, as has been amply demonstrated in recent years³.

On the other hand, the terrible spectre of war is once again hanging over us, which is not exactly going to help the economic recovery of tourism. Certainly, as with the pandemic, the most dramatic aspect is still the number of victims and casualties, but regarding what we are analyzing here, we cannot fail to mention that, despite the restrictions, 134,000 Russian tourists visited us last year, spending 228 million euros, according to data from the National Institute of Statistics on Tourist Movements at the Border (FRONTUR).

The tourism sector, which accounts for approximately 15% of our country's GDP, is in a particularly precarious situation, as it has been the economic sector that has first suffered the effects of the pandemic, reaching what has been called "tourist zero"⁴. The restrictions on mobility and the measures imposed on travelers visiting our territory have had a major impact on activity. According to INE data, international tourist arrivals fell by 75.86% in August 2020. In addition, the different "waves" that we have suffered throughout 2021 have prevented the activity from taking off, so that the long-awaited recovery is taking longer than desired, although the forecasts for the summer of 2022 are even too flattering, with an estimated growth of 53%, with an increase in activity of 47,000 million euros.

Paradoxically, just before the pandemic, the most specialised doctrine on the subject questioned the tourism growth model that was being developed in our country, especially in certain territories (Balearic Islands, Mediterranean coast, etc.), and some autonomous communities even adopted legal regulations that

² *European Economic Forecast*, Summer 2020, Institutional Paper 132 | July 2020, p., 22. "Thus, according to the European Commission's forecast for this year 2020 and early 2021, and at the expense of what is set out in the report on the economy for autumn 2020 and 2021, "The economic impact of confinement in the first half of 2020 is likely to be worse than expected in the spring forecast. This will not be fully offset by the expected rebound in the second half of 2020 as most of the activity restrictions are removed. As a result, annual GDP growth in 2020 is now forecast at nearly -11%, about 1½ pps. lower than projected in the spring. Activity should continue to recover during the first half of 2021 and then gradually moderate in the second half. This, together with a positive carryover from the last quarters of 2020, would bring annual GDP growth to around 7% in 2021 (virtually unchanged from the spring), leaving output volume in 2021 about 4½% below its 2019 level."

³ Regarding the volatility of the sector, see CORRAL SASTRE, A. (2017), *La liberalización del sector turístico, ¿Hacia un modelo de turismo sostenible?*, Reus.

⁴ SIMANCAS CRUZ, M., (2020), 'Deconstruyendo una crisis turística', in *Turismo poscoronavirus, ¿una oportunidad para el reconocimiento?*, en *Turismo pos-COVID-19. Reflexiones, retos y oportunidades*, Coord. SIMANCAS CRUZ, M., HERNÁNDEZ MARTÍN, R. Y PADRÓN FUMERO, N., Cátedra de Turismo Caja Canarias-Ashotel de la Universidad de La Laguna.

greatly restricted tourism in their territories. The paradigmatic case is that of the Balearic Islands, which, through Decree-Law 1/2020 of 17 January, regulated against so-called “excess tourism” in order to improve quality in tourist areas, empowering the administration to prohibit certain economic activities related to excess tourism.

However, data relating to the summer of 2022 give us an idea that the intention is to continue with the same developmentalist policies, especially on the part of the autonomous communities that are especially dedicated to sun and beach tourism. Thus, according to a press release from the INE, “Spain received 7.0 million international tourists in May, compared to 1.4 million in the same month in 2021”.

In view of these data, and this is the aim of this paper, it is interesting to analyse what measures the public authorities can take, and in what sense, to recover the tourism sector without falling into the problems that some destinations suffered before the pandemic. Thus, I believe that this is an unbeatable opportunity to recover the activity, avoiding overcrowding, congestion and gentrification. In short, by committing to quality and sustainable tourism. May the so-called “zero tourism” serve as a catalyst for us not to fall into some of the mistakes we were making before the terrible health crisis.

2. TOURISM ISSUES BEFORE THE PANDEMIC

As we have already indicated above, a large part of the doctrine specializing in public intervention in the tourism sector had shown that, in recent years, certain phenomena were occurring that prevented us from speaking of sustainable and quality tourism, which, in principle, is the main objective of the autonomous community laws regulating the sector⁵.

Thus, the overloading of certain destinations, the offer of a tourism of excesses absolutely at odds with quality, the damage to the environment, the gentrification of many cities, outbreaks of “tourism phobia”, etcetera. These are problems that existed before the health crisis and to which attention had already been drawn,

⁵ SOCÍAS CAMACHO, J. M., (2020) ‘Espacio público en la ciudad turística’ in BARRERO RODRIGUEZ, C. y SOCÍAS CAMACHO, J. M., *La ciudad del siglo XXI: transformaciones y retos*, INAP.

because they represented, I repeat, a challenge in the implementation of public policies in the sector⁶.

And we speak of a challenge because the public authorities do not have all the legal tools at their disposal to put a stop to these problems. Especially, following the publication and subsequent transposition into domestic law of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market and, at the national level, Law 20/2013 of 9 December, on guaranteeing market unity⁷. It is becoming more and more complicated to limit the economic activity of tourism because we are moving, inexorably, towards a greater liberalization of the economy.

This liberalization is motivated, to a large extent, by the need to boost an economic sector such as tourism, which provides large macroeconomic figures, especially in times of crisis such as those we have experienced in recent decades: the crisis of the financial system, the economic crisis resulting from the Pandemic and the crisis resulting from the war in Ukraine, whose consequences we cannot yet fully assess.

The risk, as can be perceived, is related to an uncontrolled increase in the tourist offer, with the corresponding increase in demand, leading to situations of environmental, social and economic tension. In short, that public policies, perhaps well-intentioned, tend to promote low-quality tourism that is difficult to sustain in the future⁸. Let us now look at some of the main problems in more detail, without wishing to be exhaustive.

⁶ RODRÍGUEZ-BARCÓN, A., CALO, E. and OTERO-ENRÍQUEZ, R. (2021) “Una revisión crítica sobre el análisis de la gentrificación turística en España”. *Rotur, Revista de Ocio y Turismo*, 15(1), “However, tourism has proved to be a double-edged sword. Several studies have found some negative consequences of the massive arrival of visitors. The relevance that concepts such as overtourism (Milano, 2018; Milano, Cheer and Novelli, 2019) or “tourismphobia” (Guitart, Alcalde, Pitarch and Vallvé, 2018; Mansilla, 2020) are recently acquiring point to a certain collapse of the current model and the need to seek other ways to manage mobility in a more sustainable way, with a smaller ecological footprint and less intrusive with the day-to-day life of residents (Colomb and Novy, 2016). Among its consequences we can highlight: the increase in the price of housing and commercial land, the precariousness and seasonalization of employment associated with the service sector, the homogenization of commerce and loss of identity of spaces, the municipal economic pressure to maintain certain infrastructures and services, or the privatization of public spaces”.

⁷ A comprehensive analysis of the impact of these regulations on the tourism sector can be found at CORRAL SASTRE, A. (2017), *La liberalización del sector turístico, ¿Hacia un modelo de turismo sostenible?*, Op. Cit., pp. 151 y ss.

⁸ MANTECÓN, A., (2020), “La crisis sistémica del turismo: una perspectiva global en tiempos de pandemia”, en SIMANCAS CRUZ, M., HERNÁNDEZ MARTÍN, R. y PADRÓN FUMERO, N. (Coords.), *Turismo pos-COVID-19. Reflexiones, retos y oportunidades*, Op. Cit., págs. 24 y 25; “Over the last six decades, the Spanish tourism sector has articulated a “model” guided by the basic objective of increasing the number of visitors. All other considerations were subordinated to this principle (both during the dictatorship and during democracy), which has ended up giving it certain structural features. Among others:

- Specialization in a predominantly “sun and beach” tourism product, with low added value and demanded by price-sensitive low-middle income consumers.

2.1. – Exponential growth

The liberalization to which I have referred above is intended to facilitate access to the tourism market for developers and service providers. This, in itself, is not only not bad, but is in line with the main liberalization policies of both the European Union and the State.

The problem arises when, due to the absence of adequate administrative control, the supply increases exponentially, so that the demand increases in the same terms, generating stressful situations in different ways: environmental, social, public services, etc.

This perspective of tourism growth at all costs, based on short-term economic benefits, has much in common with the tourism policies that were implemented in our country in the fifties of the last century, that is, at the height of the so-called developmentalism⁹. The circumstances are not the same, of course.

- A highly atomized business development, characterized by the formation of family businesses with little margin to resist disturbances and with low qualified human capital (as also pointed out by the Davos Forum).
- Permission of speculative practices, carried out by real estate entrepreneurs who have often used the promotion of tourism development as an excuse to benefit the interests of the construction industry.
- The projection of a stereotyped international tourist image as a center of "mass tourism".
- Excessive dependence on foreign tour operators.
- The suffering of problems derived from the excessive seasonality centered on the summer months.
- The environmental degradation of many tourist enclaves linked to the overexploitation of scarce natural resources, the destruction of landscapes and the occupation of large amounts of land by intense urban development activity.
- The progressive transformation of traditions into cultural heritage and, through their subsequent media spectacularization, into products aimed at mass tourism consumption.

