



Ensuring the environmental sustainability of tourism: Multilevel regulatory instruments

OÑATI SOCIO-LEGAL SERIES FORTHCOMING

DOI LINK: <https://doi.org/10.35295/OSLS.IISL.2661>

RECEIVED 15 MARCH 2026, ACCEPTED 23 JUNE 2026, FIRST-ONLINE PUBLISHED 16 JULY 2026

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Abstract

This article explores, from a legal viewpoint, the main policy options that might ensure environmentally sustainable tourism. This goal can only be partially ensured by the free market forces, therefore regulatory action is needed. Regulatory responses are needed at all territorial levels, due to the horizontal and comprehensive reach of tourism. With this idea in mind, the article identifies and presents the main regulatory instruments adopted to ensure the environmental sustainability of tourism at different governmental levels. First, the initiatives of the two most important international organisations in Europe are discussed (with a focus on EU legal tools such as environmental assessments of projects and plans). Then, the article focuses on Spain. After presenting in broad terms the allocation of competences in the domain of sustainable tourism, the article presents the main initiatives adopted at national and regional level, not forgetting the local one. Special attention is given to physical planning, which is considered as the paramount governmental tool to attain sustainable tourism.

Key words

Public policies, EU directives, environmental assessment, multi-level governance, territorial planning

Resumen

Este artículo analiza, desde un enfoque jurídico, las principales opciones de política pública que podrían garantizar un turismo sostenible desde el punto de vista medioambiental. A juicio del autor, el mercado solo puede asegurar ese objetivo de manera parcial, por lo que es necesaria la intervención de las instancias político-administrativas, a través de la ordenación normativa y el planeamiento, y ello desde

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todos los niveles territoriales. Partiendo de esta base, el artículo expone las principales técnicas e instrumentos legales adoptados para garantizar la sostenibilidad ambiental del turismo. En primer lugar, se analiza el marco de constituido por las dos organizaciones internacionales más importantes de Europa (centrándose en las evaluaciones ambientales de proyectos y planes). A continuación, el artículo se centra en España. Tras exponer en términos generales el reparto de competencias en el ámbito del turismo sostenible, el artículo expone las principales iniciativas adoptadas a nivel nacional y regional, sin olvidar el local, prestando especial atención a la técnica de la planificación territorial y urbanística.

Palabras clave

Políticas públicas, directivas de la UE, evaluación ambiental, estructura territorial, planificación del uso del suelo

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1. Introduction: “Sustainable tourism”: A new paradigm?

This contribution explores the main regulatory instruments and techniques incepted at different governmental levels to ensure that tourism respects the environmental prong of the sustainability paradigm.²

The analytical perspective of this contribution is exclusively legal. As the editorial introduction to this special issue states, this contribution outlines the key regulatory tools to promote sustainable tourism and seeks to contextualise and concretise the general debate in one specific country (Spain). In this vein, this article stands in the line of the contributions in this special issue that advocate for enhancing the regulatory framework for “sustainable” tourism across levels of governance.

As historians have described, the roots of tourism as a human, organised activity may be traced back to the 17th century, when young nobles from western and northern European countries made what was called the Grand Tour — a trip around Europe with the purpose of discovering art and cultural heritage. By the 18th century, this custom was widespread among wealthy classes and it spread to other parts of the world.

Since then, tourism has not ceased to develop (Pérez Rodríguez 2020). It has involved more and more people, visiting more and more territories, located in increasingly remote locations. Today, the tourist industry has diversified its offer with no pause and tourism merchandising has been extremely successful in creating, in the mind of the people, the “need” to rest, relax and travel. At the beginning, this need was constrained to the holidays season, but currently this compelling need must be satisfied all year round³. Tour operators and travel agencies offer countless package holidays and excursions for groups, and the industry is now publicizing outer space tourism for those who can afford it...

For decades, tourism has been seen in many countries as a key pillar of the national economy and a major source of growth, job creation and prosperity.⁴ Nations compete among themselves to attract more and more tourists, and the different governments proudly show their annual, record-breaker figures in terms of “international visitors”.⁵ In those countries, tourism has been a highly valued source of economic growth and has been fostered by intensive advertising campaigns, marketing and commercial strategies, addressed to the international markets

² This paper does not consider the conceptual intricacies involved in the notion of “sustainable tourism”. It accepts the standard definitions contained in soft law and refers to other contributions in this special issue exploring that question.

³ According to the usual social stereotypes, a successful retiree is a grey-hair gentleman who travels during the whole year, discovering distant places, collecting “exciting” experiences and enjoying, finally, the pleasures that he deserved after a life of hard work.

⁴ In the Balearic Islands, the economic sector of tourism represented in 2023 roughly 45% of its GDP.

⁵ In Greece, the number of foreign visitors reached 33 million in 2003, five more than in 2022. Tourism revenues for 2023 approached a record high of 20.5 billion € in 2023 (source: National Bank of Greece). For its part, Spain beats year after year the aggregate figures of foreign visitors. Thus, in 2023 the kingdom received 85.2 million international tourists, 93.8 million in 2024 and roughly 98 million in 2025. This figure marked a new record and placed Spain as the second most visited nation in the world (only advanced by France).

In contrast with this pattern of unlimited growth of tourism, an interesting sociological trend is emerging in many places, as local communities are speaking out with increasing force against uncontrolled and mass tourism. This trend is still far from being uniform or prominent, but it gains growing support in the public opinion.

Under this new understanding, tourism is certainly considered to benefit the local economy, but it conversely triggers an intolerable footprint on both the natural and man-made environment, and on the local residents' quality of life.

Thus, the current pattern of mass tourism is coming under increasing scrutiny, and more and more people are realizing its multi-faceted impact on their cities and communities: from the stress on the local environment (water consumption, waste generation and treatment) to the impact on the social structure (induced immigration, growth in the price of housing), or on the local culture (new social habits brought by the tourists, replacement of the local language with foreign languages, etc.) not to forget the clear contribution of tourism to the paramount problem of climate change.⁶

This heavy burden is especially critical in small islands, whose physical basis is reduced, and which have a limited ratio of absorption of the different environmental impacts. In this sense, it may be said that some touristic destinations have been victims of their own success.⁷

As a consequence of this, in places where the tourists were in the past warmly welcomed and proudly counted, there are now growing popular demonstrations against mass tourism. An evidence that this understanding is gaining ground among increasingly broad segments of the population,⁸ and some authors have identified that *overtourism* is increasingly leading to "tourismphobia".⁹

The current challenge is, then, to reconcile tourism with the respect of the natural environment and with the local way of living of the local populations. A notion that is usually encapsulated in the expression "sustainable tourism". In fact, this endeavour has for long been sought by a set of legal and regulatory instruments, which are briefly outlined in this article.

