Administrative control in the "high quality" gastronomic offer

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The importance of fine dining establishments in Spain has been increasing in recent years. In this regard, the importance of self-regulation systems that guarantee the high quality of the products and services offered by these establishments has increased, resulting in a decrease in administrative intervention to control quality. However, the Administration cannot disappear from this world, as there are other objectives of general interest whose fulfillment it must guarantee. Therefore, even if it does not necessarily use limiting mechanisms, but rather promoting them, the Administration must be present.

Keywords: Fine cuisine, administrative intervention, Michelin guide, tourism quality, sustainable tourism.

1. INTRODUCTION

This paper aims to analyze the need to guarantee certain minimum requirements, which, in my opinion, are essential before we can begin to talk

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about quality gastronomy, that is, about this sector as a tourist attraction or resource.

I understand that a high level of gastronomic quality has nothing to do with the need for this service to be provided in luxury establishments. The latter may be part of the criteria for assessing high gastronomic quality (tableware, furniture, etc.), but it certainly cannot be a determining factor in achieving the high standards of gastronomic quality that many restaurants in different countries, and especially in Spain, currently enjoy.

What I intend to analyze in this brief paper is to what extent promoting these high levels of gastronomic quality is a public mission. That is, whether the relevant public administration can, through various intervention instruments, maintain a presence in this market.

I'm not referring to a control over the food quality of products, or whether they have the corresponding authorization or the relevant declaration of responsibility has been submitted. No, I'm referring to something more complex. What role can the Administration play in establishing a gastronomic quality system, similar to the private sector's Michelin Guide or the Repsol Guide?

The issue is complex, in my humble opinion, because it's not just about ensuring that establishments meet the most basic health standards, but also that the cuisine they offer is creative, innovative, and striking. In a word, what has traditionally been called "signature cuisine [2]. "

I understand, and I will make it clear in this work, that, to the extent that our country has become a global gastronomic benchmark and a large number of tourists come to experience this culture, public administrations must intervene to ensure the continuity and development of this tourist resource. I think it is worth highlighting the economic data that tourism represents for the Spanish economy: Tourism activity reached €184.002 billion in 2023, 12.3% of GDP, which was 0.9 percentage points higher than in 2022. The main branches of tourism generated more than 2.5 million jobs, 11.6% of total employment. The

[2] According to ROBERT GUILLÉN, S., (2017), Alta cocina y derecho de autor, Reus, [ROBERT GUILLÉN, S., (2017), *Haute cuisine and copyright* , Reus], "The « plats Signature dishes, signature dishes , or signature dishes are closer to artistic expression than the know-how learned in cooking schools. The notion of "an author's own creation" has become clear in the culinary arts. As its protagonists point out, to speak of "creative cuisine" is to speak of "creations" and "authors." And the classification of culinary works or creations has been established by an increasingly knowledgeable society, which chooses, prefers, and distinguishes between works "by Carme Ruscalleda," "by Arzak," "by the Roca brothers," "by Aduriz," or "by Adrià." This reality already underscores the need to protect that link between authors and works: without those authors, their culinary works would not exist, for which they take responsibility when they present them to society. Therefore, they can demand recognition of their authorship, as well as respect for their work.

results released today include the statistical revision of the national accounts series[3].

Of course, as is inevitable, the market's own rules must be allowed to operate freely; that is, healthy competition between authors and restaurants is vital for the sector's proper growth. But the government must be there to ensure this fair competition, promote research, development, and training, and protect a way of understanding the relationship with food that, in our country and in all Mediterranean countries in general, is a part of life and culture.

That's where, in my humble understanding of gastronomy, the Administration must be present. To protect this way of understanding gastronomy from less healthy habits, of course. But also to promote innovation, creativity, imagination, ingenuity, inspiration, and, of course, quality, high quality, the gastronomy that has made us a global benchmark alongside other countries like France, Peru, and Italy.

2. THE GASTRONOMIC OFFER AS A TOURIST RESOURCE

There are many examples in our country of restaurants that motivate a visit to a specific place. Without being exhaustive, we can mention "El Bulli ", a restaurant located in Cala Montjoi , in the Girona town of Rosas (Spain) that was open between 1962 and July 2011, and was internationally known for the gastronomic work developed by Spanish chefs Ferran Adrià and Albert Adrià, "El Celler de Can Roca", a restaurant located in Girona, founded in 1986 and specializing in traditional Catalan cuisine, which in 2013 and 2015 was considered the best in the world on the list *The S.Pellegrino The World's 50 Best Restaurants , prepared by Restaurant* magazine and has three Michelin stars, "El Arzak", located in San Sebastián, with three Michelin stars and in this firmament since 1974, " Aponiente " located in El Puerto de Santa María (Cádiz) which has received five Michelin stars and three Repsol Suns.

The examples are so numerous that it's not possible to spend more time describing them, but I'm certainly leaving out many culinary tempos that, as I mentioned, attract many tourists each year.