The interaction of all these elements has favored the appearance of tensions that are not a mere anecdotal reflection of economic prosperity. Rather, they propagate an atmosphere of doubt that calls into question its future viability. The crisis caused by the coronavirus poses challenges and also raises discussions about the type of responses that deserve to be taken into account. However, the vehement commitment to certain dynamics and the reluctance to undertake profound changes both in the configuration of tourism products and in consumer habits now leads to a scenario with very consolidated inertias and limited margins for maneuver (especially in some cases).

⁹ VELASCO GONZÁLEZ, M., (2020) "Políticas turísticas ante una pandemia", en *Turismo pos-COVID-19. Reflexiones, retos y oportunidades*, Op. Cit., p. 132, "In the case of Spain's tourism policy, the main restrictions are the persistence of the reference to growth and competitiveness as the basic principle of public action related to tourism; the structural problems of the Spanish tourism model; the characteristics of the private tourism sector and the cross-cutting nature of the activity itself, which goes far beyond the sectorised work format of governments [...] The Spanish tourism model was built in the sixties and seventies and since then it has had some structural problems that it has not been possible to modify, despite various attempts. As early as 1973, the public actors themselves spoke of a "quadruple concentration" caused by the Spanish tourism model: concentration of supply, highly oriented towards the sun and beach product; temporal concentration, since the basic product requires a climate that occurs in the summer months, which is also when holiday periods are concentrated; spatial concentration, linked to the coastal territories; and concentration of demand, with a very high dependence on two specific issuing markets. This concentration is not easy to change as it is linked to the country's own tourism development model".

There are currently certain legal instruments that allow us to curb this excessive growth, but we must adopt a firm and not hesitant, clear stance¹⁰.

In this sense, the Pandemic may cause the exorbitant growth we were experiencing before the virus to take two very different paths:

- i. The first and most encouraging one, that we shake off that short-term vision that brings quick profits, but to very few, and make a proper medium-long term planning, based on essential factors such as quality and sustainability.
- ii. The other path I am referring to, which I believe we cannot afford, is to continue with the above, that is, to increase the number of tourists at all costs, without taking into account other public interests worthy of protection. We run the risk that the eagerness for tourist recovery will lead us back to this obsolete model¹¹.

And this cannot imply a negative vision of tourism. We start from the necessary assumption that tourism is positive, an essential asset for our economy. And we are a country especially prepared for these flows of people¹². Therefore, I do not share

¹⁰ ROMERO PADILLA, M., ROMERO MARTÍNEZ, J. M.ª. y NAVARRO JURADO, E., (2020), "Reflexiones desde el post crecimiento: ideas, estrategias y tácticas para el turismo post-COVID-19" en *Turismo post-COVID-19. El turismo después de la pandemia global. Análisis, perspectivas y vías de recuperación*, op. cit., p. 4, "Tourism is an activity marked by developmentalist thinking, almost exclusively economic, related to the evolution of the global economy and with a geographical growth/expansion unprecedented in history. International tourism reached 1 billion tourists for the first time in 2012 and continued to grow to 1.5 billion in 2019, an increase of more than 30% in just 7 years."

¹¹ RODRÍGUEZ-BARCÓN, A., CALO, E. y OTERO-ENRÍQUEZ, R. (2021), "Una revisión crítica sobre el análisis de la gentrificación turística en España". *Rotur, Revista de Ocio y Turismo*, 15(1), Op. Cit., They refer, for their part, to the risk we run of wanting to make up for lost time: "Will we witness a structural and profound transformation of the processes of tourist gentrification, for the sake of greater – and indispensable – urban sustainability? Or, on the contrary, once the worst phases of the pandemic have been overcome, will we observe a sharpening of hedonism and a liquid desire for new tourist experiences and, consequently, will we witness a widening of the problems associated with this type of gentrification? In any case, the analytical treatment of the eight themes identified here in the Spanish literature, in our opinion, will probably constitute the "continent" of the answers to these questions".

¹² RIVERO CEBALLOS, J. L., HERNÁNDEZ HERNÁNDEZ, J., CORRAL QUINTANA, S. y NAVARRO IBÁÑEZ, M., (2021) "Una breve reflexión desde el cero turístico", en SIMANCAS CRUZ, M., HERNÁNDEZ MARTÍN, R. y PADRÓN FUMERO, N. (Coords.), *Turismo pos-COVID-19. Reflexiones, retos y oportunidades*, Op. cit., p. 63, "Unfortunately, there is a widespread view that tourism is concentrated in regions and countries that are not capable of doing better, so that available resources can only be allocated to tourism activities. Hence some voices have been heard during the current pandemic urging the replacement of the supposedly low or non-existent value of tourism with activities that provide greater economic and social value. Moreover, the reduction of tourism in particular in the way we have known it in Spain would, according to this vision, mean less dependence on the outside world and a considerable improvement in economic and environmental sustainability. For all these reasons, it is not superfluous to call attention to the fact that we should avoid falling into such a biased (and erroneous) perspective of the very varied and diversified tourism activities".

the idea that we have to stop being a country that bases its economy on tourism, which does not imply leaving aside or advancing in other economic activities. But it would be a mistake, I insist on the idea, not to take advantage of the special geographical, climatological and social circumstances that we have in Spain.

But we need to be more competitive, and this implies, as I understand it, betting on quality tourism and, inevitably, using the legal instruments at our disposal to limit certain types of tourist offer that conflict with that quality and that generates, as I have already indicated, certain social problems.

2.2. – Overcrowding and congestion: a breeding ground for “tourism-phobia”

The uncontrolled growth referred to in the previous section led, logically, to the overcrowding of certain destinations, especially sun and beach destinations, and to the congestion of public services, which led to social tensions in certain destinations. This is nothing new. Since the middle of the last century, the tourist “boom” of developmentalism, we have experienced moments of great tourist pressure that the respective competent public authorities have failed, or with little success, to tackle.

Before the Pandemic, there were certain places where the increase in tourist demand had led the competent authorities to limit, as far as legally possible, the increase in tourists. Cities such as Barcelona, Palma de Mallorca and, in general, cities on the Mediterranean coast were beginning to be saturated with visitors who, in addition, were consuming low-quality tourism, i.e. short, cheap stays, in short, what Decree-Law 1/2020 of 17 January of the Balearic Islands has rightly come to refer to as “tourism of excess”¹³.

The essential issue in the face of these problems lies, in my opinion, in the policies that many public administrations have implemented in order not to

control and limit these negative effects, taking refuge in certain rights and principles such as freedom of enterprise and the need to activate the economy after the great financial crisis of 2009. It is true that the instruments of administrative intervention in the economy have changed since the liberalisation initiated by Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (hereinafter I will refer to it as the Services Directive), and the Spanish transposition regulations, as well as Law 20/2013, of 9 December, on guaranteeing market unity. However, this does not mean that there are no control instruments that allow the competent authorities to control the activity in order to avoid certain pernicious effects. They do exist, and should be used when necessary.

The tourism legislation of the different Autonomous Communities no longer relies practically on the classic authorisations and prior licences, which are very effective, but perhaps somewhat outdated. However, there are other control methods, such as responsible declarations and prior communications which, although perhaps less effective, if used appropriately, can perfectly fulfil their function of controlling the quality of tourism.

Notwithstanding the above, it should be pointed out that with technological advances it does not make much sense, in my opinion, to speak of prior controls or subsequent controls insofar as, as seems logical, these advances should make us reconsider the means of intervention of public administrations in citizens’ rights. As I said, institutions such as administrative silence, maximum periods for resolving and notifying procedures, etc., sound like Larra’s “Come back tomorrow”. The instruments of administrative policing cannot be based on mechanisms more typical of the 19th century than of today. Hence, as I understand it, the administrative procedure should be completely reconfigured and adapted to the current digital reality, without prejudice to other rights that should be respected, such as data protection, in the broadest sense, or the rights of those citizens who wish to stay out of the digital world.

2.3. Gentrification and “touristification” of cities

The excess of tourist supply in cities produces phenomena such as gentrification or the “touristification” of large urban centres. Gentrification is understood as the arrival of new residents with greater purchasing power in certain neighbourhoods, which raises the standard of living and prices, thus expelling the old residents who cannot cope with the new economic situation. By “touristification”, we can understand the loss of identity of certain cities as a

¹³ ROMERO PADILLA, M., ROMERO MARTÍNEZ, J. M.ª, y NAVARRO JURADO, E., (2020) “Reflexiones desde el post crecimiento: ideas, estrategias y tácticas para el turismo post-COVID-19” in *Turismo post-COVID-19. El turismo después de la pandemia global. Análisis, perspectivas y vías de recuperación*, BAUZÁ MARTORELL F. J., y MELGOSA ARCOS, F. J. (dir.), RONDÓN GARCÍA, L. M., TROTTINO TORRALBA, L. y MULET FORTEZA, C. (coord.), AECIT, p. 4, “In Spain, the weight of tourism is even greater (12.3% of GDP and 12.7% of employment). This weight has a bearing on the degree of dependence that the Spanish economic structure has on the tourism-real estate dynamic, which has been reinforced in recent years as it has been stimulated as a way out of the 2008 financial crisis. Destinations have grown by promoting the construction and development of more accommodation, facilities and infrastructure. The result is a model of mass tourism, which Spain already had, but now with a low-cost format, precarious employment, a boom in the supply of low-cost accommodation (tourist accommodation, hostels, etc.), etc. This model has generated for the first time in Spain two critical positions in the local population with respect to tourism: rejection of tourism (tourism-phobia and urbanophilia, in Barcelona or Palma de Mallorca) or social movements against the overcrowding and touristification of public spaces, not rejecting tourism, but denouncing that the positive impacts are insufficient compared to the negative ones (for example, in Malaga, Madrid, Valencia) (Navarro-Jurado et. al. 2019).

consequence of an excessive focus on tourists, sometimes leaving aside the needs of the residents themselves¹⁴.