2. Governance mechanisms for achieving environmental sustainability in tourism: exploring the policy options

There are two basic options to promote and achieve environmentally sustainable tourism in a given area, region or country. The first option is to rely on the forces of free

⁶ According to recent studies, tourism is responsible for roughly 8% of the world's carbon emissions, of which 49% comes from transportation, and other sources such as food and beverage, lodging and several services. See: Sustainable Travel International: *Carbon footprint of tourism* (www.sustainabletravel.org).

⁷ For instance, the archipelago of the Balearic Islands (Spain) was visited by 14 million tourists in 2023. This represented roughly 45% of its GDP. The Canary Islands (same country) received in 2023 roughly 18 million tourists, more than Brazil. In Greece, the iconic Island of Santorini has a permanent population of roughly 15,000 inhabitants, but hosts more than 6 million visitors annually. And the island of Mikonos has a "legal" or permanent population of 10,000 inhabitants but during the touristic season it receives thousands of tourists (with a peak of up to 250,000 people in the middle of Summer).

⁸ Demonstrations have been frequent in the Balearic and Canary Islands, and in the city of Barcelona. See RTVE (2024), Catà Figuls (2024), La Nación (2024), Dollimore (2025).

⁹ For an analysis of that sociological trend, in the specific case of the Canary Islands, see Sánchez-Bayón and Daumann (2025).

market and private entrepreneurship, an option supported by liberals and developers. The second option relies on governmental intervention and regulation, on the positive action of the institutionalized political powers and public authorities. This latter perspective follows the interventionist approach (pro State control, coupled with central planning and supervised growth).¹⁰

Concerning the first option: it is true that the free market is already generating spontaneous manifestations of sustainable tourism. There is, indeed, a part of the population (usually, middle and wealthy classes) who refuse to spend their holidays in standardized, fully packed resorts, and prefer to visit alternative places. Or they rather wish to stay in hotels that have been designed and are operated under strict standards of sustainability and respect of the environment.¹¹ The number of these facilities is growing around the world, and there are precise labels that identify or certify them.¹²

These experiences may have a diversified origin: they may be the result of a genuine environmental-friendly attitude of the hotel-owner or just a marketing strategy aiming at diversifying its offer and trying to attract a more selective (and rich) type of costumers. However, the number of these initiatives is still limited if one compares them against the wealth of “business as usual” accommodations.

In reality, one should not expect that the market will be able to generate spontaneously the result of “environmentally sustainable” tourism by itself, for the simple reason that the demand for “standard” tourism (*sun and beach* approach) is growing every year, around the world. Therefore, the economic incentives are strong, and the trend for “mass tourism” and “overtourism” is moving in exactly the opposite direction from sustainable tourism.¹³

Accordingly, this paper is based on the hypothesis that the environmental sustainability of tourism can be defined, and it can be achieved through the adoption of public policies for tourism. Moreover, those public policies must be appropriate to the territory and the socio-cultural context where tourism takes place.

Public policies must also respect some substantive and procedural requirements in the decision-making process (public participation, strategic environmental assessment, etc.). Indeed, decision-making in this area must be articulated on the basis of appropriate

¹⁰ For a critical presentation of the most relevant theoretical and methodological framework concerning public intervention and its management of change, applied to Spanish tourism services (digitalization), see: Sánchez-Bayón *et al.* (2025).

¹¹ The location has been chosen after carrying out an environmental assessment of the project. The facility has been built with materials taken from the nearby places and respecting environmental parameters (wood from certified forests); the facility is self-sufficient in terms of water and energy consumption; water is recycled and energy comes from own, renewable installations; toiletries are chemicals-free; the food served in the restaurant is ecological and comes from the orchard of the hotel or from local producers; the hotel applies the strictest recycling and re-use standards, etc.

¹² For instance, the EU Ecolabel (see below) may be awarded to hotels and campsites and guarantees that the certified accommodation has optimised environmental and waste management, and reduced energy consumption, water consumption, transport emissions and food waste.

¹³ For instance, it is expected that 62 new cruise ships will be built in Europe over the next five years, representing an investment of 40 billion euros (Maudlin 2023). As is well known, a conventional cruise ship can carry between 850 and 3,000 passengers on average, but some mega-cruises can accommodate more than 6,000, with an immense environmental footprint (energy consumption, CO2 emissions, residual waters, food waste, etc.).

participation mechanisms for the populations of the places welcoming tourism and the concerned stakeholders (tourists, businesses local people, etc.).

Among the different techniques and instruments at the disposal of the governmental levels for ensuring environmental sustainability, planning ("physical" or territorial planning) is certainly the key technique for the governance and control of land use and for reconciling land use with environmental protection (see: Chalifour *et al.* 2007). By means of that technique, the competent authorities may direct and control the process of urban transformation (free production of buildable land *vs.* controlled urban growth). In this vein, in some European countries, such as Spain, an increasing doctrinal vector advocates for a re-thinking of the public policies on land development, where environmental sustainability considerations should prevail over the uncontrolled provision of land to the construction sector (Bassols Coma 1996, Parejo Alfonso 1996, Lora-Tamayo 2006, Parejo Alfonso and Roger 2009, 99-279, Quintana López 2018).

Since the powers and competences that are necessary to adopt the appropriate public policies may correspond to the different institutional levels of decision-making, it is clear that sustainability in the tourism sector can only be achieved through the combined action of all the public authorities involved in the process, at the different territorial levels.

Consequently, we need to explore the activities and actions of the relevant international organisations, that might laydown the framework for domestic policies and plans. And, in the national sphere, we need to identify the different governmental actors, their powers and they coordinated actions. Indeed, the relevant competences on tourism, spatial planning, environmental management and sustainability may be dispersed and allocated to the different territorial levels (local, regional, national, and European). For that reason, they are all collectively responsible for the success (or failure) of the paradigm of eco-sustainable tourism.

3. The international (European) perspective

Sustainable tourism is a recurrent debate that has taken hold in the vast majority of the competent international forums and has so far generated a variety of concretizations and achievements. For the sake of conciseness, this paper will focus on the European orbit,¹⁴ and will therefore briefly present the achievements, initiatives and, moreover, the regulatory tools and instruments that may play a role in ensuring the environmental sustainability of tourism, adopted by the leading international organisations.¹⁵

In the case of the EU, this international organization generates normative mandates that serve as an unavoidable frame of reference for the discussion and adoption of the corresponding national public policies. In other cases (Council of Europe), the

¹⁴ For a presentation of the most important soft law documents and international conventions in this domain, see the paper of Prof. Milagros Álvarez, "Institutionalization and legitimization of sustainable tourism standards: The role of the Global Sustainable Tourism Council" (*Oñati Socio-legal Series*, forthcoming).