Haute cuisine can therefore be considered not just another sector within the complex world of tourism, but a genuine tourism resource that must be

[3] Data from the National Statistics Institute, Spanish Tourism Satellite Account. 2021-2023 Series, published on December 26, 2024.

protected and promoted. Thus, according to the World Tourism Organization's (UNWTO) Committee on Tourism and Competitiveness, gastronomic tourism is "a type of tourism activity characterized by the fact that the visitor's travel experience is linked to food and related products and activities. In addition to authentic, traditional, or innovative gastronomic experiences, gastronomic tourism can also involve other related activities such as visiting local producers, participating in gastronomic festivals, and attending cooking classes [4]. "

I'm not referring to the fact that tourists eat during their trip, but rather that gastronomy decisively influences the decision to travel and choose a specific destination. This is gastronomic tourism as defined by the UNWTO and the Basque Country. Culinary Center in the "Guide for the development of gastronomic tourism" [5].

2.1. Origins of gastronomy: cooking as a characteristic of human beings

Eating is not unusual; all animals do it, and it's a physiological need, that is, a primary need, essential for survival. However, the transformation of food into something else—that is, cooking or adapting a particular food to make it fit for human consumption, or more palatable—is unique to our species.

The idea of cooking is also closely linked to the emergence of fire. "Familiarity with fire certainly established the objective conditions for the discovery of cooking, so crucial in evolution that it marks the boundary between the heterotrophic animal (the common animal) and the singular autotrophic animal, which already prepares its food [6]."

Consequently, the evolution of cooking and gastronomy are intimately linked to that of humankind. Cooking and gastronomy are a feature of cultural identity, an element of civilization, in short, something inextricably linked to human development. In this sense, gastronomy can be considered "the set of tangible and intangible elements related to the knowledge of everything related to cooking and the art of preparing, presenting, enjoying, and appreciating culinary products and beverages [7]. "

[4] This can be read on the website https://www.unwto.org/es/gastronomia-turismo-enologico , last consulted on March 8, 2025.

[5] WORLD TOURISM ORGANIZATION AND BASQUE CULINARY CENTER (2019), "Guide for the development of gastronomic tourism", p. 8.

[6] CORDÓN, F. (1980), Cocinar hizo al hombre, Los 5 sentidos, [CORDÓN, F. (1980), *Cooking made man* , The 5 senses, p. 85]

[7] ROBERT GUILLÉN, S., (2017), *Alta cocina y derecho de autor*, op. cit., p. 18.

This inextricable connection between the evolution of cooking and humankind led to the need to regulate certain aspects of gastronomy from a very early age. Thus, the first mechanisms for protecting the copyright of successful recipes appeared in Ancient Greece [8]. Although I will not address the copyright of culinary recipes in this work, it is interesting to note how this legal necessity arose very early on.

2.2. Brief reference to the evolution of cooking to the present day

Nor do I intend to undertake an exhaustive historical analysis of the evolution of gastronomy and its relationship with the law over time.

However, it's worth mentioning, in my opinion, that this is a necessary connection; that is, gastronomy has needed the legal world to the extent that it is a strategic sector for the population. Obviously, the needs today are different, and the legal and administrative instruments have advanced to the same extent.

In this line of historical evolution, we can also point out the granting by Queen Isabella of Castile of a privilege to Don Pedro Azlor in relation to certain mills for making bread, with the intention, above all, of protecting certain recipes and the quality of this essential food:

> " He being the first in these mys Reynos has it bringing and showing and having put in industry to invent and spent many times trusting to take advantage of his knowledge and that if another person were to take his invention he would lose all his work (…)" [9].

One of the first books dedicated to gastronomy dates from this same period: "Libre del Coch", by Ruperto de Nola, dated approximately 1490, cook to Alfonso V known as the Magnanimous. This work, originally written in Catalan,

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[8] PINA, C. y LÓPEZ ALZAGA, R., (2018), "Protección legal de las recetas: ¡No copies mi receta! ¿La patentamos?", *Diario La Ley*, núm. 9175, [PINA, C. and LÓPEZ ALZAGA, R., (2018), "Legal protection of recipes: Don't copy my recipe! Should we patent it?", *Diario La Ley* , No. 9175], "Ancient Greek texts report that in the city of Sybaris, known for its hedonistic lifestyle, exclusive rights were already granted to cooks for one year over their culinary creations", where The Banquet of the Scholars, Athenaeus of Naucratis is cited. Book XII, Chapter 20: "Phylarchus states that "the Sybarites, with a great inclination to luxury, enacted a law according to which (…) if any cook invented a peculiar and excellent dish, no other cook could execute it for a year, and only the inventor would be entitled to receive all the profit derived from the preparation of his recipe during that time. All this with the aim of inducing other people to work and achieve excellence in these tasks." Along the same lines, ROBERT GUILLÉN, S., (2017), op. cit., p. 31, who places this

[9] BALAÑA VICENTE, S., (2016) "Propiedad industrial en los siglos XV y XVI». La patente concedida en 1478 al Doctor Pedro Azlor", *Revista Común. Prop. Ind. derecho competencia*, n. 77, [BALAÑA VICENTE, S., (2016) "Industrial property in the 15th and 16th centuries". The patent granted in 1478 to Doctor Pedro Azlor", *Revista Común. Prop. Ind. competition law* , n. 77.]

was translated into Spanish with the title "Libro de los gusados, manjares y potajes" (the oldest edition in Spanish dates from 1525) [10].