These situations often generate unease among residents, who see tourists as a privileged group with better rights than the citizens themselves. It is perceived that public administrations are more concerned with increasing the number of tourists, the benefits of which ultimately fall on very few, without any substantial improvement in public services. The crisis, as MILANO (2018) rightly points out¹⁵, is deeper than it may seem at first sight, and does not involve implementing the classic policies (which the author himself describes as The Myth of the 5Ds: De-seasonalisation, Decongestion, Decentralisation, Diversification, "Deluxe Tourism"), but rather "proposing structural changes to the economic model in which the tourism phenomenon is currently inscribed".

However, I cannot agree with this author as far as the promotion of tourism quality¹⁶ is concerned. The concept of tourist quality that is humbly proposed has to do with global quality, that is to say, not thinking about luxury for the tourist and forgetting about the resident. The issue is more complex, in my opinion. It is a question of achieving adequate quotas of tourist quality in a

¹⁴ RODRÍGUEZ-BARCÓN, A., CALO, E. Y OTERO-ENRÍQUEZ, R., (2021) "Una revisión crítica sobre el análisis de la gentrificación turística en España", *Revista de Ocio y Turismo*, Vol. 15(1) p. 4, "In order to conceptually integrate the complex processes derived from touristification and gentrification on urban space, yet aware of the need to revisit the debate around these concepts, in this paper we speak in terms of "tourist gentrification". This concept defines a particular model within the complex theory of contemporary gentrification, which highlights "the role that public policy plays in promoting both gentrification and tourist development, and the actions of large leisure companies (...) in remodelling (places) into spaces of entertainment and consumption". However, although the processes of gentrification and touristification often act concomitantly and, in spatial terms, converge on the central and coastal sectors of cities, we should not lose sight of the existence of certain differential nuances. In the case of gentrification, for example, the traditional population is replaced by socio-economic sectors with greater purchasing power, while touristification tends towards the partial disappearance of certain sectors of the local population. Naturally, the two phases may overlap at some point, as touristification may hit the most vulnerable social sectors first, reinforcing the processes of spatial displacement".

¹⁵ MILANO, C., (2018) "Overtourism, malestar social y turismofobia. Un debate controvertido", *Revista de Turismo y Patrimonio Cultural*, Vol. 16, 3., p. 556

¹⁶ *Ibidem*, p. 558, "Finally, another strategy for the reconversion of the tourism offer has been directed at pricing policies to align demand with what is being called Deluxe Tourism. In other words, increasing the cost of visiting a destination, site or tourist attraction in an attempt to elicit the tourists who visit it. This measure could also be justified by the illusory objective of decongesting specific areas. This type of tourism reconversion is very often related to diversification policies that, in addition to renewing its attractions, are aimed at reconvertng its target public. Inevitably, such measures and the economic consequences of elitisation call into question the very nature of the tourism phenomenon. They also have classist overtones that do not seem to be able to benefit and provide a direct response to issues such as rising housing prices, the transformation of the commercial fabric or the privatisation of public space, among others. However, there is evidence that so-called quality tourism presents a greater socio-economic distance from residents that could lead to price inflation and a rise in the price of local goods and products. Finally, to a large extent, these tourist flows (e.g. cruise passengers or trips organised by tour operators) are guided and managed around specific tourist bubbles, with the result that the redistribution of benefits would be much reduced.

context of environmental and social sustainability. From the social point of view, sustainability is about creating an enabling environment not only for tourists, but also for residents. Investing in adequate infrastructure and public services that benefit all citizens, regardless of whether they are tourists or not.

This achieves two objectives: first, that the resident is comfortable with the tourism industry and sees the tourist as a consumer or citizen. Secondly, that the visitor's tourist experience is highly satisfactory and that he or she does not perceive discomfort in those who receive him or her.

In this sense, Title II of Law 15/2018, of 7 June, on tourism, leisure and hospitality of the Valencian Community, which emphasises the principle of hospitality and balance between tourists and local residents, is particularly interesting. This basic principle of tourism policies is essential to achieve social sustainability, avoiding problems that can lead to a feeling of unease from the resident towards the visitor.

3. – CAN WE BUILD A NEW TOURISM MODEL FROM AN EXCEPTIONAL TOURISM "ZERO": AN ANALYSIS FROM AN IUSADMINISTRATIVIST PERSPECTIVE?

3.1. – The health crisis: zero tourism

In March 2020 we witnessed, perplexed, the declaration of a State of Alarm by the Spanish Government as a consequence of a pandemic declared by the World Health Organisation¹⁷. It was not the first time. The previous State of Alarm was decreed precisely to avoid a tourist crisis resulting from the strike called by the air traffic controllers' union in December 2010¹⁸.

But the 2020 State of Alarm was for a completely different reason. A highly contagious respiratory virus forced all countries to take unprecedented decisions: closing their borders. The only way to stop the spread of the disease was to prevent people from moving. The movement of all citizens was therefore restricted, except for essential reasons. Logically, this drastically affected the

¹⁷ As a general reflection, it is true that on the occasion of this pandemic we should, in my opinion, reflect on the increasingly important international challenges for the law. Perhaps it would be a good idea to give greater powers to international organisations or institutions such as the World Health Organisation or the World Tourism Organisation.

¹⁸ On the impact of the air traffic controllers' strike on tourism consumers see, RACIONERO VALENCIA, S., "El derecho de huelga de los controladores aéreos frente al derecho de los consumidores turísticos" in *1 Jornadas Doctorales de Castilla-La Mancha el doctorado: impacto social y futuro profesional*, coordinated by COLLADO YURRITA, M. A., (coord.), (2011) y HERNÁNDEZ ADROVER J. J., (coord.), Universidad de Castilla-La Mancha,

tourism industry¹⁹, as it is not considered an essential activity, despite its economic importance.

All tourism activities, leisure, hotels, accommodation, congresses, etc., came to a complete standstill. In fact, one of the main causes of the rapid spread of the virus was the hypermobility in the globalised world in which we live. Hypermobility originated, to a large extent, by tourism itself, so that its closure was inevitable.

This is what has been called the “tourist zero”, i.e. the total and absolute paralysis of all tourist activity, which has shown, among other things, the fragility of the sector after the financial crisis of 2008 despite the good numbers of the last 10 years and the firm commitment to growth at all costs, without taking into account other legal assets that should be protected²⁰.

3.2. – Tourism as the main industry affected: The change in the tourism model

As can be easily understood, tourism is one of the economic sectors most affected by this health emergency²¹. The tourism industry is essentially based on the mobility of the recipients of services, something which, as we have already seen, has been restricted since March 2020 with varying degrees of intensity. From the total limitation of the first months of the quarantine, with a ban on leaving home except for activities considered essential, to more or less severe restrictions depending on the number of contagions, the situation of intensive care units in

hospitals or the degree of immunisation of the population achieved through vaccines or the contagions themselves.

The point is that tourism, which is based, as I say, at least for the moment, on experiences outside the place of habitual residence²², has been radically affected by the situation, drastically reducing its activity to the point of what we have already called “zero tourism”. Now is the time, from the bottom of the well, to raise our heads and look around, to analyse whether the situation prior to the pandemic, with an uncontrolled growth in supply and demand and the consequent problems generated, was the one that governments want and society demands. We need to take a medium- to long-term perspective, and not focus on the quick profit and forget about other legal assets that also require protection by the law²³.

It is time, I think, to make a 180.º turn, to change the model or “rethink

²² In the following sections, I will focus on this idea, i.e. how information and knowledge technologies can provide us with experiences similar to those obtained by tourist consumers without the need to move from our own place of residence. Through, for example, virtual reality instruments or artificial intelligence systems. It remains to be determined, but this cannot be the subject of this paper, whether this will really be considered tourism or other types of information society services. In international conference ESHTe | INATEL on October 16th, 17th and 18th. 2022 a very interesting presentation on Metaverse and tourism was given, which I am looking forward to reading in full (Claudia Madrid Martínez, Venezuela, Central University of Venezuela)

²³ JARA SANTAMERA, M. A., “Turismo y economía circular. El necesario alineamiento entre oferta y demanda y una necesidad ambiental” (2019) In, www.researchgate.net. In any case, Covid-19 should represent a driver and accelerator of the changes that were already necessary in the sector, and where the pandemic is consolidating a more sustainable tourism demand, with the necessary adaptation of the tourism offer to maintain and increase its competitiveness in the long term. In the same vein, on the importance of administrative intervention aimed at correcting the possible excesses of tourism, fostering the circular economy: FLORIDO C., JACOB M. y PAYERAS M., In “How to Carry out the Transition towards a More Circular Tourist Activity in the Hotel Sector. The Role of Innovation”, *Administrative Sciences*, 2019, 9, 47; doi:10.3390/admsci9020047, pág. 16: We can say that the transition model to a circular destination focuses on three main axis: The public administration and/or destination management organizations (DMOs), the tourism sector and the resident population. Each of them has a differentiated role in this transition, specifically:

Role of the Public Administration and/or DMOs.

