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Legal Regulation of Tourism in Castilla y Leon (Spain)

David Álvarez

University of León, Spain
Avda. Facultad de Veterinaria 25, 24004, León
David Álvarez Cordero
E-mail: davidleon_28@hotmail.com

Abstract

Tourism is an activity, which has a heterogeneous treatment by scholars in this field. Current approaches prefer to focus on it from economic consideration in general or as a simple genesis of new contractual arrangements. The tendency to consider tourism as a matter of State requires then of a normative political effort and the implementation of basic criteria that would serve to consolidate it in this sense.

Studies on tourism are relatively recent. While chemistry, medicine, mathematics and geography have been under review since the earliest times, this "pleasure" travel does not begin to be studied in a scientific manner until between the wars (1919-1939). During 1920s, the world lived a stage of economic boom. It was at this time when it was popularized the use of the telephone, automobile and home appliances as well as travel, because in these years, thanks to the increase of income per capita and a cheaper, a lot of people that before would not have been able to have access to tourism, had access to this privilege. This explains that the increased movement of people leaves more money in the visited places (receptors cores). The first effect arising from the massive influx of tourists to a place is therefore expenditure; hence the first studies were carried out from the world of economics. Tourism is defined as the set of relations and phenomena that occur as a result of displacement and temporary stay of persons outside their place of residence, provided that it is not motivated by lucrative reasons.

Keywords: Spain, tourist legislation, tourism register, cultural values, quality employment, profitability.

Introduction

The Act 10/1997, of 19 October, of Tourism in Castilla y León [1], along with a series of regulations governing the specific aspects of tourism services, have served as a framework for the development of tourism activities without precedent in Castilla y León, in positions of leadership in products such as rural and cultural tourism. And is that tourism is a very dynamic activity that leaves obsolete provisions or required of the legislator new rules that give legal cover to a series of activities and services that tourists demand. For this reason, in the exercise of the exclusive competence the community of Castilla y León has, in promotion of tourism and its management in

the territory of the community, in accordance with article 70.1.26 of the Statute of autonomy [2], is dictated this law with the aim of becoming the essential legal text which regulates management of tourism in the territory of the community of Castilla y León, in which refers specifically to his ordination, planning, promotion and discipline, in order to build a sustainable tourism in which to reach the greater economic and social profitability, trying to protect particularly significant resources for their environmental and cultural values.

Materials and methods

The main sources for writing this article became the official documents of Spain, materials of the journal publications and archives, as well as the State Official Newsletter, where all laws are published as soon as they enter into force.

This article has been analyzed using Methods of interpretation of the law, which are the means available for the interpreter to establish the possible meanings and scope of interpreted law. These methods are commonly accepted by doctrine and sometimes expressly enshrined by the own legal systems. These elements are the grammatical, the historical, the logical, the systematic and the teleological element. The grammar element is the one that allows you to set your senses and scope of law making use of the tenor of the words of the law, namely the meaning of the terms and phrases that the legislator used to express and communicate its thinking. This interpretive method is based on the assumption that the will and intention of the legislator is steeped in the law. The historical element allows interpreting the legislated right referring this to the history of the legal text, which is interpreted. This history is reflected in each of the stories or stages of the process of formation of the law. The logical element consists of establishing the sense or scope of a law, relying on the intellectual analysis of the connections that have similar laws or with other laws related to the same subject. The systematic element makes possible to interpret the law according to the connections with the whole legal system of which it forms part, including the general principles of law. The teleological element, finally, is the one that allows establishing the meaning or scope of a legal precept according to the purpose.