Ultimately, this is a demonstration of concern for a sector that, at that time, understandably, was accessible to very few people. The majority of the population couldn't afford to eat anything other than what they produced themselves, and although there were more popular recipes and dishes, their cooking really depended on their purchasing power, which, I repeat, was very low.

However, as I just mentioned, there was a concern on the part of the fledgling State to control, in some way, not so much the quality of the dishes that could be served in inns and taverns, but rather to guarantee a minimum level of healthiness in what was offered.

2.3. The gastronomic offer as another tourist resource

Cuisine is undoubtedly a part of tourism, as he stated when he stated: "There is no doubt that, as a social fact, catering is understood to be a part of tourism[11]."

It can't be any other way if we want to offer tourists a comprehensive service that meets all their possible needs. However, I'm referring to something else here. Gastronomy, not as just another tourism subsector, but as a true tourist attraction or resource, that is, as a circumstance that motivates the trip, that constitutes the fundamental reason for the trip.

In this sense, I believe that the public administration must intervene, considering the economic impact that tourism represents for our country [12]. But the question is: What kind of intervention? A stricter one, where market access is strictly controlled, or, on the contrary, a more lenient one, allowing the market to set its own limits?

The answer to this question is precisely what this work attempts to answer, and I believe, as I will try to explain in the following lines, that, as in almost everything, virtue lies in the middle ground. I will address this in the next section.

I now simply want to highlight how some restaurants have managed to become authentic tourist attractions in areas that, in principle, were not particularly

[10] LUJÁN, N., (2019), *Historia de la Gastronomía,* Debate, [LUJÁN, N., (2019), *History of Gastronomy,* Debate].

[11] RAZQUIN LIZARRAGA, M. Mª., (1999), "El marco jurídico de la restauración", en TUDELA ARANDA, J., *El régimen jurídico de los recursos turísticos,* Revista Aragonesa de Administración Pública, Monografía III, Zaragoza, 1999, [RAZQUIN LIZARRAGA, M. Mª., (1999), "The legal framework of restoration", in TUDELA ARANDA, J., *The legal regime of tourist resources,* Aragonese Journal of Public Administration, Monograph III, Zaragoza, 1999].

[12] Tourism activity reached €184.002 billion in 2023, representing 12.3% of GDP and 0.9 percentage points higher than in 2022. Tourism's main branches generated more than 2.5 million jobs, or 11.6% of total employment, according to data from the National Statistics Institute (Spanish Tourism Satellite Account), dated December 26, 2024.

considered tourist destinations. To give just a few examples, and without intending to be exhaustive: Raíces restaurant in Talavera de la Reina (Toledo), L'Aliança restaurant English: d'Anglès (Anglès, Girona), GET STARTED! (Campezo, Alava), Quevedo's Coto (Juan Abad Tower, Ciudad Real), Culler de Pau (O Grove, Pontevedra), Urdaniz 's Mill (Urdaitz , Navarre), El Batan Inn (Tramacastilla, Teruel), The Bicycle Restaurant (Hoznayo , Cantabria), L'Escaleta (Cocentaina, Alicante), Marcial House (Arriondas, Asturias), Venta Moncalvillo Restaurant (Daroca de Rioja , La Rioja).

This doesn't mean that the aforementioned destinations alone aren't capable of attracting visitors. But the fact is that having famous restaurants is an incentive for tourism.

I'm not talking about wanting to learn about the culinary or gastronomic traditions of a particular region, but rather about a specific establishment, due to its quality, innovation, or other similar characteristics, capable of attracting tourists. The restaurant, therefore, becomes a tourist destination.

3. THE IMPORTANCE OF ADMINISTRATIVE CONTROL OVER THE SUPPLY OF HIGH-QUALITY GASTRONOMY

One of the main questions that must be raised when addressing the administrative control of the gastronomic offering is precisely to what extent it is necessary and through which legal and administrative instruments it can be carried out.

It seems that the gastronomic market itself has fairly effective self-regulation mechanisms [13], as we will see in the following lines. However, in my opinion, a

[13] According to RODRÍGUEZ FONT, M., (2024), "Actividad de ordenación y control", *Manual de Derecho administrativo. Revista de Derecho Público: Teoría y Método*, Marcial Pons, [RODRÍGUEZ FONT, M., (2024), "Organizing and Control Activity", *Manual de Derecho administrativo. Revista de Derecho Público: Teoría y Método* , Marcial Pons], "In addition to legal norms —which are drawn up by public subjects, representatives of the legislative and executive branches— and are accompanied by coercive means (both to guarantee their compliance and to sanction their violation), there are norms and controls drawn up by private subjects as a result of self-regulation. These norms and controls are agreed upon by mutual consent, their compliance is voluntary and they are not supported by external coercion mechanisms. In many cases, the effects of self-regulation do not go beyond the private sphere in which it is created; but, in many others, its references or results do transcend it to be taken into consideration by public bodies. This is the case, for example, with respect to a significant portion of existing self-regulation in the area of economic activities. Certain rules and controls developed by private operators (economic agents, social partners, non-governmental organizations, etc.) enjoy technical and/or political recognition and, through a legislative policy decision—within the framework of the transformation of governance forms driven by the European Union—achieve, to a greater or lesser extent, relevance for public law, becoming a technique or instrument that the legal provisions themselves place in the hands of the Administrations to manage the purposes entrusted to them by the legal system: in the case at

certain level of administrative intervention is always necessary to avoid potential externalities, which do exist and can affect particularly vulnerable legal assets, such as health and other consumer and user rights, tourism quality, and the image of the destination, among others.