- To design incentives to promote the implementation of CE measures in the tourism sector (i.e., Tax deductions for investment in CE measures/technologies).
- To design laws and regulations that reduce the obstacles to the application of CE measures in tourism businesses.
- To involve the tour operators in the design of a program of awareness and changes in tourist habits. [...]

Public administrations and DMOs, both locally and nationally, play a crucial role in the transition to a circular destination. Indeed, they face important planning challenges related to the protection of natural resources, water supply; the promotion of renewable energies, and the reduction of pollution, among others; and at the global level, the role of national tourism policies is decisive in facilitating the implementation of more circular practices. An example of a destination which has implemented a strategy to begin the transition towards a circular destination is the Balearic Islands where different lines of action have been implemented by the regional government and the hotel sector in order to achieve this goal in the near future, taking into account the resident population as well. In fact, they have considered the three-axis model described above, specifically:

¹⁹ As pointed out by YANG, Y., ZHANG, H. y CHENG, X., (2020) in “Coronavirus pandemic and tourism: dynamic stochastic general equilibrium modeling of infectious disease outbreak”. *Ann Tour Res*; 83:102913. doi:10.1016/j.annals.2020.102913, “Infectious disease outbreaks, including coronavirus, greatly jeopardize the tourism industry given its reliance on human mobility”.

²⁰ As pointed out by ROMERO PADILLA, M., ROMERO MARTÍNEZ, J. M.ª. y NAVARRO JURADO, E., (2020) “Reflexiones desde el post crecimiento: ideas, estrategias y tácticas para el turismo post-COVID-19”, p. 3, “The financial crisis of 2008 was resolved with labour precariousness, concentration of companies and cheaper holidays (acropolans, housing and low cost activities). On the whole, it was decided to reproduce the same economic system: public bailouts for private banks, without demanding too many controls, lack of protection for families and small businesses, concentration of companies and more growth as the only guide along the way. These general elements have a significant impact on tourism [...] The aim of this paper is to reflect on how to approach the transformation of the tourism operating system in the current health crisis from a post-growth perspective, avoiding reproducing and extending the problems of the previous situation. It would be neither prudent nor profitable to recover a fragile and weakened tourism sector after the crisis. It must emerge stronger, and for this, short-term palliative economic actions are not enough, outside a broader structure with medium- and long-term strategies and objectives that address the climate emergency”.

²¹ PÉREZ GUERRA, R., (2020), “Algunas notas sobre el derecho administrativo del turismo: COVID-19”, *Revista General de Derecho Administrativo*, Iustel, 54, “Tourism, as an economic activity and one of Spain’s most important strategic sectors, will also be affected by this pandemic. Tourism is perhaps the economic sector in which COVID-19 has caused a major tsunami because it is an activity that is based on the movement of people from their habitual residence to other destinations for holiday and/or leisure purposes and which is subject to seasonality; in short, it is a very fragile and completely globalised sector”.

tourism"²⁴ from a sustainable, environmental, social, cultural, economic and, of course, health perspective, avoiding overloading the corresponding territories so that neither the environment nor public health is affected, nor residents look askance at tourists. Of course, understanding that the tourism sector must generate economic benefits is something we cannot disregard, but perhaps it is necessary, as I have been saying, to change our perspective.

But in order to achieve this objective, it is also necessary to rethink the instruments available to the public authorities, and even the role they must play in this whole process of reinvention or change of model. Because I understand, as I will try to explain in the following sections, that the public authorities, especially the public administrations competent in the matter, cannot adopt a neutral position. Their position must, I believe, be committed to this change, to the medium and long-term sustainability and quality of a sector that is essential, whether we like it or not, for the Spanish economy.

In this sense, the doctrine has already expressed itself in such a way that there has even been talk of the birth of a "new Tourism Law" to generate security and confidence²⁵. Let us take advantage of these lines to point out something that is

Role of Public administration and/or DMOs, with the following measures designed and implemented:

- New Llei de Residus i Sòls Contaminants of the Balearic Islands (New Waste Law).
- Aid programs for the implementation of environmental quality certifications:
- Awarding of prizes to encourage the creation of ideas and innovative projects that can contribute to the achievement of the circular economy objectives

²⁴ RIVERO CEBALLOS, J. L., HERNÁNDEZ HERNÁNDEZ, J., CORRAL QUINTANA, S. y NAVARRO IBÁÑEZ, M., (2020) "Una breve reflexión desde el cero turístico", en SIMANCAS CRUZ, M., HERNÁNDEZ MARTÍN, R. y PADRÓN FUMERO, N. (Coords.), *Turismo pos-COVID-19. Reflexiones, retos y oportunidades*, Op. Cit., p. 64, "However, zero tourism can also be an excellent opportunity to "rethink tourism", that is, not to be satisfied with the things that are being done well and to consider the foreseeable dynamics of the changes that will take place in the near future. Thus, for example, the increase in health safety requirements in tourist destinations will be very noticeable in the coming years. In any case, uncertainty about tourism activity should be mitigated by considering the demonstrable influence of economic growth on tourism".

²⁵ MELGOSA ARCOS, F. J., (2020) "Coronavirus y turismo. Efectos de la declaración de alarma y de las distintas normas sobre medidas sanitarias y socioeconómicas en el sector turístico español" en *"Turismo post-COVID-19. El turismo después de la pandemia global. Análisis, perspectivas y vías de recuperación"*, Op. Cit., p. 15, "If there is one thing all experts agree on, it is that the COVID-19 crisis will mark a turning point for tourism. Tourism businesses and destinations are obliged to generate security and consumer confidence; it is essential to establish rules and protocols that generate security. From now on, it will be necessary for all tourist establishments to display in a visible place – and in all communications with customers – all seals and certificates certifying that they have complied with cleaning and disinfection processes.

In hotels, it will be necessary to offer guests masks and disinfectant gels in the room amenities; in cleaning, staff protection and the use of new products capable of combating viruses will be mandatory; in catering, it will be necessary to change buffet habits in favour of other alternatives with less risk, without ruling out breakfast in the room; and it will also be essential to reduce contact through the use of digitalised tools and services, for example, to carry out registration. In terms of staffing, new behavioural patterns are needed between staff/clients, between staff and each other, and between clients and other clients.

well known to those of us who study this branch of the legal system, albeit in all humility: the volatility of the sector in the face of regulatory or economic changes.

3.3. – The role to be played by public administrations in changing the tourism business model.

This is the current panorama of tourism in our country. A sector immersed in a serious structural crisis, with a model, I believe, anchored in the last century, which means that little or no progress can be made without the decisive impetus of the public authorities.

In this sense, the role that public administrations are called upon to judge is crucial²⁶, through the different instruments of administrative intervention available to them. In this respect, although it is true that the liberalisation carried out in recent years has left the administrations with fewer resources to intervene in the sector, it is no less true that there are currently adequate mechanisms that

It will also be necessary to review the current regulations on seating capacity in establishments, especially restaurants, in order to achieve a minimum distance between people; the Seville Veterinary Association recommends a maximum capacity of 4 people per 10 square metres. Apart from prior hand disinfection, diners will also have to avoid crossings and contacts with workers, customers and suppliers. However, we will have to wait for the action protocol mentioned in the first conclusion, although we believe that it will be a minimum protocol that each autonomous community can implement in their tourism and health legislation, if they deem it appropriate. I believe that the most prudent thing to do is to apply the protocol drawn up by the ICTE and avoid falling into the temptation of drawing up different protocols and seals of guarantee that end up making the recipient "dizzy" and losing effectiveness; nor would a protocol of maximums be a good thing because of the damage that could be caused to companies in such delicate matters as capacity or the installation of certain protective elements.

Portugal already has an official label certifying that an establishment is "clean and safe", which can be obtained from the National Business Registers from 24 April. Establishments must follow an internal operating protocol set by the Department of Health, the certificate is free of charge and valid for one year.

It will also be necessary for public tourism managers to change many of the management models that have served until now. For example, they will have to implement disinfection measures, as well as measures on access and stay on beaches, in museums and monuments; and in general, in all public shows and recreational activities.

There is considerable unanimity on the urgency of security measures. Spain has proposed to the G20 to work jointly at a global level on homogeneous measures to create safe destinations. CEHAT calls for a European agency to validate the post-COVID-19 protocols. At EU level, the so-called "health passport" is one of the alternatives being considered to open up air traffic.

All in all, all parties involved in tourist destinations will have to be prepared to offer safe travel to tourists; smoothly and with some flexibility in booking. Travel agencies have an opportunity because of the guarantee that their legal framework provides for consumers. We can affirm that a new stage in tourism law is being born.