¹⁵ This paper does not consider the initiatives, schemes and achievements launched or fostered by quasi-governmental and non-governmental organisations, such as the European Charter for Sustainable Tourism in Protected Areas (ECST), launched by the European Federation of Protected Areas (EUROPARC).

international organization simply catalyzes and encourages cooperation and coordination among the different countries.

3.1. The Council of Europe

Although the Council of Europe (hereinafter, “CoE”) is a typical inter-governmental organisation, its radius of action is broad, and its performance can be assessed as impressive: to date, the Council of Europe has produced 226 international treaties, and a high number of “soft law” documents, ranging from “declarations” to “recommendations”, “strategies” and the like.

The CoE has adopted some conventions on environmental protection that may have a collateral impact on the development of tourism, such as the Landscape Convention (ETS No. 176), or the Convention on the Protection of the Environment through Criminal Law (CETS No. 228). However, the most important achievement of the CoE in this area is the program known as “Cultural Routes”, launched in 1987 with the Declaration of Santiago de Compostela.

With this program, the CoE seeks to promote responsible and sustainable travelling and tourism across the continent, suggesting and allowing the tourists to discover its rich cultural and architectural heritage. Each certified “Cultural Route of the Council of Europe” (there are more than 40) brings together people and places in identified networks of shared history and heritage. The network implements innovative activities and projects pertaining to five main priority fields of action, and one of them is, precisely, cultural tourism and sustainable cultural development.¹⁶

In view of the success of this initiative, in 2010 the Committee of Ministers (the top decisional body of the organisation) adopted the Enlarged Partial Agreement on Cultural Routes of the Council of Europe (Resolution CM/Res(2010)53), known under the acronym of EPA.¹⁷ The said Committee adopted subsequently two key formal decisions aiming at institutionalizing this network. On the one hand, Resolution CM/Res(2013)66 confirmed the establishment of the Enlarged Partial Agreement on Cultural Routes. In 2023, the Committee of Ministers adopted Resolution CM/Res(2023)2, revising the rules and criteria that must be met in order to award and to obtain the certification “Cultural Route of the Council of Europe”.

Contrary to the EU, the action of the CoE does not allow, as a rule, for direct financing from this international organisation. This is a matter of exclusive competence of the member States. Therefore, the CoE fosters, encourages and facilitates the synergies among its member states, but the actual maintenance, conservation and management of these routes correspond to the national authorities.

¹⁶ For instance, 90% of the cultural routes cross rural areas, bringing additional opportunities to less well-known destinations.

¹⁷ 42 members states of the Council of Europe are members to the partial agreement.

3.2. The European Union

3.2.1. The competences of the Union in the field of sustainable tourism

An account of the international context for decision making for sustainable tourism in Europe should focus on the actions and measures adopted by the European Union (EU), due to its overwhelming scope of actions and powers.

To begin with, the EU is strongly committed to the key political paradigm of sustainable development. Thus, and apart to some references in the preamble of the Treaty on the European Union (TEU),¹⁸ art. 3.1 thereof proclaims that the Union “shall work for the sustainable development of Europe based on balanced economic growth and price stability”; and art. 3.5 further states that the Union shall contribute to peace, security, and “the sustainable development of the Earth”. Furthermore, sustainable development is one of the key guiding principles of its external action (art. 21, TFEU). The references to sustainable development are also present in the TFEU (art. 11, enshrining the so-called “integration principle”).

In the strict field of “tourism”, the system of the treaties has not recognised explicit powers to the Union in order to develop a true “policy” on the matter (not even a “shared” one). Thus, under art. 6(d) of the TEU the Union has competence “to carry out actions to support, coordinate or supplement the actions of the Member States” in several areas, among which stands “tourism” (letter d).

It is true that the said treaty devotes a full title (title XXII) to tourism. However, this title has only one provision, namely art. 195. Under this provision, the Union shall “complement” the activities of the Member States in the tourism sector, in particular by promoting the competitiveness of the Union’s undertakings in this sector. In any case, the possibility of “of any harmonization of the laws and regulations of the Member States” is explicitly excluded.

In view of this primary-law scheme, the Union cannot set “hard-law”, harmonization measures affecting specifically the tourism industry in the member states (by which the Union could impose in one way or another the paradigm of “sustainable tourism”). However, this lack of explicit competences to frame a true comprehensive policy in the field of tourism has not prevented the Union to approve different key political positions on “sustainable tourism”. The measures adopted cover the full spectrum of soft law documents:

(a) *Resolutions*: for instance, the European Parliament Resolution of 25 March 2021, on the definition of a Union strategy for sustainable tourism.

(b) *Communications*: for example, the European Commission Communication of 20 February 2014, entitled “A European strategy for more growth and jobs in coastal and maritime tourism”.

c) *Council conclusions*: among which the seminal “New European Agenda for Tourism” (2022). This is probably the key soft law document of the Union in the field of sustainable tourism.

¹⁸ The framers of the Treaty, “determined to promote economic and social progress for their peoples, taking into account the principle of sustainable development and within the context of the accomplishment of the internal market...”

(d) *Special reports: “A Transition Roadmap for Tourism”* (European Commission, General Direction of Free Market and Industry 2022).

Apart from this, one should not disregard the spending power of the Union, and the many funds and programs that have an environmental or “sustainability” component, which may well be addressed to foster sustainable practices and projects in the tourism sector.¹⁹

3.2.2. The environmental powers of the Union and the *indirect* greening of the tourism activity

The fact that the EU cannot frame a comprehensive policy in the domain of “tourism” is not a factor that has prevented this organisation from adopting significant actions that have an impact on tourism, and that may transform it into a “sustainable” one. We refer naturally to the powers and competences of the Union in the environmental arena, a powerful sectoral policy that has developed since the ‘70s and has produced hundreds of legal rules, mainly directives and (some) regulations.²⁰

Thus, the EU environmental legal rules (based on arts. 191 and 192 of the TFEU) may affect or hit (also) the tourism activities, facilities, projects, installations or plans. Several EU directives may have, and do have, a direct incidence on the tourism activity. Since all (or most of them) tourism infrastructures must respect the EU environmental laws and regulations, in the same way as any other industry sector. This means that the EU, by adopting “environmental” rules, may affect or condition this economic sector, contributing dramatically to greening it.