The aim is to ensure that the regulation of these types of services not only achieves the objectives set by the sector itself through self-regulation. These interests will normally tend toward the protection of the aforementioned legal assets, as this also guarantees the survival of the tourism resource that gastronomy represents. However, they may sometimes conflict with other objectives of general interest whose protection falls exclusively to the public administration as a constitutionally mandated mission in accordance with the provisions of Article 103.1 of the Spanish Constitution.

3.1. Market only or administrative intervention?

The answer to this question can only be that at least some level of administrative intervention is necessary, beyond any regulations within the sector itself or from private entities such as the Michelin Guide or the Repsol Guide.

We already pointed this out above. The interests pursued by private entities such as those mentioned may or may not coincide with the general interest. Therefore, I believe that a certain level of administrative intervention will always be necessary to guarantee at least the monitoring of compliance with certain requirements closely related to the general interest. Here, criteria related to the guarantee of fundamental rights or guiding principles of social and economic policy come into play, such as non-discrimination, the protection and promotion of health, the appropriate use of leisure activities, or environmental protection, to give just a few illustrative examples.

Legal assets that, as I have already stated, may or may not coincide with the interests pursued by the private entities behind some well-respected guidelines. Therefore, I reiterate the idea that minimal administrative intervention is essential to achieve the public interest objectives that may be affected.

And here we enter fully into the choice of the instrument of administrative intervention, which must necessarily be the least restrictive in accordance with the provisions of the general administrative legislation itself. Thus, according to Article 4 of Law 40/2015, of October 1, on the Legal Regime of the Public Sector, referring to the principles of intervention by Public Administrations in the development of an activity:

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hand, those aimed at the regulation (and also control) of the activities of private entities. This type of self-regulation is known as regulated self-regulation.

> Public Administrations that, in the exercise of their respective powers, establish measures that restrict the exercise of individual or collective rights or require compliance with requirements for the development of an activity, must apply the principle of proportionality and choose the least restrictive measure, justify its necessity for the protection of the public interest, and justify its suitability for achieving the objectives pursued, without in any case resulting in discriminatory differences in treatment. They must also periodically evaluate the effects and results obtained.

Therefore, a minimum of administrative intervention is required to ensure compliance with objectives of general interest, beyond the legitimate objectives of the private entities behind self-regulation.

3.2. Administrative intervention mechanisms for haute cuisine

3.2.1. Administrative management and control

There are no specific regulations in our country regarding what can be considered haute cuisine. Regional tourism laws regulate, where applicable, catering as a secondary or complementary activity to tourism, but they do not establish or develop regulations regarding what should be considered haute cuisine.

I'm not arguing here that it's essential, but the truth is that it would be good to have a minimum regulatory density, not so much to exercise administrative control activity, which is also necessary, but to, where appropriate, promote this type of restaurant.

The problem is that, in this type of activity, that is, haute cuisine, the authorities have largely ignored it. Requirements are established to verify compliance with minimum quality standards and, where appropriate, to classify the type of establishment, but nothing more.

Thus, to give the most recent example of regulation, Decree 79/2021, of July 6, which regulates the organization of catering businesses in Castilla-La Mancha, establishes the following classification in its Article 3: 1. Catering businesses are classified into the following categories: a) Restaurants. b) Cafeterias. c) Bars. d) Leisure, entertainment, and dance establishments. e) Catering companies. f) Event spaces. No reference is made to haute cuisine or fine dining restaurants.

The State has also regulated this matter, but not through its authority to regulate tourism, which it does not have, but rather based on Article 149.1.16, which grants the State exclusive authority over the foundations and general coordination of health. Thus, through Royal Decree 1021/2022, of December

13, which regulates certain hygiene requirements for the production and marketing of food products in retail establishments [14].

The remaining autonomous communities have outdated regulations that, in no case, refer to this type of haute cuisine restaurant, but rather include them in the more general concept of catering establishments, which can include restaurants or bars with daily menus. This is said, by the way, with all due respect and admiration for the work they do, which is essential, along with other restaurants that offer a completely different service and that, as I argue here, can be considered a tourist resource or attraction.

In this sense, I believe that the mechanism of the responsible declaration or prior notification as a control instrument may be sufficient to guarantee a minimum level of quality in the supply of catering establishments [15]. I believe it is not necessary to wait for prior authorization or license, although what should really be used, in my opinion, is a form of simultaneous control that allows for verifying compliance with the minimum requirements in real time. As I have already stated on other occasions, the appropriate technology exists in the hands of public administrations to carry this out. The development and implementation of technological mechanisms should not be solely the responsibility of the private sector. The public sector must make a serious and adequate investment to develop technological applications that make the administrative control they are legally mandated to do more effective and efficient.

In conclusion, and to conclude this section, I understand that the public administration's mission to oversee haute cuisine restaurants can be understood to be fulfilled by using responsible declarations similar to those of more conventional establishments. The administrative oversight mission ends, in my opinion, with verifying compliance with minimum requirements that guarantee the health, preservation, and handling of food. The administration cannot demand higher quality standards, as most establishments would be unable to meet them.