²⁶ On the occasion of World Tourism Day 2021, a specialised media outlet such as Hosteltur recreated an imaginary scene between a teacher and his student following the Socratic method to explain the relationship between tourism and circular economy devised by Professor Alfonso VARGAS-SÁNCHEZ (2021) and reproduced below (the names devised are Amanda -student- and Pedro -professor-):

¹⁻¹ The road to sustainability has to be travelled jointly, with the involvement of all parties with a role to play, who have to be aligned and add up, with special reference to public administrations due to their importance in this and other facets.

allow them to carry out this task more or less effectively. And apart from the existence of mechanisms to control the tourist offer, it is true that, on many occasions, it has been the administrations themselves that have encouraged unsustainable tourism through the implementation of public policies aimed at the “touristification” of urban areas.

Consequently, it is the public administrations that should, as I understand it, lead the change, firmly spearheading progress towards a sustainable tourism model from all perspectives. May the crisis generated by COVID-19 be, this time, the long-awaited turning point.

Of course, public promotion measures, which have been developed in recent years since the beginning of the health crisis, first, and then the economic crisis (or simultaneously), are not ruled out. There has been a great deal of aid, both from the State and from the autonomous communities, municipalities, provincial councils and the European Union itself. From the European Union, it is worth highlighting the Thomas Cook line of financing for companies established in Spain in certain economic sectors, especially tourism.

Thus, at the Extraordinary European Council of 10 March 2020, four priorities were identified: limiting the spread of the virus, supplying medical equipment, promoting research and addressing the socio-economic consequences. The Spanish government addressed this fourth priority in Royal Decree-Law 7/2020 of 12 March 2020, which adopts urgent measures to respond to the economic impact of COVID-19 (BOE 13 March 2020) and devotes chapter III to the articulation of a series of measures to support the tourism sector.

But the question that arises next is whether this line of aid, whether this public promotion of the tourism sector tends to consolidate a model that has already been exhausted. In other words, is it efficient to spend public money on promoting a model that needs to be changed? There is no doubt, it is necessary to clarify that I defend the granting of indirect public aid such as, for example, reductions in social security contributions for workers and the self-employed or the suspension of the payment of official loans. But if the aim is to promote a change of model, it does not seem logical to spend resources on lines of aid that promote the consolidation of the previous model, i.e. the one we are trying to change.

I believe that this aid should be used for purposes more in line with the model of sustainable tourism that is being advocated here. In such a way that the companies receiving the funds would undertake to meet a series of objectives previously designed by the public administrations responsible for tourism and to

develop them in the medium term. These objectives are obviously related to the sustainability of the sector.

But apart from this public aid, as I understand it, the real action must come from police activity. With the corresponding prior legal authorisation, to allow the competent public administrations to control the tourist offer that could be considered contrary to the spirit of what is understood as sustainable tourism in the terms established above.

Therefore, to enable the necessary measures and instruments to achieve the desired objectives, and this inevitably involves limiting certain forms of supply, especially those which, I repeat, go against sustainability. I am not just referring here to so-called “overtourism”, which is yet another example of unsustainable tourism, but to all forms of tourism which, from whatever perspective – environmental, economic, social or health-related – upset the previous balance of the tourist destination in question.

Let us now look at the various measures proposed.

3.4. – Legal-administrative instruments for the implementation of the change of the tourism model

Logically, a commitment to sustainable tourism is required from all public authorities. In accordance with the principle of legality, no administrative control measure can be authorised that is not covered by a regulation with the status of law. The judiciary, insofar as they perform jurisdictional functions, must also pay attention to the principles that may or may not be included in the regulations (we often forget that judges and magistrates, in the performance of their duties, must take into account the general principles of law, of which sustainability is a part²⁷).

These control measures must also be respectful of the rules which, more than a decade ago, largely liberalised the tourism market. I am referring, of course, to Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, and its transposition in Spain through two laws: Law 17/2009 of 23 November on free access to service activities and their exercise, and Law 25/2009 of 22 December amending various laws to adapt them to the Law on free access to service activities and their

²⁷ PIÑAR MAÑAS, J. L. (2002) (Dir.), UTRERA CARO, S. F. (Coord.), *Desarrollo sostenible y protección del medio ambiente*, Thomson.

exercise. Of course, and apart from the above, but in the same sense, Law 20/2013, of 9 December, on guaranteeing the unity of the market²⁸.

We are not proposing here a return to the above, but rather the appropriate and reasonable use of the instruments available to public administrations to carry out the control and supervision of a sector, the tourism sector, which requires a change of model.

In this respect, it is hard to understand how the competent public administrations do not make more intensive use of information technologies to achieve the proposed objectives. It is not necessary, I would like to stress this idea, to wait several weeks or months to check that companies and professionals comply with requirements aligned with sustainability. Nor is it necessary to initiate lengthy and costly inspection processes to ensure compliance with the relevant requirements. The use of these technologies can achieve, on the one hand, a lighter administrative intervention, i.e. less intense and restrictive of rights and, on the other hand, a more effective compliance with the sustainability objectives previously proposed in the corresponding public policies.

3.5. – Smart tourism as a solution to the problem of sustainability. Also in the health sector

3.5.1. – INFORMATION TECHNOLOGIES HAVE BEEN PART OF THE PROBLEM.

In a previous work I have already explained my point of view on how information and knowledge technologies have contributed, to a large extent, to increasing the problems of mass tourism, the gentrification of cities and “tourism-phobia”, by means of digital platforms that bypassed the traditional tourist offer of accommodation. The lack of information and knowledge has largely contributed to the problems of overcrowded tourism, gentrification of cities and “tourismphobia”, through digital platforms that bypass the traditional tourist accommodation offer. Initially, the lack of regulation of this new offer prevented

²⁸ Special mention should be made of Royal Decree 39/2010 of 15 January, which repealed various state regulations on access to tourism activities and the exercise thereof, and which entailed the deregulation of many tourism subsectors. In this sense, the autonomous communities, which applied many of the repealed regulations in a supplementary manner, found themselves in the need to regulate certain tourism sectors in record time. Some of them are still unregulated in some autonomous communities, which, together with the change in the control model, means, de facto, a complete liberalisation of certain tourism subsectors.

public administrations from controlling them, facilitating the increase of tourists²⁹.

In short, the use of ICTs by the tourism industry has essentially focused on increasing supply, leaving aside other possibilities that would have prevented tourism from growing out of control.

Now, using the pandemic as a turning point, it is time to dust off and develop some technological solutions that will allow us to reach adequate levels of tourism sustainability, without forgetting, of course, that within this concept of sustainability we must include, as is logical, economic profitability, because without this data we cannot really speak of sustainable tourism.

In short, as seems to be clear, it is a question of developing the concept of electronic administration, that is to say, of enabling the competent administration to use the appropriate means and technologies for greater efficiency in the control of tourism sustainability. And not only, exclusively, the use of such means, but, in fact, I am proposing, as will be seen in the next section, a structural change in the administrative work, in the mentality of those who work in the administration. I cannot dwell too long on implementing this idea, which is undoubtedly very interesting, as it is beyond the scope of this humble work.

3.5.2. – THE USE OF INFORMATION AND KNOWLEDGE TECHNOLOGIES TO DIGITAL TOURISM.

As I pointed out in the previous section, this is a real structural change in tourism, i.e. that these technologies that are already with us and have helped the industry to significantly increase the number of tourists, i.e. demand, should also help to achieve sustainable tourism through adequate control of the carrying capacity, avoiding overcrowding and excesses of tourists, which will logically lead to an increase in sustainability and tourism quality.

In this sense, the concept of smart cities where hyper-connectivity through the internet of things and other similar mechanisms is key to the digitisation of tourism. Note that we are talking about digital tourism, not smart tourism. This concept is, I believe, the evolution of the former and I will refer to it in the following section.

²⁹ BOUAZZA ARIÑO, O., “Uso residencial y uso de hospedaje en la Ciudad de Madrid”, ponencia en el Congreso Internacional sobre “Gobiernos locales y economía colaborativa” celebrado en la Universidad de Jaén los días 19 y 20 de mayo de 2022. Como pone de manifiesto el autor de este trabajo, la ausencia de regulación en algunas comunidades autónomas, unido a la intensa utilización de plataformas digitales, provocó la proliferación de viviendas de uso turístico sin ningún tipo de regulación, generando importantes problemas en algunas zonas de la ciudad de Madrid.

What I am referring to in this section is the joint use of different technological tools not only to increase the number of visitors, as has been the case up to now, but precisely to control the tourist offer and, therefore, reduce the factors that can encourage so-called “overtourism”.

Logically, this control and limitation activity must be adequately underpinned by a regulation with the status of law, in compliance with European and state regulations on access to economic activities. However, there is nothing to prevent these limits from being set and that this type of technology can be used for this purpose. It is a question of using appropriate, proportional and effective techniques.

3.5.3. – DIGITAL TOURISM FROM THE PERSPECTIVE OF PUBLIC ADMINISTRATIONS. AN UNFINISHED BUSINESS.

The use of information and knowledge technologies to manage the tourist offer has led, as shown above, to an increase in demand by facilitating and speeding up the different stages of the trip for tourists. From hiring means of transport and accommodation, to making it easier for tourists to get to know the places of tourist interest, to moving around the destination in question.