Discussion

Nowadays, the Castilian and Leonese tourism sector brings to the economy 10.5% of GDP [3], and is conceived as a strategic economic sector with great capacity for growth in terms of employment and income, and which contributes to the opening and improve of the image of Castilla y Leon in the world. Several studies of tourist show changes that recommend modifications and an adaptation of the profile of the tourist offer of the autonomous region, which should be reflected in the Law. The estimations of the World Tourism Organization (UNWTO) [4], in its study of prospective world on people travelling in the year 2020, point to a series of changes: greater diversification of demand and, therefore, a greater specialization of tourist products; quality as a non-replaceable value and sustainable and responsible tourism. Also it is expected that segments of demand with higher share of growth in the coming years will be precisely in which the community of Castilla y León has greater potential: cultural tourism and nature and adventure tourism. This law establishes a few objectives that match with those set by the World Tourism Organization and those followed by the European Union in the Lisbon strategy [5], in which recognizes the potential of tourism to generate quality employment, and therefore it is expected a sustainable economic growth, its role in the preservation of the cultural and natural heritage as well as its contribution to the intercultural dialogue and the strengthening of one's identity; aspects that have a special presence in this legal text. They have reflection in this standard, continuation of the modification operated to Act 10/1997, of 19 October, of tourism in Castilla y León, by the Decree-Law 3/2009, of 23 December, of measures for boosting activities in Castilla y León [6], the objectives of the act 17/2009, of November 23, of free access to services activities [7]. Throughout this, it has been incorporated partially into Spanish law the Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market [8]. The objectives are achieved by eliminating obstacles that oppose freedom of establishment of those who provide services in the Member States and to the free movement of services between Member States and ensure, both the recipients and the providers of services, the legal certainty necessary for the effective exercise of these two freedoms of the Treaty of the European Union.

This act commits to cooperate between the administration of the community of Castilla y León and the rest of public administrations, especially with local authorities, as well as social agents with greater representativity of the sector. Also it powers the participation of the private sector through the new Regional Tourism Council of Castilla y León, which will replace the Council of Tourism of Castilla and Leon. Another important aspect, given the signs of identity of the sector of tourism in the region of Castilla y Leon, is the promotion of stable and quality employment and in order to ensure a better service. Once consolidated the sector as a key element of the regional economy, the next step is to promote the quality and excellence of tourism as a strategy for the future, and as the basis for regional tourism policy, always in cooperation with the sector, through professional associations and social agents. This law is structured in a preliminary title and six titles, comprising ninety-two articles, six transitional provisions and ten final provisions.

The preliminary title defines the object and the purposes of the Act, as well as its scope, which incorporates the definition of the subject to which it is directed. Given the breadth of the material field of the touristic activity, it is essential a prior delimitation that concretes which aspects of the reality of our environment must be under consideration from this standard. The purposes of the Act are designed to get the most out of tourist resources, within the utmost respect and care of the culture and traditions of the community of Castilla y León, following guidelines that mark the beginning of sustainability. Apart from collecting general purpose like the promotion of tourism as a sector strategic and instrument for the development of the autonomous community, it have been singled out purposes that are part of the strategy of the community of Castilla y León, for instance, among others, the achievement of territorial balance through tourism, with special attention to the peripheral areas, the promotion of accessibility in the area of tourism, the stimulation of cooperation in cross-border tourism projects or respect for the dignity of the person and its fundamental rights through the offer of tourist services and activities.

Title I is devoted to the distribution of competences in the field of tourism, differentiating which correspond to the autonomous region of the competences and which correspond to local authorities. This regulation constitutes the institutional support that aims to ensure effectiveness in the exercise of the powers and proper collaboration and coordination between the bodies that they have assigned. The law provides a competential distribution system that parts of the idea of cooperation in the framework of the legislation on local government, giving priority to skills of coordination that the existing system attributed to the autonomous communities in relation to local tourism, while scrupulously respecting local autonomy. This title also regulates the system of organization, and is noted for collecting important developments with some very clear goals: facilitate inter-administrative coordination and the participation of the private sector, business and non-business, through their representatives, in accordance with the objectives established in law 8/2008, of 16 October, which creates the Social Dialogue Council and regulates institutional participation, in accordance with article 16.4 of the Statute of Autonomy. The participation of the tourism sector and the specialists will take place explicitly in the new Regional Tourism Council of Castilla y León through two new committees: the Standing Committee of development of new tourism products, such as advisory body to make proposals for new products, and the Table of training in the field of tourism, as a body that will boost the tourism training coordinating socio-economic operators and administrations of the community of Castilla y Leon. The Regional Council of tourism of Castilla y Leon has been equipped with greater powers than its predecessor, the Tourism Council of Castilla y León, and a more pluralistic participation that emphasizes its character of an advisory body. Together, with the committees referred to in the preceding paragraph, the Permanent Commission and the Castilla y Leon Analysis Center [9], are added to the mentioned Regional Council as a tool at the service of administrations and the tourism sector to analyze the evolution of tourism in the Autonomous Community. It is also recognized in this title that, in line with article 7.2 of the Statute of Autonomy, the communities Castilian and Leonese, in relation to collaboration in the field of tourism promotion abroad, are vehicles to reinforce the presence on the outside of the Autonomous Community.