The most visible case of what we are describing is probably EU directive 2011/92/UE of 13 December 2011, on the environmental impact assessment (EIA) for projects. Under this directive, the member states must ensure that a number of projects, listed in that legal rule (a) obtain a license or authorization before they are build and operated; and (b) are subject to a mandatory and thorough examination of their repercussions (“impacts”) on the environment (understood “*lato sensu*”) before they obtain those regulatory permits.²¹

The completion of a full and prior EIA allows the competent authorities to set conditions and compensation-reparation measures on any given (tourist) project (if listed in the directive in the national laws), therefore ensuring the balance between economic activity and the respect for the environment. Moreover, if the EIA finds that the project is going to trigger a too harsh or intolerable impact on the environment, the licensing of the project will not be recommended by the environmental assessment conclusions. This means that, in practice, the licensing authority will not grant the necessary permits for the construction and operation of the tourism project.

¹⁹ For instance, the Recovery, Transformation and Resilience Plan (PRTR) articulates the funds of the European Next Generation EU plan and dedicates 3,400 million euros to reactivate one of the strategic pillars of the Spanish economy. Most of it, around 60%, must be used in projects linked to sustainability.

²⁰ The bibliography on this sector of EU Law is amazingly wide. For the interested reader, we make a reference to a well-known treatise: Krämer (2024).

²¹ The literature on EIA for projects is vast. For what concerns books in Spanish, see: Quintana López (2002), Razquin Lizarraga (2000).

In its current version, several projects connected to the tourism activity are included in Annex II of the directive, under the heading “tourism and recreational activities”. This heading include, among others: (a) Ski slopes, ski lifts and cable cars and associated constructions; (b) marinas; (c) tourist developments and hotel complexes outside urban areas, and associated constructions; (d) permanent camps for tents or caravans; (e) theme parks.

On the other hand, if a tourism resort, facility or installations wants to be built in the countryside, within a natural protected area (or in its vicinity), it may be affected by the “Habitats” directive (Directive 92/34, of 21 May 1992) or by the “Wild birds” directive (Directive 2009/147, 30 of November). Member states and governmental agencies must ensure that the objectives of these directives are fully respected and that no new “tourism” project may jeopardise the ecological balance or the conservation status of these designated areas, and of the species of flora and fauna that live therein.

Another EU legal rule that may be relevant for sustainable tourism (especially from the public planning perspective) is the directive on strategic environmental assessment of plans and programs on the environment: Directive 2001/42/EC, of 27 June 2001.

This directive requires that the plans and programs adopted by the different levels of government that are likely to have significant effects on the environment, must be subject to an assessment of those repercussions, before they are finally adopted (Strategic Environmental Assessment, SEA). This assessment aims to ensure a high level of environmental protection and to integrate environmental considerations into the planning process, thus promoting (eventually) sustainable development (Cuyás Palazón 2007).

This piece of EU legislation is of crucial importance for this article, since it advocates for the need of public policies ensuring sustainability and focuses on planning as an essential technique. Therefore, all governmental plans, programs and strategies aiming at achieving sustainable tourism or having a clear impact on this objective must be subject to this strategic environmental assessment. This assessment must respect some essential procedural steps, among which, public information and participation, which ensures the effectiveness of environmental democracy and increases the legitimacy of the public policies embodied in the plan.²²

According to art. 3.1 of the directive, an environmental assessment shall be carried out for all plans and programs in a number of sectors, among which stand “tourism”. Apart from genuine “tourism” plans, it is also relevant to note that the plans approved in the matter of “town and country planning or land use” are also subject to this “strategic” environmental assessment when they set the framework for future development consent of projects (such as tourism projects) listed in the annexes of the directive on EIA, or which require an assessment pursuant to the aforementioned “Habitats” directive.

In a nutshell, although the Union has no power to approve a directive or a regulation whose title bears explicitly the title “tourism”, its environmental laws are a powerful tool to ensure that the construction and operation of major tourism-related facilities are built

²² The legal literature on SEA for plans is vast. For books in Spanish, see: Fernández García (2006), Galera Rodrigo (2006).

and operated with full respect of environmental standards and in an eco-friendly manner.

The several domestic administrative bodies and agencies, and the different levels of the Union's member States are bound by these pieces of EU legislation, which must be transposed into the legal systems of the member states by binding laws and regulations approved by the domestic parliaments and governments.²³

On top of that, the Court of Justice of the EU (hereinafter, "ECJ") has the power to enforce the faithful application of these rules in the member States, especially in the context of the "infringement procedure" (foreseen in arts. 268-270 of the TFEU). In the area involving tourism and the environment, the ECJ has rendered important judgements, where environmental considerations have prevailed over the economic ones.²⁴

Apart from this "compulsory" or regulatory mechanisms, the EU has also set the framework for the implementation of voluntary mechanisms that may have a clear connection with sustainable tourism. They consist primarily in a two-fold mechanism: on the one hand, the Union sets environmental criteria or parameters, that should be met by different goods (for instance, washing machines) or installations (for instance, hotels). On the other hand, there is a certification stage, where the private companies that comply with the aforementioned criteria may have their products certified by independent organisations, therefore demonstrating that they, or their products, are "ecological" or "sustainable". For the purpose of this paper, the most interesting is that the Union has set environmental criteria and voluntary certifications for hotels and camp sites (EU eco-label).²⁵ Therefore, the Union promotes the environmental sustainability of essential tourism facilities and helps the tourist in taking the right decision in choosing highly sustainable places to spend their holidays.

These schemes have, essentially, an "informative" objective. With the EU Ecolabel, tourist accommodation and campsites offer an eco-friendly and high-quality alternative to conventional hotels and campsites. Therefore, the whole scheme trusts the customer and hopes that the citizens, through hundreds or thousands of informed individual decisions, will have an impact on the market, and that more hotels and tourist accommodations will decide to endorse an eco-friendly, sustainable pathway.

²³ In the case of Spain, both the directives on EIA and on SEA were transposed by the Act No. 21/2013, of 21 December, on environmental evaluation (*Ley de evaluación ambiental*).

²⁴ See, for instance, the judgment of the ECJ (Second Chamber) of 29 January 2004, in the case *Commission v. Republic of Austria*. In this ruling, the Court condemned Austria because a golf course had been enlarged without performing an assessment of this tourism-related project on the Wörschacher Moos, a special protection area, and on the local population of corncrake (*Crex crex*), a protected bird living in the concerned forests. Another noticeable case is the ECJ ruling of 30 January 2002, *Commission v. Greece* (case C-103/00). In this proceedings, the Commission claimed that Greece had not protected adequately the local populations and colonies of the turtle *Caretta* in the iconic island of Zakhintos: they were threatened (especially in the summer, the most critical season for their eggs) by the uncontrolled spread of tourism-related installations (beach hotels) and activities (such as pedalos). The Court declared that Greece had violated the "Habitats" directive (Directive 92/43/EEC).