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[14] Article 2.2.a) defines a retail establishment as: "Retail establishment: one in which food is handled, prepared, processed or stored at the point of sale or delivered to the final consumer or to a community, on-site or remotely. This includes mobile or temporary premises (such as tents, stalls and street vending vehicles), support warehouses and facilities where sales are primarily carried out to the final consumer, as well as catering and hospitality establishments. Excluded are farms where primary products are sold directly and places where food is handled, prepared, stored and occasionally supplied by individuals for events such as religious, school, charity or municipal celebrations."

[15] For a more exhaustive analysis of this mechanism, together with prior authorizations, see my work CORRAL SASTRE, A. (2017), *La liberalización del sector turístico ¿Hacia un modelo de turismo sostenible*, Reus, [CORRAL SASTRE, A. (2017), *The liberalization of the tourism sector: Towards a sustainable tourism model?*, Reus].

A different issue, and here I believe there is still work to be done, is that the legal norms that regulate catering establishments should make special reference to haute cuisine as a model or type differentiated from the rest. To the extent that they can become, as I argue, authentic tourist resources, a brief reference could be made regulating at least some minimal characteristics (perhaps related to location, furnishings, qualifications of the professionals who work there, etc.).

3.2.2. Administrative promotion

As a result of the above, that is, the regulatory recognition of haute cuisine restaurants, certain promotional measures could also be implemented, to the extent that, as tourist resources, they can motivate visits to a particular destination, as I have already stated above.

That is, in addition to subsidies for the renovation of certain properties that can be used for this purpose, tax incentives, or exceptions regarding the possibility of using or renovating buildings in rural areas. These are just a few examples that come to mind in line with what was stated in the previous section.

But the truth is that, as we have seen, this requires a minimum regulatory density that allows the competent public administration to act.

3.3. Self-regulation in the sector

As previously stated, the fine dining sector does not appear to require excessively intense levels of intervention. Minimal regulation (which could be greater, as I understand it) and subsequent oversight mechanisms seem sufficient to achieve the public interest objectives that are, in principle, required.

Once these minimum requirements are met, the market itself determines the quality and classification of the restaurants themselves. In other words, the sector's players have extensive knowledge, allowing the market to regulate itself without the need for administrative intervention.

Before continuing to develop this idea, I believe it is necessary to make a brief methodological and conceptual clarification. When I talk about self-regulation, I am referring to certain instruments that have been used by the private sector to regulate certain aspects of a profession, trade, or sector [16]. This is not entirely independent of the public sector, but with a different underlying purpose, to achieve objectives that may or may not coincide with those of the public sector.

[16] On self-regulation ESTEVE PARDO, J., (2002), *Autorregulación: génesis y efectos*, Aranzadi, [ESTEVE PARDO, J., (2002), *Self-regulation: genesis and effects* , Aranzadi].

Therefore, as stated above, extreme precautions must be taken to prevent unwanted deviations and the violation of rights or interests whose protection is the responsibility of the relevant Administration.

It should not be forgotten that the private sector, companies, and professionals in the "haute cuisine" sector, legitimately pursue interests that may only occasionally coincide with public interests [17]. High quality justifies a high price. This also entails high quality products and careful preparation. As I say, it can be a tourist attraction that motivates visits or trips to the specific destination.

However, it may also involve an improper application of the so-called "reservation or right of admission." If the restaurant in question only wants a certain type of customer and discriminates, for example, in reservations or admission to the establishment, private and public interests would conflict, and therefore the latter should prevail, with the public administration having to exercise its powers to enforce them, where appropriate [18].

3.2.1. The success of the Michelin Guide (Michelin stars)

The Michelin Guide [19]is today one of the benchmarks, perhaps the most

[17] DARNACULLETA I GARDELLA, M. M., (2003), "Derecho administrativo y autorregulación: la autorregulación regulada, *Universitat de Girona*, Tesis doctoral, [DARNACULLETA I GARDELLA, MM, (2003), "Administrative law and self-regulation: regulated self-regulation, *University of Girona* , Doctoral thesis.]

[18] The right of admission is configured as a power of the owners of public establishments, recreational activities and public shows, the exercise of which finds an unbreakable limit in the basic principles of equality and prohibition of discrimination of article 14 of the CE. Thus, it violates this fundamental right to prevent the entry of people of color (as declared by Judgment No. 440 of the First Section of the Provincial Court of Alicante), of persons of legal age (in this sense, Judgment No. 308 of the Fourth Section of the Contentious-Administrative Division of the High Court of Justice of Andalusia, of March 12, 2009), or of disabled persons (thus, Judgment No. 370 of the Oviedo AP, of the Criminal Division, of November 13, 2000). Likewise, it would violate Article 14 to prevent entry to a user or spectator due to their sex or sexual orientation, or any other personal or social circumstance that does not respond to the conditions of security and public order that the owner of an establishment, show or public or recreational activity has the duty to observe. The same could be said of the arbitrary application of dress or image requirements. In this regard, see LAMORA CASTILLÓN, M., (2013), "El derecho de admisión en los establecimientos y espectáculos públicos: su tratamiento por la jurisprudencia", *Economist & Jurist*, Vol. 21, núm. 172, p. 31, [LAMORA CASTILLÓN, M., (2013), "The right of admission to public establishments and shows: its treatment by jurisprudence", *Economist & Jurist* , Vol. 21, No. 172, p. 31]

[19] It all began in Clermont-Ferrand, in central France. In 1889, brothers André and Edouard Michelin founded the tire company that bears their name, encouraged by positive prospects for the automobile industry in France, which at the time had fewer than 3,000 vehicles.