There remains, however, a pending issue. The use of these same technologies by the competent administrations to guarantee adequate control of the tourist offer and to avoid, as far as possible, the main problems to which I alluded at the beginning of this paper and which, if action is not taken forcefully, could worsen as a result of the pandemic and the apparent economic crisis derived from the Russian-Ukrainian war.

As I noted above, problems related to overcrowding, overtourism and gentrification are pushed into the background when the economic crisis and unemployment are used as arguments. It seems that anything goes to avoid these difficulties which, on the other hand, are structural and cannot be solved in the short term, but only in the medium or long term and after a general reflection and a political consensus which, realistically speaking, we are, unfortunately, very far away from.

Examples such as the Canary Islands and Andalusia illustrate this last point. The approval of legal regulations aimed at facilitating supply, without taking into account other issues to which we have already alluded. Thus, Law 5/2021, of 21 December, on urgent measures to boost the primary, energy, tourism and territorial sectors of the Canary Islands, in its Chapter III, entitled “Actions for renewal and modernisation of tourism”, establishes a whole range of legal tools

and instruments aimed at simplifying administrative procedures and interventions and different incentives for the promoters of tourism activities.

Another clear example of this line of action can be found, without wishing to be exhaustive, in Decree-Law 25/2020, of 29 September, which, as an extraordinary and urgent measure, creates and regulates the Andalusian Tourist Voucher, as a consequence of the situation caused by the coronavirus (COVID-19). As can be seen in this regulation, the legislator's measures (in this case the Andalusian Government using its legislative power) are essentially aimed at increasing and promoting supply without taking into account other considerations. Or, in the same region, Decree-Law 6/2021, of 20 April, adopting urgent measures as a consequence of the situation caused by the coronavirus (COVID-19), for the sectors of hotel establishments, tourist flat establishments, tourist camps and rural tourist complexes, and modifying other regulatory provisions, whose Explanatory Memorandum, point II, paragraphs 9 and following, shows the Andalusian Government's ultimate concern in approving the regulatory text under analysis:

“In view of this exceptional situation, it is necessary to adopt exceptional measures to alleviate the negative effects that the constraints on free movement are having on these Andalusian companies, to safeguard the companies and employment linked to this socio-economic activity, sustaining the tourism sector until it is reactivated.

For this reason, using the powers conferred by Articles 71 and 37 of the Statute of Autonomy for Andalusia, this decree-law regulates three lines of subsidies for hotel establishments, tourist flat establishments, tourist camps and rural tourist complexes, with the aim of financing the working capital of SMEs, in order to help maintain these sectors affected by the economic impact of the pandemic caused by COVID-19 and the measures adopted to contain it, helping to sustain the continuity of their company or business, avoiding the definitive cessation of the same and, therefore, the destruction of employment.

Therefore, given the need to support these companies, in a situation of extraordinary and urgent need, caused by the concurrence of the pandemic situation and the measures that have been adopted to control its expansion, which are proving to be devastating for their respective businesses, this Decree-Law establishes a non-competitive procedure for granting subsidies”.

As can be seen, no mention is made of the promotion of sustainable or quality tourism, or of a change in the tourism model. The measures focus essentially on maintaining a tourism model which, as has been shown, is unsustainable.

It is not the intention to criticise this type of measures, which are indeed very commendable, as they seek to boost a sector that is essential to the economy of these regions and of the State in general. What is striking, however, is that certain economic crises (economic crisis of 2009, pandemic, etc.) are used to promote measures aimed at increasing the supply and number of tourists. However, it never seems to be the right time to promote investment in appropriate technological tools to facilitate the control work of the competent public administrations.

In my opinion, the current moment is key. The Autonomous Communities must react and make the necessary structural changes in their administrations to facilitate the transition not towards an electronic administration, but towards an "intelligent administration", if I may use an expression that does not hide any malicious intent. In this sense, given that we are talking about control mechanisms that are regulated in the Law on Common Administrative Procedure, that is, Law 39/2015, of 1 October, on the Common Administrative Procedure of Public Administrations, this change should be led by the State, even though it lacks direct competences in tourism matters, in principle.

In the following section I will analyse, in a more exhaustive manner, the changes that specifically arise in the administrative control of tourism supply linked to a structural change in public administrations. In short, not so much the use of ICTs to achieve the objectives of tourism sustainability mentioned above, but the conversion of the model to one that is, if you will allow me to use the expression, intelligent. That is, based on new technological tools that allow for automatic decision-making, if necessary. Above all, on the side of the competent public administrations which must, in my opinion, lead and encourage change.

3.5.4. – SMART TOURISM: SCIENCE FICTION OR INESCAPABLE REALITY? THE NECESSITY FOR STRUCTURAL CHANGE.

It is necessary to begin, I believe, by attempting to define the concept of smart tourism. I pointed out above that it is not simply a matter of using ICTs to achieve certain objectives. Rather, it is about a radical change in the model that will, in turn, make it possible to achieve an adequate level of tourism sustainability.

Of course, the change I am proposing must be addressed by all actors: public administrations, activity promoters and, to the extent that smart tourism services are attractive, by the tourists themselves.

We will focus here on the way in which the competent administrations should act to promote smart tourism in order to achieve an adequate level of tourism sustainability. In short, it is a question of analysing the different tools that can be used by the public sector to ensure that the private sector meets the necessary requirements to achieve the desired tourism sustainability, complying with the European parameters related to the freedom to provide services and the freedom of establishment, in short, with the freedom of enterprise and the free market, limits which, as I have said, cannot be exceeded without complying with the minimum requirements demanded in European and national regulations and which have already been mentioned *ut supra*.

Before referring to the different instruments for developing the administrative tools to implement smart tourism, it should be analysed whether there is a general authorisation for the competent public administrations to use artificial intelligence systems or similar. The answer, which is affirmative, can be found in Article 41.1 of Law 40/2015, of 1 October, on the Legal Regime of the Public Sector, which allows administrations to adopt automated decisions without the intervention of public employees³⁰. The legal guarantees for citizens are contained in the same article of the aforementioned law, but in its second paragraph stating that: "In the case of automated administrative action, the competent body or bodies, as appropriate, must be previously established for the definition of the specifications, programming, maintenance, supervision and quality control and, where appropriate, auditing of the information system and its source code. It shall also indicate the body which is to be held responsible for the purposes of the contestation".

Along these lines, what we intend to analyse here has to do with the use of tools related to artificial intelligence (algorithms, software and the like) to make the work of public administrations more effective and efficient. In what is now being analysed, essentially, for the control of tourism supply and demand so as to avoid the excesses that are so detrimental to sustainability and quality.

³⁰ In this sense, the General Data Protection Regulation of the European Union, Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC, is much more restrictive by preventing, as a general rule, automated decisions and profiling that produce legal effects on him or her or significantly affect him or her in a similar way. This is stated in Recital 71 and Article 22 of the aforementioned European regulation. However, the regulation itself allows Member States to establish exceptions to this general prohibition in their own domestic law, as Spain has done in the aforementioned Law on the Legal Regime of the Public Sector.

It should be noted that it is not intended to analyse artificial intelligence as a tool to increase profits or improve the tourist experience. That is not the purpose of this paper. As indicated above, the objective is to point out the tools that these technologies offer to public administrations to achieve the stated objectives of tourism sustainability.

In a context, it should be remembered, in which the pandemic and the apparent economic crisis resulting from the Russian-Ukrainian war may tend, as so often has happened, to encourage the arrival of tourists without giving other considerations a second thought. The relevant administrations often use these moments to sharpen the arguments related to reducing bureaucracy and facilitating market access for entrepreneurs and promoters of tourist services³¹. This is certainly a laudable objective, but it must, of course, be accompanied by appropriate control measures to maintain adequate levels of carrying capacity and sustainability. I insist on this idea that I intend to develop below: it is about the public sector being able to make use of technologies related to artificial intelligence to carry out more effective and efficient work in controlling access to the tourism services market, while respecting, as it cannot be otherwise, the principles and freedoms recognised in the original law of the European Union and which have to do with the internal market for services and the European digital market.

It is also necessary to point out that the technology to be analysed is based on other technologies that I have not expressly mentioned, but which must be taken for granted. Thus, the massive processing of data (Big Data), hyperconnectivity of devices or the internet of things, etc., serve as a foundation for the development of artificial intelligence.

Perhaps it is necessary, before listing the different instruments that may be available to the competent public administrations in this area, to provide a definition, at least a brief one, of what, for legal purposes, is considered artificial intelligence. Especially when there is a proposal for regulation at European level that aims to "harmonise"³² the regulations of all the Member States in this area³³.

³¹ GARCÍA GARCÍA, S., (2022) "Una aproximación a la futura regulación de la inteligencia artificial en la Unión Europea", in *Revista de Estudios Europeos*, volume 79, January-June, p. 301, "[...] without forgetting the different applications that this can have for the public sector and, in particular, for Public Administrations, which can use it as an auxiliary instrument in their decision making; decisions that, if streamlined, can be at least or even limited in their possible discretionality".

³² I use the word "harmonise" because it is curious that the aim is to harmonise through a regulation, when traditionally this has been done through directives.