Title II presents the great novelty of grouping into a single title tourists and tourism companies as essential parts of the tourist activity. The title, structured in two chapters, aims the determination of the rights and duties of tourists and tourism businesses with a balanced and extensive catalog by compliance with which should ensure competent public administrations, according to the objectives set out in the Global Code of Ethics for tourism. In the section on rights

and duties there are established important news as the regime of the overbooking, that will facilitate the activity of companies and tourism professionals, and, at the same time, an increase in the legal security for tourists and for businesses. This same title provides that the administration of the community of Castilla y León promotes conflict resolution of the tourists with the providers of services through consumer arbitration.

Title III, called Access and Exercise to the tourist activity, structured in four chapters, lays down the conditions of access and exercise, with full submission to the new legal framework produced by law 17/2009, of November 23, of free access to service activities, which transposes into Spanish law the directive 123/2006 of 12 December, relative to the internal market services. Also it has been taken into account the forecasts contained in the Decree-Law 3/2009, of 23 December, on Measures of improvement for the activities in services in the community of Castilla y León [10], adopted within the framework of the above provisions and the provisions of article 62.3 of the Statute of Autonomy, which legitimizes the community to develop the law of the European Union in the field of its competences.

Chapter I deals with the freedom of establishment and provision of services, and the prohibition of the illegal activity, such as unequivocal proof of the support and commitment of the community of Castilla y León with the business tourism sector, tourists and the quality of the tourist services.

Chapter II, entitled Freedom of establishment, in accordance with the amendment of Act 10/1997, of 19 October, of Tourism in Castilla y León, by means of the Decree-Law 3/2009, of 23 December, of Measures of improvement for the activities in services in the community of Castilla y León, picks up the regime of the enforceable responsible declaration to the owners of tourist accommodation and catering and the intermediation touristic activities, active tourism and other tourist activities not related to a physical settlement, as well as service providers of tourist accommodation and restaurants already established in Spain or in any other Member State of the European Union, and that legally exercise the activity for each physical establishment, from which intend to carry out the activity in the Autonomous Community. This chapter provides a regime of exemptions, as well as communications in cases of modifications, terminations or changes of ownership. Also, it is referred to the regime applicable to cases of inaccuracy, misrepresentation or omission of essential character, in any data, demonstration or document that will accompany or join the responsible declaration. The chapter ends by regulating the access and exercise of the activity of tour guide in the community of Castilla y León. For this purpose, it is required that all tour guides are in possession of the corresponding rating. Such authorization is justified by compelling reasons of general interest such as public order, the protection of the rights and safety of consumers and recipients of services, the fight against fraud and the conservation of the cultural heritage, without the possibility of being replaced by a less restrictive measure to the lender who comes to secure these ends, because it does not support *a posteriori* control, since the effects and harmful results for protected legal goods would have already taken place and, in some cases, they may be irreparable.

Chapter III, entitled Freedom of providing services, sets the peculiarities of the responsible statement in cases of tourist activities not related to a physical establishment. It also contemplates the exercise of the activity of tour guide in the free provision of services. For this purpose, it is established the obligation to display, prior to first move to the community of Castilla y León, the corresponding previous statements in case of tourist guides established in the rest of the Spanish territory or in other countries of the European Union. Thereby, in accordance with the provisions of the Royal Decree 1837/2008, of 8 November [11], which are incorporated into Spanish law the directive 2005/36/EC, of the European Parliament and of the Council of 7 September 2005, and the directive 2006/100/EC of the Council of 20 November 2006, concerning the recognition of professional qualifications [12], as well as to certain aspects of the practice of the profession of lawyer.

Finally, chapter IV provides for the Tourism Register of Castilla y León, with administrative nature and public character, which significantly will improve the benefits of the traditional Businesses, Activities and Tourist Professions Register, which replaces.

Title IV, of Tourist Activity, regulates tourist accommodation and catering establishments, as well as the activities of active tourism, tourist intermediation and tour guide. This title is divided into five chapters and several sections in order to update the legal framework of the tourist activity of the community of Castilla y León to the demands of the 21st century and lay the foundations to facilitate tourism development from the business areas for forthcoming decades.