To support the development of this industry and, at the same time, the development of the Michelin Group, they decided to provide motorists with a small guide to make their travels easier. Thus was born the famous MICHELIN Guide, the first edition of which appeared in France in August 1900. In its introduction, André Michelin wrote: "This work appears with the century and will last as long as it does." The guide included a wealth of practical information: maps, instructions for changing a tire, where to refuel, and, fortunately for the traveler who needed to recover from the day's adventures, a list of places to eat and stay.

For twenty years, all this information was published free of charge. Until the day of an important event, now a mere anecdote, when André Michelin visited a tire shop and discovered that his prized guides were being used as shims for a

important, for haute cuisine internationally. It is a clear example of successful self-regulation. That is, companies and professionals in the sector freely accept the criteria imposed by the Guide and abide by its decisions.

It's certainly a success story because it undeniably guarantees the quality of restaurants that earn one of the so-called Michelin stars, which can reach up to three. Earning one of these coveted stars, especially all three, guarantees the restaurant and its chef fame and professional success, which usually translates into higher incomes.

However, the process by which this success is achieved (some of the stars) is, in my opinion, not entirely clear. According to the website itself, it appears that inspectors trained at the world's best hotel and restaurant schools tour the establishments. They do so anonymously "to fully assess the level of service offered to all guests. They pay the bill and can then reveal their identity if they want any additional information. Readers' emails also provide us with valuable testimonials and a whole range of information that will be taken into account when developing our tour itineraries [20]. "

The independence, as stated on its website, is absolute in order to "maintain a completely objective point of view, always seeking the reader's interest. The selection of establishments is carried out completely independently, and registration in the guide is completely free. The inspectors and the editor-in-chief make decisions collegially, and the highest awards are debated at the European level."

The point is that beyond these statements made on the website itself, there is no guarantee other than its own reputation and that of the restaurants and chefs who are part of it, which is certainly no small feat.

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bench. So, based on the idea that "man only truly respects what he pays for," a new MICHELIN Guide was launched in 1920, priced at 7 francs.

The 1923 guide featured the section "Recommended Hotels and Restaurants." This was the first time independent restaurants were mentioned, as until then only hotel restaurants had been mentioned.

Aware of the growing interest in the guide's restaurant section, the Michelin brothers recruited a team of mystery diners, now known as "inspectors," to anonymously visit and review restaurants.

In 1926, the guide began awarding stars to the quality of restaurants, although initially only one star was awarded. Five years later, a hierarchy of one, two, and three stars was established, and in 1936, the criteria used for granting these awards were published.

Today, the MICHELIN Guide has become a global benchmark in the field of gastronomy, thanks to its ongoing commitment to readers and its rigorous selection process, which is independently applied worldwide. This selection is carried out by anonymous inspectors, highly trained professionals who apply the same working methods worldwide.

The Michelin Group's mission to improve mobility, which guided the creation of the guide, is at the heart of the Michelin brand's DNA, reflected in its slogan "The best way forward." https://guide.michelin.com/en/en/history--of-the-michelin-guide , last accessed March 17, 2025.

[20] https://guide.michelin.com/en/en/the-inspection-process [last consulted on March 17, 2025.

But it's a process, in my opinion, too opaque. And as the first quarter of the 21st century draws to a close, it's necessary to provide these processes with more publicity and public participation. Indeed, it states that they receive emails from Guide users, but it doesn't specify how to write (or the email address) or how to verify "complaints," if any.

3.2.2. The sun model and the Repsol Guide

Regarding the suns and the Repsol Guide, this is a model similar to the one mentioned in the previous section, that is, a model accepted by the industry itself because it is relevant and prestigious enough for chefs and restaurants to accept its own criteria and standards.

In this sense, according to their website, "Professionals from different work fields, without direct links to the hospitality sector, but with extensive knowledge of gastronomy and a common pleasure: discovering those places where there is a cuisine worth sharing with everyone. This team has been guided by a renewed rating system that was developed with the advice of the Basque Culinary Center, and which has the ambition to value the overall customer experience, with a clear gastronomic foundation, but observing all the aspects that determine it, from the moment of the reservation until the diner leaves the door and decides when to repeat or who to recommend it to [21]. "

The Suns system is similar to that of Michelin stars, although it refers to some criteria not mentioned in the latter. Thus: "The Repsol Guide Suns rating system incorporates parameters linked to sustainability, zero kilometers, integration, the circular economy, and the essential coherence of projects, which must be evident in the kitchens, the premises, the staging, and the wine cellar [22]. "

Like the Michelin star system, the Repsol Suns system is not a public system where the criteria to be taken into account are clearly established, nor, in principle, are the decisions regarding the granting or elimination of awards motivated. Consequently, they are self-regulatory systems with little transparency.