³³ Proposal of the European Commission Brussels, 21.4.2021 COM (2021) 206 final, 2021/0106(COD), Regulation of the European Parliament and of the Council laying down harmonised rules in the field of Artificial Intelligence (Artificial Intelligence Act) and amending certain Union legislative acts

In this sense, the proposed European regulation refers to artificial intelligence or artificial intelligence system (article 3) as:

[...] software that is developed using one or more of the techniques and strategies listed in Annex I and that can, for a given set of human-defined objectives, generate output information such as content, predictions, recommendations or decisions that influence the environments with which it interacts.

On the other hand, it is necessary to clarify that, according to the doctrine, we can speak of various stages or levels of artificial intelligence. Thus, AI Internet, AI Business, AI Perception and AI Autonomous³⁴. The first two have already been reached some time ago. In the economic sector that concerns us now, in fact, as indicated above, it has essentially served to increase the tourist offer, with a view to increasing profits and therefore promoting the problems that we now want to tackle. In this sense. This is what we have identified *ut supra* with digital tourism.

The next two, however, as indicated above, are to be implemented in the coming years. In these last stages, the most relevant ethical and legal challenges will probably arise, especially if the so-called "singularity" is reached, i.e. the moment when machines are able to act and think independently and autonomously, apart from human beings. It is not the subject of this paper, but neither can we fail to mention the challenges faced by citizens in the use of these technologies by the executive power³⁵.

³⁴ CRIADO, J. I. (2021) "Inteligencia Artificial (y Administración Pública)", *Eunomia. Revista en Cultura de la Legalidad*, 20, p. 352, "In terms of maturity model within the public sector it is also possible to differentiate different moments of AI. Lee (2018) has suggested four different stages, linked to the way in which they harness the power of AI to generate disruption in particular sectors, as well as to achieve deeper weaving into the everyday life of the governance of the systems in which organisations, public services and people operate. These stages are as follows: AI Internet, AI Business, AI Perception and AI Autonomous. Each of them involves different moments in the evolution of AI within organisations in general and public administrations in particular.

³⁵ GARCÍA GARCÍA, S., (2021) "Una aproximación a la futura regulación de la inteligencia artificial en la Unión Europea", *op. cit.*, "The risks arising from the use of this non-human intelligence fall especially on the protection and guarantee of fundamental rights enshrined in the Charter of Fundamental Rights of the European Union; specifically, the Commission speaks in this sense of possible repercussions for the right to human dignity, respect for private and family life and the protection of personal data, non-discrimination and equality between men and women, freedom of expression and assembly, the right to effective judicial protection and to an impartial judge, the presumption of innocence and the rights of the defence, as well as the general principle of good administration. Workers' rights, consumers' rights, the rights of the child and the integration of disabled persons, and the right to a high level of environmental protection and the improvement of the quality of the environment could also be directly affected. In order to defend all of these, the Commission recognises an inevitable restriction on the freedom to conduct a business, intellectual property and the freedom of the arts and sciences; however, this limitation will be proportionate and limited to the minimum necessary to prevent and reduce serious risks to security and likely violations of fundamental rights.

I cannot dwell on these interesting questions, but it is worth noting that this is one of the main challenges facing the law in the near future, as it will shake the very foundations of the social and democratic rule of law as we know it today.

3.5.5. – PROPOSAL ON THE DIFFERENT TOOLS THAT CAN BE USED BY ADMINISTRATIONS FOR THE INTELLIGENT CONTROL OF THE TOURIST OFFER.

The following is a brief outline, i.e. a non-exhaustive list of possible administrative tools based on artificial intelligence that can serve the aforementioned objective of controlling the tourist offer in order to increase the overall sustainability of tourism. It is understood that the use of these tools will also, as seems logical, increase the efficiency and effectiveness of administrative control activity which, as is well known, is one of the constitutional objectives according to Articles 31.2 and 103.1 of the Constitution, respectively.

3.5.5.a. – Gathering information: Internet of things and smart cities as a preliminary step

We are starting to become aware of the amount of data that we generate through any daily act in our lives. The paradigm is the use of mobile phones, but not only. Credit card payments, video surveillance cameras, devices implanted in our clothes, and so forth. A surveillance capitalism³⁶ that brings a value to the information we generate that is really useful to the big companies that offer us services of all kinds, especially tourist services. Our information is the real fuel for the economic revolution we are living through, and the preliminary step to massive data processing which, as will be developed later, is essential for the implementation of artificial intelligence systems.

The implementation of smart cities, based on the constant and massive collection of data, has already been a reality for several years. As indicated in the previous paragraph, perhaps the main difference lies in the awareness of this reality on the part of citizens, users and consumers of products.

What I intend to highlight in this section is that the usefulness of these technologies applied to the living environment where tourism takes place (cities, towns, natural areas), not only involves increasing tourism supply and demand, i.e. the sector's profits, but can also serve to contribute to tourism sustainability by indicating, for example, the places where certain access limits must be

implemented in order to respect carrying capacity or to allow for better coexistence between residents and tourists.

We start from this idea: it is necessary that the administrations, in the exercise of their competences, impose limits. However, not general limits, without justification and without sense, but respecting the requirements imposed by European and national legislation on freedom of access to the internal market for services (or national). Precisely, the implementation of these technologies will help to make the administrative tools for limiting tourism activities more efficient and effective. Modulate tourism to avoid the problems I mentioned at the beginning of this paper.

Because sustainable tourism, where the urban and natural environment is respected, without overcrowding, without conflict between residents and users, without excesses, in short, without the problems that existed before the pandemic, is quality tourism. And quality tourism generates more sustainable tourism.

Smart cities, based on the internet of things (and people), are an essential tool for achieving this goal. Knowing the number of visitors and their needs, interests and concerns sufficiently in advance is a necessary requirement for administrative control powers to be exercised proportionately and whenever necessary.

3.5.5.b. – Massive data processing or Big data

Another tool that we need to analyse, in my opinion, is the massive analysis of data through different systems. In fact, this massive processing of data must be considered the first step towards artificial intelligence and, consequently, towards the use of these technologies by public administrations in the control of tourism activities, i.e. what I have been calling digital tourism³⁷.

Since the implementation of information and knowledge technologies in the tourism sector, very early on, by the way, the quantities of data generated have been enormous. Initially, the storage of this information posed a major problem for tourism companies and professionals, as they had to comply with the relevant data protection and security legislation. But the truth is that, for several years now, companies and professionals in the sector have realised the importance that

³⁶ ZUBOFF, S., (2020), *La era del capitalismo de la vigilancia: La lucha por un futuro humano frente a las nuevas fronteras del poder*, Paidós,

³⁷ VALERO TORRIJOS, J., "Las garantías jurídicas de la inteligencia artificial en la actividad administrativa desde la perspectiva de la buena administración", op. cit, p. 87. 87, "Although, starting from an inextricable link with treatments based on big data, the truth is that the next evolutionary state of technological innovation in the public sector pushes us towards what has come to be called "artificial intelligence", whose inexcusable presupposition consists of the massive analysis of large volumes of information based on the parameters of big data, being able to offer automated responses to future situations based on mere predictions where the automation of learning would not only be relevant, but also with a depth that only allows the use of huge amounts of data".

this data can have by applying certain technologies related to artificial intelligence, as they can essentially be used to predict consumer behaviour and offer services adapted to future needs.

From the point of view of public administrations, the use of these huge amounts of information is also a major tool. Firstly, because it is essential for the sector itself to know this data for decision-making. This results from the application of Law 37/2007 of 16 November 2007 on the re-use of public sector information, article 3 of which provides for the re-use of information generated by the public sector, essentially for commercial purposes.

But what we are trying to bring up here is, secondly, the possibilities for the re-use of this information by the public administrations themselves in the fulfilment of their competences in the field of tourism. In other words, that the administrations themselves can use the information generated for the exercise of their public powers. There is, of course, a major obstacle: compliance with the purpose limitation principle referred to in Article 5.1.b) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (GDPR) 38.

In this regard, public administrations, to which, as is well known, the same data protection regulations apply (GDPR and Organic Law 3/2018 of 5 December on the Protection of Personal Data and the guarantee of digital rights) may only use such information under the terms provided for in the aforementioned legislation, i.e. if the data cease to be personal because they have been anonymised, or if some of the requirements provided for in Article 6 for the processing of such personal data converge.

In any case, repeating the idea that I wanted to express a few paragraphs above, this data generated by the sector should serve not only to help supply to predict demand behaviour and, if necessary, to increase profits, which is also the case. But also to help the competent administrations to predict where the next problems related to tourism sustainability are going to occur and to anticipate

solutions from administrative law. This information, the so-called Big Data, is therefore essential for what is being analysed here.

An example of enormous interest for what we are studying here can be found in the Valencian Institute of Tourism Technologies (INVAT-TUR), which compiles information to issue weekly reports. Its sources and indicators are the following:

- Air capacity for travel to Alicante, Castellón and València. Source: Mabrian
- Flight prices. Source: Mabrian: Mabrian
- Mobility according to mobile geolocation. Source: Google (Mobility)
- KeyWords by tourist destination. Source: Google Trends
- Searches for travel to the Comunitat Valenciana. Source: <https://hotelinsights.withgoogle.com/intl/en/>
- Hotel bookings in the Comunitat Valenciana. Source: TravelGateX: TravelGateX
- Competitive Intelligence for “Sun and Beach” and “Urban” destinations. Source: <https://hotelinsights.withgoogle.com/intl/en/>

This information is very valuable for companies in the sector, as mentioned above. But it is also extremely important for the competent administrations (in this case the Valencian Regional Government) to plan and, where appropriate, use the administrative tools deemed necessary to ensure tourism sustainability.