²⁵ The precise and technical criteria that must be met by these installations, deeply connected with tourism, may be checked at https://environment.ec.europa.eu/topics/circular-economy/eu-ecolabel-home/product-groups-and-criteria/holiday-accommodation_en (EU Ecolabel - Tourist accommodation).

4. The national dimension

As noted *supra*, this paper is based on the hypothesis that the achievement of a new paradigm in tourism, an eco-friendly and “sustainable” one, can only be achieved by the public authorities and political bodies, using the several powers they have, basically their power to pass laws and regulations, and their power to adopt plans of many sorts.

Naturally, the outcome of the use of these powers will depend largely on the internal constitutional features of each country, its economic context, its culture and tradition, and the priorities originated by the fruitful dynamics of its social elements (mass media, public opinion, popular demands, priorities of the day, etc.)

It is obviously impossible to address all these complex normative and sociological dimensions in a humble article like this. For that reason, we will focus on a couple of precise dimensions and questions. First: who is supposed to adopt the relevant decisions? That’s it: what governmental level or institution is supposed to be authorized or empowered to approve the different sets of laws and regulations that could favor the achievement of the paradigm of “sustainable tourism”? Second: what are the usual “products” of the decision-making processes? That’s it, what type of laws, regulations or planning documents are or may be approved by the competent bodies in order to achieve “sustainable tourism”?

Since there are roughly 50 countries in Europe, we will focus on the one that the author knows best for obvious reasons, while comparative references will be made where pertinent or necessary.

4.1. Basic models for power-allocation at national level

From the viewpoint of the allocation of powers and competences among the different territorial levels of government (vertical power distribution) it is commonly accepted that there are two basic types of countries: “centralized” and “decentralized” ones. In the first model, all the decisional powers (or the most important ones) correspond to the central, national or State-structure (national parliament, Government, ministries and agencies). In the second one, the powers are distributed (following different criteria and parameters) among the different territorial levels of the State.

Of course, both models are not monolithic, and they admit diverse degrees and nuances. For instance, Greece, Ireland, Turkey and Portugal are all centralized countries, but there are variations among them. In the other category, decentralization admits also different degrees and scales. A country may have a mild decentralization (Poland, France), it may be deeply decentralized while remaining unitary (Spain, Italy), but it may also be federal (Germany, Belgium, Austria, the UK) or even confederal (Bosnia-Herzegovina, Switzerland).²⁶

Thus, the Hellenic Republic (simply, “Greece”) is a good example of a very centralized country. There is only one national Parliament (unicameral). There are regions in the

²⁶ Anyway, these categorizations have only a “pedagogical” purpose, for they may be misleading: for instance, the UK can be theoretically categorized as a “federal” country, but its degree of “local” decentralization is among the weakest in Europe.

country, but they lack any normative or regulatory power whatsoever.²⁷ The same happens at local level: Greek municipalities cannot pass binding local regulations, except in some few fields, strictly local (for instance, traffic). Therefore, all legislative powers to regulate tourism lay in the hands of the national parliament, or of the national government and ministries.

Moreover, the State departments and ministries are also competent for the approval of individual tourism-related projects, such as theme parks, five-star hotels, resorts, etc. The concerned municipalities are simply heard, but they don't have the power to decide. Sometimes, these big projects are even approved by means of a "special law" of the Parliament. Finally, the State is also the only one that can impose taxes, charges and fees on the tourism industry or activities.

At the other end of the decentralisation spectrum, we can identify countries such as Italy, Germany and Spain, the latter of which is analysed in more detail below.

4.2. The case of Spain

Compared to Greece, the Kingdom of Spain is organized around a totally different model, that of multiple and deep decentralization. Under the Spanish Constitution of 1978 (hereinafter, "SC") this country is articulated in three territorial levels: (a) the national or State level; (b) the regional level; and (c) the local level (island, provinces, municipalities and other local entities). The result is that the country is deeply decentralised.

The fact that Spain is a highly decentralized nation, and that the responsibilities for tourism and related matters (environment) are distributed among the different institutional actors, means that the objective of sustainable tourism can only be achieved through the concerted and coordinated action of the different public administrations having responsibilities in this area. For this reason, Spain is a perfect example of "multilevel dialogues for sustainable tourism".

4.2.1. The State and the regions: powers allocation and main initiatives

Powers and initiatives at state level

In the specific domain of tourism, the State authorities do not have, in principle, any explicit competence, as this is a matter that the Constitution has entrusted entirely to the regions (art. 148.18 of the SC: "Promotion and regulation of tourism within its territory"). Therefore, all regions have exclusive powers to regulate the tourism activity and to enact the appropriate regional statutes,²⁸ that may be eventually supplemented by administrative regulations approved by the regional governments.

The clear consequence of this allocation of powers is that, in Spain, the state authorities have very few (if any) legislative competences in the specific domain of tourism. The

²⁷ The Council of Europe regularly monitors the situation of decentralization in its member states. In the case of Greece, see: Recommendation 372 (2015)2, of the Congress of Local and Regional Authorities, on local and regional democracy in Greece, of 26 March 2015 (doc. CG/2015(28)8Final).

²⁸ By way of example, we may refer to the Act of the Andalusia Region No 13/2011, of 23 December 2011, on tourism.

State Parliament, for instance, could not, in principle, approve a National Act on Tourism.

Conversely, the State has competences and powers in other areas, and by legislating on those areas the State may issue laws and regulations that may have a transversal or collateral impact on tourism. For example: environmental protection (transposition of the EU directives mentioned *supra*), transportation, taxation, cultural heritage and artistic patrimony, international trade, general regulation of the economy, etc.

The State, though, still keeps some competences in the field of tourism, which are mainly of executive nature. They are mainly connected with the international dimension of tourism, the coordination of the several regions (see below). This might explain that still today there is a ministry on tourism (Ministry on Industry and Tourism) whose arguable existence may be justified for historical reasons, and a National Institute for Tourism (Instituto de Turismo de España, Turespaña).²⁹

The lack of explicit competences in the narrow area of “tourism” has apparently not prevented the Ministry of Tourism to prepare a national “Strategy on Sustainable tourism of Spain 2030”, which was eventually approved by the central Government in October 2025. This “policy paper” aims at reorienting Spanish tourism towards greater sustainability. According to the ministry’s website, this strategy seeks “to lay the foundations for the transformation of Spanish tourism towards a model of sustained and sustainable growth that will allow us to maintain its position of world leadership”.³⁰

The leading role of the regions in ensuring environmentally sustainable tourism

In Spain, the “autonomous communities” (*Comunidades Autónomas*)³¹ are by far the most relevant political actors for ensuring the achievement of the environmental sustainability paradigm in tourism. Spanish regions handle a large domain of public responsibilities and have a fair share of powers and competences (sometimes, full and exclusive), among which tourism and environmental protection, and several related matters.