4. LEGAL ASSETS THAT MUST BE PROTECTED

There are, of course, legal rights that must be protected and that amply justify administrative intervention. Some of these have already been mentioned throughout this work, such as, for example, the health and safety of consumers

[21] https://www.guiarepsol.com/es/soles-repsol/como-se-otorgan-los-soles-guia-repsol/

[22] *Ibid.*

and users, which justifies public presence regardless of whether the establishment is considered "haute cuisine." The Administration's mission is to ensure that food served to the public meets the most basic health standards. Likewise, establishments must provide minimum services.

But the objectives of Tourism Administration go further. Below, we briefly analyze what these objectives entail.

4.1. Tourism as a broad concept

The fact that so-called "haute cuisine" establishments offer high-quality gastronomic services does not, in itself, justify the lack of public administration intervention. To the extent that they are considered tourism resources, the competent administration must ensure that other tourism policy objectives are met. For example, sustainability criteria, access for people with reduced mobility, and monitoring of admission criteria, to name just a few examples.

Tourism, as is well known, is a very broad concept, a multifaceted phenomenon that cannot be justified solely from an economic perspective [23]. Therefore, administrative intervention in the sector is justified to the extent that it ensures compliance with other public objectives related to the general interest.

It is true that such intervention must be proportionate and carried out in a way that impacts the economic activity of these establishments as little as possible. Therefore, in this case, I believe that subsequent monitoring through mechanisms such as a declaration of responsibility and prior notification could be sufficient and appropriate. But, of course, as with any other tourist establishment, inspection and, where appropriate, the exercise of sanctioning powers are justified.

As I have already emphasized in other works, tourism quality should not be understood solely as elite tourism, but rather as environmentally and socially sustainable tourism, which is what, in my opinion, the public administration should pursue.

4.2. The overall tourist experience

In line with what was stated in the previous section, "haute cuisine" establishments, to the extent that they can be considered tourist resources, must

[23] TUDELA ARANDA, J., (2001), "La ley y el reglamento en el Derecho del Turismo", *Documentación Administrativa*, núm. 259-260, [TUDELA ARANDA, J., (2001), "The law and the regulation in Tourism Law", *Administrative Documentation* , no. 259-260], p. 124, "It is undeniable that one of the fundamental characteristics of tourism activity is its multifaceted nature".

be aligned with the overall tourism policy objectives set by the corresponding public administration.

In this sense, as already noted, "high gastronomic quality" is not enough; other criteria must be met beyond those established in the corresponding self-regulation systems, such as sustainability, accessibility, social responsibility, etc.

Therefore, to the extent that this type of establishment deviates from these general objectives of global tourism policy, there may be administrative intervention, proportionate, of course, to ensure these objectives are aligned. This does not only involve police intervention or administrative control, but also promotional measures that incentivize or discourage certain activities.

In fact, I believe that traditional administrative control measures (inspections, prior authorizations, etc.) would be very ineffective in this type of activity, so more effective alternatives such as awards or recognition would be necessary.

5. THE NEED TO EDUCATE IN GASTRONOMIC VALUES

5.1. Health as an end

Finally, I will address an issue that is generating serious public health problems internationally [24]and is related to gastronomic education. Obesity is becoming one of the main health problems in Western cultures. This problem is undoubtedly related to changes in society's lifestyle: the increase in sedentary lifestyles, the Western way of life, etc. But gastronomic values also undoubtedly

[24] In 2022, 2.5 billion adults aged 18 years and older were overweight, including over 890 million adults who were living with obesity. This corresponds to 43% of adults aged 18 years and over (43% of men and 44% of women) who were overweight; an increase since 1990, when 25% of adults aged 18 years and over were overweight. Prevalence of overweight variety by region, from 31% in the WHO South-East Asia Region and the African Region to 67% in the Region of the Americas.

About 16% of adults aged 18 years and older worldwide were obese in 2022. The worldwide prevalence of obesity more than doubled between 1990 and 2022.

In 2022, an estimated 37 million children under the age of 5 years were overweight. Once considered a high-income country problem, overweight is on the rise in low- and middle-income countries. In Africa, the number of overweight children under 5 years has increased by nearly 23% since 2000. Almost half of the children under 5 years who were overweight or living with obesity in 2022 lived in Asia.

Over 390 million children and adolescents aged 5–19 years were overweight in 2022. The prevalence of overweight (including obesity) among children and adolescents aged 5–19 has risen dramatically from just 8% in 1990 to 20% in 2022. The rise has occurred similarly among both boys and girls: in 2022 19% of girls and 21% of boys were overweight.

While just 2% of children and adolescents aged 5–19 were obese in 1990 (31 million young people), by 2022, 8% of children and adolescents were living with obesity (160 million young people).

Data obtained from the website: https://www.who.int/es/news-room/fact-sheets/detail/obesity-and-overweight [accessed March 18, 2025]

play an essential role.

Thus, the consumption of low-quality products with artificial flavor enhancers, excess trans fats [25], high sugar and/or salt content, etc., is undoubtedly contributing to increasing obesity problems in society, where childhood obesity is of particular concern [26].

The government must, and indeed does, intervene by approving culinary education programs or strategies. Along these lines, haute cuisine restaurants can serve to achieve these broader social and cultural goals by promoting and educating, for example, about culinary values related to the "Mediterranean diet," that is, encouraging the consumption of vegetables, legumes, olive oil, and healthy foods, to the extent that this contributes to preventing obesity.