Chapter I, called Establishments of tourist accommodation, with a five-section structure, regulates the following types of them: Hotel, rural tourism, tourist apartments, camping and tourist regime hostels.

Given its roots, the hotel accommodation is classified into the following types, existing currently: hotel, apartment hotel, motel, hostel and pension; however, it opens the possibility to specialize in accordance with the requirements and conditions to be determined. Specifically, for hotels who are referred by the following specializations: family hotel, gourmet hotel, spa hotel and historic hotel.

The most significant novelties appear in the section of rural tourism accommodation, responding to a need for demand and an exigency of the tourism sector. Firstly, with the inclusion among the modalities of the rural hotel; secondly, the distinction of each type of accommodation; namely, rural hotel, inn and rural house in five categories through an specific system of categorizing for this type of establishment; and, finally, with the abolition of the so-called rural tourism centers, which necessarily will have to search accommodation in other types of tourist accommodation. These measures, in short, will serve to make the community of Castilla y Leon follow a leading position in rural tourism at a national level.

The Act also regulates the accommodation facilities in the modalities of touristic apartment and camping, and expressly sets the number of categories that may be classified.

In the modality of hostels, there are two types: the tourist hostels and hostels of the roads to Santiago.

Chapter II deals with the settlements of restaurants. It maintains the traditional groups of restaurants, cafés and bars and incorporates the banquet halls to give legal cover to an existing reality. It also opens the possibility of recognizing specialties of catering establishments of the community of Castilla y Leon, as the grill and inn.

In chapter III, are regulated the activities of active tourism; in chapter IV, the activities of touristic intermediation, with the novelty of reservation centers, along with traditional travel agencies; and in chapter V, the profession of tourist guide.

Title V, of Management, development and promotion of tourism, is divided into three chapters. Chapter I, with the title general management of tourism and tourism resources, strengthens a series of principles that should govern the management of tourism, like the sustainable touristic development and the support to initiatives of accessible tourism, under the name of accessible Castilla y Leon, with the conviction that a more accessible tourism is a more quality tourism.

In this area are set series of tourism strategic resources because of being the hallmark of the tourism of the region of Castilla y Leon in national and international spheres, such as the Castilian language, the gastronomy of Castilla y Leon, goods of cultural interest, cultural spaces, natural protected areas, the Natura 2000 network protected areas, the goods included in the lists of European Heritage and World Heritage and the Biosphere Reserves declared by UNESCO in the Autonomous Community.

The tourism planning will take place through Regional Projects and Plans, within the framework of reference involving the Planning Guidelines of the territory of Castilla y León. In these instruments will be focused the determinations that will define the model of tourist development and it should be fixed and maintained the possibility of declaring a territory as tourist space saturated when the limit of maximum tourism is overpassed, and to be determined according to the rules.

The tourism planning will be implemented via Tourism Strategic Plans, of multi-year basis, that will determine the main needs, responses and the various programs of action for sustainable tourism development. There are established programs for the development of specific tourism products as well as the obligation of the competent Counseling in tourism of promote scenarios in collaboration with the administration of the State, with the administration of other autonomous communities, with local administrations and with other regions of the European Union, especially with the border regions of Portugal, to set up plans and programs of joint action. Finally, it keeps the faculty that the provinces, districts and municipalities in their respective territorial areas, report of the competent directorate-general for tourism, for the purposes of achieving greater coordination, to develop plans for tourism development, respecting the principles and criteria laid down in the Tourism Strategic Plans.

The chapter ends with an article dedicated to the tourist quality, as a goal to get by means of a range of actions to achieve, through collaboration with industry, through professional associations and social partners.

Ultimately, it arises the general management with rigorous submission to informants, advocated and defended principles by institutions of worldwide prestige, with the premise of facilitating a rapid and effective response in the actions of the public administrations of the community of Castilla y Leon, allowing them to be at the height of the dynamism of the tourism sector.

Chapter II is dedicated to the administrative activity of tourism development, updating a set of measures and instruments that serve effectively to boost tourism of the community of Castilla y Leon, through the enhancement of heritage, revitalizing customs, festivals, traditions and other tourist resources. Among other measures, it is envisaged the promotion of professional and business associations, subsidies, premiums and tourism awards and the promotion of creation of tourism.