All regions are autonomous territorial bodies whose powers and competences are defined by the SC and – especially – by their respective statute of autonomy (“*estatuto de autonomía*”). All regions are placed on a theoretically equal constitutional footing, even if all of them do not have the same competences and fiscal autonomy. Each “Comunidad Autónoma” has its own parliament (democratically elected) and its own government, which reports to the regional parliament.³²

Spanish regions enjoy a large remit of political, legislative and administrative autonomy. They have powers to establish both legislative norms and administrative regulations, within the limits of the Constitution and their respective statutes of autonomy. They also have discretion to formulate their own public policies in many fields (such as health,

²⁹ See Turespaña: <https://www.tourspain.es/es/>

³⁰ A presentation (in English) of this strategy may be found on the website of the Ministry at: <https://turismo.gob.es/en-us/estrategia-turismo-sostenible/paginas/index.aspx> (Sustainable tourism strategy of Spain 2030).

³¹ In this contribution, we will use the word “regions” instead of “comunidades autónomas”, because it is shorter and it is an easily recognisable terminology in English.

³² For a thorough presentation of the Spanish model of regional decentralization, see: Muñoz Machado (2007).

agriculture, environment, tourism, housing, urban development, etc.). In most cases, those regional policies must respect rules and policies established in national legislation (considered “basic” or framework legislation, binding on the regions). In others, they are theoretically free to design their own public policies, to approve laws and regulations, as well as plans, strategies and programs.

As noted *supra*, the Regions have, in principle, exclusive competences for the promotion and regulation of tourism within its territory, and apart from that, they enjoy large legislative, regulatory and planning powers that may converge on tourist activities and on the tourism industry.³³ For instance, they have exclusive competences in several domains that have a clear connection with tourism, such as commerce and trade fairs (art. 148.1.12^o), regional cultural and architectural heritage (148.1.16), or spatial planning and housing (art. 148.1.3), a matter that is of crucial importance because this article advocates for a central role of spatial-economic planning for the achievement of “sustainable tourism”.

Moreover, regions can also pass environmental legislation, within the respect of the State legislation (art. 148.1.8 – art. 149.1.23). This is another key competence for ensuring sustainable tourism, since the regions may pass laws and regulations, for instance, for the protection of the natural parks and other protected areas. Moreover, they may approve the planning instruments that regulate and control the use of the land within those parks and protected areas. Consequently, by means of this power the regions may exclude the possibility that tourist resorts or hotels be built within those natural parks and protected areas, or in their proximity.

Thus, in the light of the above presented constitutional allocation of competences, the main responsibility to define (or to re-orient) tourism in terms of environmental sustainability lays in the hands of the regions and (to a minor extent and territorial scale) in those of the local authorities (see, below).

In recent years, indeed, many regions (especially in those where tourism massification is more evident) have adopted dozens of different initiatives of legislative, regulatory and planning nature, a full account of which is clearly impossible in a paper like this. By way of example, we can sort those measures as follows:

(a) Adoption of regional strategies

In this area, it is worth mentioning the Canary Islands Tourism Infrastructure Strategy. This strategy was adopted with the fundamental objective of defining a series of lines and axes for tourism activity.³⁴ It defines five strategic lines, including “Environmental and sustainable transition” and “Energy transition and mitigation of climate change”. In this vein, the strategy considers it necessary to design and build tourism infrastructures in a way that reduces their negative externalities. In fact, the circular economy is

³³ For instance, regions may define and classify the different types and names of the touristic accommodations; they regulate the requirements that must be met by a person to become a certified touristic guide, and they run the exams that must be passed to obtain that category, etc. All these requirements and regulations may differ from region to region.

³⁴ It has been approved by means of a Resolution of the regional government of the Canary Islands of November 25, 2024.

postulated as an important way forward in the transition towards the integral sustainability of tourism.

The strategy underscores that tourism infrastructures should reduce their carbon footprint. Similarly, a green transition should be promoted, developing sustainable designs appropriate to the use of environmental resources and reducing their impact on emissions. As it can be seen, this is a typical soft law approach, deprived of hard or tough mechanisms.

(b) Enacting comprehensive regional statutes on sustainable tourism

A stronger regulatory approach towards sustainable tourism consists of passing a regional statute that tackles specifically this question with a holistic and transversal perspective.

In this vein, it is worth mentioning that the Andalusia region has been preparing in 2025 a new Act on Sustainable Tourism. This new law, which is been debated in Parliament nowadays, is foreseen to be enacted in 2026. It will substitute the pre-existing 2011 regional Tourism Act. This piece of legislation is supposed to lay down measures to ensure a balance between tourism development and the environmental, economic and social sustainability in the region.

(c) Using taxation to promote sustainable tourism

A more specific regulatory approach towards sustainable tourism may be the use of taxation. In this vein, it is worth mentioning that some years ago the Valencia region approved the regional Act No. 7/2022, of 16 December 2022, on fiscal measures to foster sustainable tourism. The key tool in this statute was the “Valencian tax on tourist stays”, which was created by that act. The taxpayer was defined as any person who stayed in any tourist accommodation establishment located in the Valencian Community, including hotels, tourist apartments, campsites, and even areas for overnight stays in transit for motorhomes. The collection of this tax was supposed to be entirely earmarked for investments and expenditure linked to the promotion, encouragement and development of sustainable tourism.

At first sight, taxation seems to be an adequate tool to ensure sustainable tourism. However, the taxing authorities should be cautious in using this instrument, because the tourism market is very sensitive, and tourists may take decisions based on those new financial burdens. The tourist destinations compete among themselves, and the impact of taxation may be subject to political debates.

This is precisely what happened with the regional act in Valencia region. After a change in government, the incumbent cabinet promoted the urgent derogation of the act, even before it had entered into force. This was eventually done by means of the Regional Decree-law 12/2023, of 10 November.