5.2. The wine issue and the proper use of leisure time

One of the issues that particularly concerns me, although I can only mention it here tangentially, has to do with the enormous contradiction that arises between the promotion of wine consumption through, for example, wine tourism, and the serious health problems that alcohol consumption can cause [27].

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[25] GONZALEZ BOTIJA, F.,., "La educación alimentaria: en especial el caso de las grasas trans", en CREMADES GARCÍA, J. y ANSÓ, R., (Directores), GÓMEZ-ACEBO DENNES, A., (Coordinador), *Derecho y Gastronomía*, GONZALEZ BOTIJA, F ["Food education: especially the case of trans fats", in CREMADES GARCÍA, J. and ANSÓ, R., (Directors), GÓMEZ-ACEBO DENNES, A., (Coordinator), *Law and Gastronomy]* , op. cit., p. 254.

[26] Overweight and obesity result from an imbalance of energy intake (diet) and energy expenditure (physical activity).

In most cases obesity is a multifactorial disease due to obesogenic environments, psycho-social factors and genetic variants. In a subgroup of patients, single major etiological factors can be identified (medications, diseases, immobilization, iatrogenic procedures, monogenic disease/genetic syndrome).

The obesogenic environment exacerbating the likelihood of obesity in individuals, populations and in different settings is related to structural factors limiting the availability of healthy sustainable food at locally affordable prices, lack of safe and easy physical mobility into the daily life of all people, and absence of adequate legal and regulatory environment.

At the same time, the lack of an effective health system response to identify excess weight gain and fat deposition in their early stages is aggravating the progression to obesity. *Ibid*

[27] Health risks of alcohol use. Alcohol consumption is found to play a causal role in more than 200 diseases, injuries and other health conditions. However, the global burden of disease and injuries caused by alcohol consumption can be quantified for only 31 health conditions on the basis of the available scientific evidence for the role of alcohol use in their development, occurrence and outcomes.

Drinking alcohol is associated with risks of developing noncommunicable diseases such as liver diseases, heart diseases, and different types of cancers, as well as mental health and behavioral conditions such as depression, anxiety and alcohol use disorders.

An estimated 474,000 deaths from cardiovascular diseases were caused by alcohol consumption in 2019.

Alcohol is an established carcinogen and alcohol consumption increases the risk of several cancers, including breast, liver, head and neck, esophageal and colorectal cancers. In 2019, 4.4% of cancers diagnosed globally and 401,000 cancer deaths were attributed to alcohol consumption.

Alcohol consumption also causes significant harm to others, not just to the person consuming alcohol. A significant part of alcohol-attributable disease burden arises from injuries such as road traffic accidents. In 2019, of a total of

It is inconsistent, as I understand it, to promote appropriate leisure time through certain policies aimed at young people (let us recall in this regard what is stated in Article 43.3 of the Spanish Constitution), which promotes sports or healthy eating, and, on the other hand, to equally encourage wine consumption through gastronomic or wine-making tours throughout the country. I understand that this type of tourism is aimed at a more mature segment of the population, who will undoubtedly be able to consume the product more responsibly, but there is still, in my opinion, a contradiction that is difficult to avoid.

6. CONCLUSIONS

Very briefly, some important conclusions can be drawn from this brief work. So-called "haute cuisine" can sometimes be considered another tourist resource that motivates travel and visits to a particular destination. This implies that, in addition to the minimum quality controls that the Administration must implement, as in any other hospitality establishment, there must be an intervention aimed at verifying compliance with other requirements.

In this regard, administrative oversight intervention must be proportionate and minimal, as the very nature of these types of establishments requires a high level of product quality. In this regard, self-regulation appears to play a crucial role through private systems such as the Michelin Guide or the Repsol Guide, even if they are not very transparent. The market, therefore, can exercise more or less adequate oversight.

But objectives of general interest go beyond high gastronomic quality. There are other objectives of general interest whose fulfillment is the responsibility of the public administration and which should not be forgotten. For example,

298,000 deaths from alcohol-related road crashes, 156,000 deaths were caused by someone else's drinking.

Other injuries, intentional or unintentional, include falls, drowning, burns, sexual assault, intimate partner violence and suicide.

A causal relationship has been established between alcohol use and the incidence or outcomes of infectious diseases such as tuberculosis and HIV.

Alcohol consumption during pregnancy increases the risk of having a child with fetal alcohol spectrum disorders (FASDs), the most severe form of which is fetal alcohol syndrome (FAS), which is associated with developmental disabilities and birth defects. Alcohol consumption during pregnancy can also increase the risk of pre-term birth complications including miscarriage, stillbirth and premature delivery.

Younger people are disproportionately negatively affected by alcohol consumption, with the highest proportion (13%) of alcohol-attributable deaths in 2019 occurring among people aged between 20 and 39 years.

In the long term, harmful and hazardous levels of alcohol consumption can lead to social problems including family problems, issues at work, financial problems, and unemployment.

the absence of discrimination in access to public establishments, accessibility for people with reduced mobility, tourism sustainability in the broadest sense, and adequate gastronomic education. These reasons justify decisive and effective administrative intervention. This does not necessarily imply the use of restriction or policing techniques, but also the use of promotion, which are considered more appropriate for achieving these goals.

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