Chapter III, dedicated to the promotion and tourist information, establishes responsibilities, principles and lines of action in the field of promotion and tourist information, all of which are aimed at strengthening the tourist brand "Castilla y Leon", as a global tourist destination.

In this chapter it is created the Census for the promotion of tourism of Castilla y León as a database for the promotion and dissemination of tourism. This census will bring the set of establishments, tourist activities and tourist guides inscribed in the register of tourism of Castilla y León, as well as complementary tourism activities, with the intention of recognizing the importance of a series of activities and services with a very positive influence on the tourism sector. Within these activities the resorts are, among others, ski and mountain resorts, golf resorts, public transport and car hire, with or without driver, professional congress organizers, thermal stations and other establishments of health tourism, wineries and wine tourism complexes, catering activities, schools of Spanish for foreigners and other companies dedicated to the management of resources.

Also, there are approached the statements of touristic interest at the regional level with an open character, by enabling statements of events or goods of cultural, artistic, sports, gastronomic and festive nature, involving the manifestation of eigenvalues and the popular tradition of the community of Castilla y Leon, only when they are of a special importance as a tourist resort. There are as well expected tourist signs that facilitate accessibility and knowledge of different resources and destinations to tourists.

This title ends with the regulation of tourist information and the Network of Tourism Offices of Castilla y Leon, with a vocation for quality public service, establishing new types of integrated and supra-municipal offices, in consistency with the territorial and tourism reality of the community of Castilla y Leon.

Finally, the title VI, of Tourist Quality Control, updates with the rules in this regard on the basis of the experience accumulated in recent years by the administrative services of the tourist inspection. The title is divided into two chapters: inspection of tourism and penalties, which is divided into four sections.

Results

The chapter I sets out the functions of tourism inspection, condition, powers and duties of inspectors of tourism, as well as the duties of the owner of tourist activity and staff at its service in connection with the inspection activity.

Chapter II incorporates many new features; the most noteworthy are the updating of the amounts of the penalties, the homogenization of prescriptions and the inclusion of new types of offences, or the change of classification of some offences endorsed on grounds of equity, coherence and effectiveness. Also, this chapter lays down the rules on the sanctioning procedure and provisional measures and the competent bodies dealt with to sanction. The chapter closes with the creation of the Registry of offenders of tourism of the community of Castilla y Leon.

The Act concludes with a transitional provision with acquired rights by who would be affected by the enactment of this Act, with a repealing provision and a regime of final provisions aimed at realizing the new regulatory framework designed in this Law.

Conclusion

The Act was born, therefore, to create a competitive environment that favors entrepreneurship and the creation of stable employment and quality, as well as for the proper protection of tourists and tourist resources of the community of Castilla y Leon. It is focused to unify regulation of tourism affairs, however, requires an additional regulatory effort for its implementation and development, which will involve, in some cases, the revision of the rules currently in force for their adaptation to the provisions of this law and the adoption of new rules.

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David Álvarez

University of León, Spain
Avda, Facultad de Veterinaria 25, 24004, León
E-mail: davidleon_28@hotmail.com

Аннотация. Туризм – это деятельность, которая имеет гетерогенную природу. Современные подходы предпочитают сосредоточиться на рассмотрении общей экономической теории туризма или просто генезиса новых соглашений. Тенденция рассмотрения туризма как дела государства требует нормативных усилий и реализации основных критериев, которые будут служить для объединения физических и юридических лиц.

Научные исследования туризма начались сравнительно недавно. В то время как химия, медицина, математика и география были предметом исследования с древнейших времен, "удовольствие" путешествия стало изучаться между мировыми войнами (1919-1939). В 1920-е годы мир жил в стадию экономического бума. В это время стало популярным использование техники, а увеличению доходов на душу населения сделало возможным широкий доступ к туризму. Поэтому первые исследования проводились в сфере экономики. Туризм был определен как совокупность отношений и явлений, которые происходят в результате смещения и временного пребывания людей вне их места жительства, при условии, что он не связан с извлечением прибыли.

Ключевые слова: Испания, законодательство о туризме, регистр турфирм, культурные ценности, занятость, рентабельность.