(d) Adoption of spatial plans inspired in the sustainability paradigm

While municipalities have competences to approve local urban development and land-use plans, the regions have the exclusive competence to approve spatial plans of a broader territorial scope and a higher strategic vision (in Spanish: *ordenación del territorio*). In those spatial plans, the regions may regulate and manage the space, and provide priorities on the use of the land. They may identify areas for the preferential

location of tourist activities, or they may classify an area as “saturated”, therefore discouraging the inception of new tourism activities.

The case of the Balearic Islands is of great interest for the issues we are analysing here, since it is a region in which the importance of the principle of sustainable development is evident in view of its small size and insular nature. The islands have a limited and fragile territory, and have experienced an enormous urban and environmental pressure induced by tourism.

In this archipelago, land-use planning legislation establishes specific urban growth ratios, which are approved by an Act of the Balearic Parliament. These normative documents are the Spatial Planning Guidelines of the Balearic Islands. They are regulated by Act No. 6/1999, of 3 April, as amended.

The Spatial Development Guidelines (in Spanish, *Directrices de ordenación territorial*, “DOT”) aim at securing the environmentally sustainable use of the land and natural resources and the protection of environmental quality, landscape, biodiversity and historical heritage. These guidelines constitute a planning instrument of exceptional normative content, which take a decisive option for a strategy of sustainability.

The regional spatial planning system is supplemented by the Island Territorial Plans, which are approved by the council of each island.³⁵ Openly inspired by sustainability criteria, these spatial planning instruments can be very detailed and they constitute the binding frame of reference for the urban planning instruments of each municipality in the island.

The most paradigmatic case is probably the Territorial Insular Plan for the island of Menorca, (hereinafter PTIM), approved in 2003, and modified subsequently. The PTIM sets out the planning rules for the entire territory of the island of Menorca, and is expressly inspired by the principle of sustainable development, which appears explicitly in its title (“Menorca, un projecte territorial sostenible”, “Menorca, a sustainable territorial project”). The PTIM is very precise and detailed. Furthermore, its provisions prevail over the urban development plans approved by the municipalities of the island.

Among other aspects, the PTIM regulates in a very detailed manner the legal regime of the tourist areas. The local urban planning instruments of the tourist areas pursue a series of environmental and sustainability parameters, and the municipalities must achieve a series of environmental objectives through their planning, such as the promotion of environmental quality.

In addition, the Island Plan determines with precision the building conditions that must be respected by any new single-family dwelling to be built in a “tourist areas”. Another interesting provision of the plan in terms of its impact on municipal planning from the perspective of sustainability is that it limits the urban growth in selected municipalities, laying down different parameters. Finally, the plan lays down criteria and standards for landscape protection, which are also binding for the local councils when they adopt their plans and regulations.

³⁵ Another distinguishing feature between Greece and Spain is the fact that, in Spain, the island is considered to be a local authority by itself, endowed with its own legal personality, governing bodies, competences, etc. However, none of these features happen in Greece.

Based on sustainability criteria, the Balearic region has adopted other strategic regulatory decisions, by virtue of which entire categories of urban development projects with a negative ecological impact have been suspended or phased out *sine die*, something that is usually known as a “moratorium”. For instance, the regional Act No. 4/2000 of 22 March 2000, on golf courses³⁶ prohibited the siting of new golf courses in the islands of Ibiza and Formentera, justifying this measure on the grounds of the ecological fragility of those islands and for sustainability reasons. In its explanatory memorandum, the law was based on the “legitimate aspirations to defend a dignified environment”. However, this act was repealed by another regional statute in 2003.

4.2.2. Coordination and cooperation between the State and the regions

As noted *supra*, Spain is a perfect example of what can be identified as a forum of “multilevel dialogues”. This dialogue may crystalize in schemes for inter-governmental coordination and cooperation. Indeed, inter-governmental cooperation lays at the heart of federalism. Different developments have taken place in this area.

Thus, apart from the Conference of Presidents (*Conferencia de presidentes*), set up in 2004, the most important forum for inter-governmental coordination between the State and the regions are the so-called “sectoral conferences” (*Conferencias sectoriales*). These multi-member bodies are composed of the relevant Minister of the State Administration and the respective ministers (*consejeros*) of the regions. There are 42 sectoral conferences, working on topics such as health, agriculture, environment, etc.

For the purpose of this paper, the Sectoral Conference on Tourism (*Conferencia Sectorial de Turismo*) is the most relevant body. This is the top consultative and collaborative body between the State Administration and the regional administrations for the coordination of their policies and actions in the domain of tourism and other tourism-related areas. This bilateral structure is the appropriate forum to disseminate and discuss common tourism plans, policies, strategies and problems involving the State and the regions.

In fact, the “conferencia” works with the aim of reaching agreements between the State and the regions on tourism and other tourism-related matters. Information on State and regional initiatives and actions is circulated; it sets up specific cooperation plans on sectoral matters, as well as mechanisms for the exchange of information; it also agrees on specific plans for cooperation in sectoral matters, etc.

Apart from the precedent schemes and coordination bodies, the central and the regional governments may of course engage in political contacts and negotiations (more likely when both governments are ruled by the same political party). Recourse to the courts is not unusual (constitutional conflicts of competences).

4.2.3. The role of local authorities

Spanish municipalities (the only local entities that can be mentioned here) enjoy a large domain of powers in the area of tourism and in that of environmental protection (very

³⁶ The full name of this statute in Spanish is: *Ley 4/2000, de 22 de marzo, de Moratoria de Construcción y Ampliación de Campos de Golf en las Islas Pitiusas*.

relevant for “sustainable tourism”).³⁷ They stem from both State legislation and regional legislation.³⁸

Municipalities have not only important “executive” powers in many tourism and environment-related matters, but also very relevant planning powers (almost exclusive) in the domain of urban development and land use zoning.³⁹ Contrary to Greece, Spain follows the approach of comprehensive urban development and land-use planning. Each one of the more than 8,100 municipalities existing in the kingdom are supposed to approve a comprehensive spatial plan covering the whole municipal territory, defining what areas are buildable, which ones are not, and which ones form the “consolidated” urban or developed land (Benabent Fernández 2004, Pardo Álvarez 2005, Muñoz Machado 2007).

In addition, they can prescribe the use that is permissible for any plot of land in the local territory (for instance: residential, industrial, services-oriented infrastructures). Municipalities can also introduce a broad range of limitations on constructions and buildings, such the number of floors that a residential building may have, minimum distances among constructions, specific requirements for tourist accommodations, etc. Thus, by means of these powerful competences the municipalities have in their hands the possibility to foresee, to plan or to even to forbid the very possibility of land development connected to tourism (new hotels or tourism-connected facilities and buildings, campsites, golf courses, etc.).