I will refer to this in the following section, but algorithms and technologies associated with artificial intelligence can be used to predict behaviour and risks to protectable legal assets, which must set the administrative machinery in motion, with all the guarantees, to prevent damage

3.5.3.c. – Smart tourism in the context of smart administrations

The development of smart tourism, based on artificial intelligence systems, requires, in my opinion, a certain context in which the competent administrations have similar technology at their disposal. It is not possible to speak of true smart tourism without all the actors involved: companies and professionals, tourists and public administrations, making regular use of artificial intelligence for decision-making.

I will now focus on how the use of artificial intelligence by public administrations can help to achieve sustainable tourism. First, of course, it is

³⁸ 1. The personal data shall be:

[...]

(b) collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes; in accordance with Article 89(1), further processing of personal data for archiving purposes in the public interest, scientific and historical research purposes or statistical purposes shall not be considered incompatible with the initial purposes ('purpose limitation').

necessary to implement these systems in the administration itself³⁹, without failing to point out, as already mentioned above, that the move towards the so-called intelligent administration is not limited to the adoption of information and knowledge technologies, but, more importantly, requires a structural change, a cultural change if you will, of the public organisations themselves, something that is more complex⁴⁰.

On the other hand, it is also necessary to point out that the implementation of artificial intelligence systems, no matter how much structural and cultural change, no matter how much administrative and bureaucratic burdens are reduced, will not change the nature of the administrative activity in question. In this sense, if it is necessary to curb excessive tourism by limiting the supply of certain services or reducing the number of visitors, the administration will have to take measures restricting individual rights. With all the guarantees and in compliance with the strict legal requirements, it is true, but they will have to be taken, after all. The use of artificial intelligence in the public sector is called upon, in this sense, to favour efficiency and effectiveness in administrative action, guaranteeing the rights of citizens, professionals and companies, but not to change the essence of administrative police activity.

In this line, the competent public administration should, in my opinion, adopt a more proactive attitude. Despite the fact that this type of procedure is initiated by means of a request from the interested party to offer the tourist services in question, this does not prevent the administration from collecting the corresponding data from the interested parties, respecting data protection legislation in the case of natural persons, especially with regard to the principle of purpose and the basis that legitimises the corresponding processing.

I am referring to a drastic reduction of burdens and processing times in administrative procedures. What I have elsewhere referred to as simultaneous authorisations and in which artificial intelligence is, I believe, set to play an essential role.

³⁹ CAMPOS ACUÑA, M.ª. C., (2019), "Inteligencia Artificial e Innovación en la Administración Pública: (in) necesarias regulaciones para la garantía del servicio público", *Revista Vasca de Gestión de Personas y Organizaciones Públicas*, Núm. especial 3/2019, p. 76. 76, "An administration that does not include innovation in its agenda does not currently respond to its principles; the challenges of the 21st century and its technological revolution cannot be faced with an organisation based on the 19th century; we must be aware that the next 50 years will see dizzying changes brought about by information technologies, robotics and artificial intelligence, in the face of which the public administration must have agile, fast and flexible dynamics to respond appropriately to the new challenges".

⁴⁰ *Ibidem*, p. 78, "But it is also important to delimit the concept of innovation from other notions that have often become widespread as a result of new technologies, such as modernisation, or the simple use of these same technologies in the service of public management, in order to avoid their common confusion, usually to the detriment of the added value of innovation".

To what extent is it necessary to lengthen administrative procedures by more than twenty-four hours? Why should institutions such as administrative silence be maintained today? I am aware of the difficulty of answering these questions, of the resistance of some administrations to innovation and change. In fact, many of these provisions are already included in the laws on procedure and the legal regime of the public sector, as is well known, even in the now repealed 1992 law, but little progress has been made. Therefore, it is not so much the legislation, which already contains provisions to this effect, but the attitude of the administration that needs to change.

3.6. – Brief reference to the challenges of smart tourism: the necessary protection of fundamental rights

So far, I have shown the possible benefits for the administration of implementing artificial intelligence systems in order to control the negative effects of overtourism.

But there are also certain risks, to which I will refer, at least briefly, in the following paragraphs. I am thinking in particular of certain fundamental rights such as the protection of personal data, equality or other rights such as transparency or access to public information and its possible re-use, to which I referred above.

Indeed, data protection is one of the fundamental rights that may be compromised by the massive use of tourists' data by the administration. In this respect, although data protection legislation must be respected even more zealously in the public sector than in the private sector⁴¹, the risk of cyber-attacks is becoming more and more obvious⁴², so that means must be included to prevent, among other things, for example, the theft of data.

Another risk, as mentioned, relates to discrimination arising from the use of algorithms by public administrations in decision-making. This is an issue that should not be neglected and, as I understand it, should be kept in mind when developing these systems. Care must also be taken to ensure that the freedom of establishment and the freedom to provide tourist services are not affected, so that European and national legislation on access to the services market is respected at all times.

⁴¹ The European legislator was aware of the enormous risk to this fundamental right posed by the use of these data by legal persons exercising public powers, as was made clear in the recitals of the GDPR.

⁴² FUERTES, M., (2022), *Metamorfosis del Estado. Maremoto digital y ciberseguridad*. Marcial Pons.

Finally, and without wishing to be exhaustive, a problem arising from the programming of algorithms and the decisions taken by machine learning, i.e. more efficient but less transparent administrations⁴³. As long as we do not know the decision-making processes of the aforementioned algorithms, we will not be able to control their actions and the consequences arising from them. To avoid this type of problem, Law 15/2022, of 12 July, on equal treatment and non-discrimination, has just been published in the Official State Gazette. Article 23 of this law provides for the implementation of mechanisms by public administrations to ensure that the algorithms used by them in decision-making take into account criteria of minimisation of bias, transparency and accountability, whenever technically feasible. It is striking, if I may say so, that equality is subordinated to the technical possibilities of the algorithms. In other words, it is saying, no more and no less, reducing the problem a great deal, I am aware, that an attempt will be made to avoid the discriminatory bias of the algorithms used by the administrations as long as this is possible from a technical perspective.

4. – CONCLUSION

The growth of the tourism sector in recent years has caused certain problems related to the excessive number of tourists. From the gentrification of cities, to tourism phobia or problems in the natural and urban environment, all of them related to the uncontrolled growth of tourism supply and demand. Various sectors (academic, social, political) had been drawing attention to this situation. However, public policies have always tended to focus more on short-term benefits, promoting the arrival of tourists, than on the protection of other assets.

However, in March 2020, an unusual situation occurred in our recent history. An unknown disease caused by a respiratory virus brought the world's population into confinement, with no possibility of any kind of travel. Of course, the movement of tourists in our country was reduced to zero, the so-called "tourist zero". Such a situation has never happened before. Not even in the financial crisis of 2009.

Faced with this situation in which the tourism sector is facing one of the most extraordinary crises in history, there are two possible solutions: the first, following

in the wake of previous situations, is to promote tourism without further concerns, facilitating the creation of establishments and thus increasing demand and the number of tourists; the second is to carry out a radical review of the model, focusing policies on preventing the proliferation of the problems to which I referred above and which are closely related to the excessive number of tourists, without forgetting, however, that we are talking about an economic sector that generates a tenth of our country's GDP and a large number of jobs.

The second of the above-mentioned solutions, which I consider to be the most appropriate, is not at odds, although it may seem so, with growth and improvement in the tourism sector. But it is about sustainable growth. Sustainability does not prevent economic growth; on the contrary, it is one of the factors to be taken into account. But it is not about, as it seems to have been the case up to now, generating profits at all costs, without thinking about other considerations or other legal assets that require legal protection.

And in this mission, which is really a crossroads, the competent public administrations are called upon to play an essential role through the tools that the Law places at their disposal to verify compliance with certain requirements. In this respect, although the principles of EU law on the free movement of services must be respected, it is no less true that there are reasons that undoubtedly justify decisive administrative intervention to achieve tourism sustainability.

To this end, the public administration currently has at its disposal certain technologies that can greatly facilitate its work, making control measures more effective and efficient and, at the same time, eliminating certain burdens on businesses and professionals in the sector.

But it is not just a question of using information and knowledge technologies, but rather of a structural change in the model of administrative control over the sector.

A change which, as I understand it, should be general for the control of any economic activity, but which is urgently needed in the tourism sector because of its economic importance in our country. We cannot use 19th century legal-administrative institutions to tackle 21st century problems. Society demands an updated public sector, with the tools of its time that facilitate access to the tourism services market with real control through artificial intelligence systems. Mechanisms that really make it possible to control, in real time, compliance with regulatory requirements and, therefore, to "authorise" the activity in question. In this sense, we need a more modern and proactive administration, not a more interventionist one

⁴³ CERRILLO I MARTÍNEZ, A., "Com obrir les caixes negres de les administracions públiques? Transparència i rendició de comptes en l'ús dels algorismes" *Revista catalana de dret públic*, núm. 58.

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