Moreover, they have large regulatory powers, in the sense that they may approve local regulations (*ordenanzas*) in many tourism and environment-related domains: environmental management, green areas, atmospheric pollution, traffic, use of public spaces (such as beaches, noise limitations, buildings and energy efficiency, recreational and leisure facilities and entertainment business, restaurants and night-clubs, opening times for recreational and food businesses, etc.

This local planning powers come along with relevant licensing powers: every single building (or any similar use of the land, like the erection of a communication tower) needs a license, that must be awarded by the municipality. Therefore, every single tourism-related building or facility will only be licensed if the project fully meets the planning and regulatory requirements previously decided by the municipality (or by the regional laws and regulations).

Finally, municipalities have also have important implementation and enforcement powers in many tourism and environment-related areas. For instance, these local authorities inspect all types of local businesses (including those who work in the tourism industry), such as night clubs, restaurants and bars; they enforce their own traffic ordinances; they control the noise produced by such installations; they impose sanctions in all matters in which they are competent. They can take initiatives, plans and strategies

³⁷ The most important piece of State legislation on local authorities is the Act 7/1985, of 2 April 1985. This statute requires that the State and the regions must recognise the municipalities competences in several domains, among which stand the promotion of the tourist activities having a local interest (art. 25.2,h).

³⁸ For a presentation of the competences and powers of municipalities in the domain of tourism in Spain, see: Martínez Pallarés (2005) and Corchero (2011).

³⁹ This is another matter on which the State has no legislative powers whatsoever. Only regions may pass legislation on the matter.

to stimulate the use of public transport, or to raise the public awareness on environmental problems, etc.

In view of this plethora of governmental and regulatory powers, there is no doubt that Spanish municipalities may use their many powers and responsibilities in tourism and tourism-related matters for advancing sustainable tourism within their territories.

Naturally, it is impossible to provide a full account of those initiatives. By way of example, it is possible to mention that many municipalities have adopted local strategies, like the ones that has been promoted by the Association of Andalusian municipalities.⁴⁰ Apart from that, many tourist municipalities have successfully implement “local Agenda 21” strategies, which address specifically the externalities caused by the tourism activity and design measures to reduce or to eliminate them.⁴¹

5. The human rights dimension

This concise contribution would be nevertheless incomplete if it did not at least explore the possible connection between the positive governmental action aimed at achieving sustainable tourism and human rights. Indeed, any administrative activity of a regulatory, planning, or command-and-control nature concerning private activities inherently gives rise to a debate regarding its potential conflict with the subjective rights—or even fundamental rights—of those affected by such government activity. In general, in this conceptual scenario there are people who demand that the executive branch undertake a particular regulatory action to safeguard their rights; and conversely there are also individual who might claim that their rights may be negatively affected by such regulatory intervention.

This dimension also arises, of course, in the field of sustainable tourism, and the connection between governmental action and subjective rights opens the door to interesting questions and perspectives, which can only be briefly identify here. Therefore, this section presents several questions, which have mainly an open or rhetorical nature and that would undoubtedly merit future research.

Primo.- Is “sustainable tourism” a moral good in itself? If yes: is it an absolute moral good, or should it be balanced or compensated by the protection of other goods of a superior nature (for instance, free market, economic activity)? Once this prioritization has been achieved, what consequences should it have for the governmental action?

Secundo.- The people who protest against tourism massification, can they invoke human rights that are affected or restrained by that economic activity? This people could probably claim that unsustainable tourism triggers a violation of their fundamental right to the environment (in the jurisdictions that recognize it) and that mass tourism is triggering a deterioration of their environment (in the wider sense). In the context of the European Convention on Human Rights, they could perhaps claim a violation of art. 8 (right to privacy, to personal and family life). However, there is a clear conceptual problem in this approach: since tourism activities are mainly private (travel agencies, tour operators, hotel and nightclubs owners, etc.), what type of governmental “activity”

⁴⁰ *Estrategia local para un turismo sostenible andaluz*. See: <https://www.famp.es/es/proyectos/page/e-local-turismo-sostenible/>

⁴¹ A well-known case is that of Calviá, a city located in the island of Mallorca. See: <https://www.calvia.com>

or “inaction” may be identified, to justify that the State has violated their environment-based human rights? In other words: can a causal link be established between the State activity (or inaction) and the violation of human rights in this area?

Tertio.- Another potential line of complaint for that affected people could be that the impact of tourism on the housing market is making virtually impossible to rent an apartment at an affordable price in their cities⁴² and that there is a deterioration of their right to affordable housing (in the jurisdictions where this is considered as a fundamental right, or a “right” that must be protected by the government).⁴³ Consequently, they could urge the public authorities to take steps to address or counteract this situation.⁴⁴

Quarto.- Environmentally sustainable tourism means a pattern or trend in the tourism activity that fully respects the environment, that limits the socio-ecological impact of tourism, etc. This paper supports the view that this a goal that can only be promoted or accomplished by the public authorities, using their regulatory and governmental powers, such as planning. It is expected that, in order to achieve sustainable tourism, these governmental regulations and plans will introduce restrictions, limitations and conditions on the deployment of private interests.

In this scenario, is it possible for the people who are negatively affected by these limitations to claim that their human rights have been violated or reduced. Consequently, there is a sharp opposition between the “human” rights of the people that are negatively affected by mass tourism and the “human rights of the people who benefit from that economic activity.

For instance: private land owners might claim that, since a local or regional spatial plan limits (or even forbids) the construction of hotels and other tourism-related facilities in their properties, the government is violating their property rights, by means of a “regulatory taking” without just compensation.⁴⁵

Quinto.- The people who were born in areas where there are no meaningful industry or agriculture activities may see that the only way to get a decent job in their homeland is to work in tourism-related activities (even on a seasonal basis). If the development of those activities and facilities is limited (or even prohibited) by “sustainable tourism” plans and regulations, is this governmental activity interfering with their human right to life, or with their fundamental right to get a job? (Art. 35, Spanish Constitution). If the chance of working in tourism is seriously limited to these people by *intrusive*

⁴² In many large Spanish cities (Madrid, Barcelona) apartment owners increasingly refuse to sell their apartments or to rent them on a normal (annual) basis, since they devote their properties to “collaborative economy” schemes such as BNB, where they can obtain higher profits. Therefore, they don’t put their empty apartments into the housing market. As the offer of apartments shrinks, the prices of housing skyrocket.

⁴³ See: art. 47, Spanish Constitution.

⁴⁴ Different big cities around the globe are implementing strict short-term rental caps and licensing requirements to combat housing shortages, such as Barcelona, New York City, Paris, London and Berlin.

⁴⁵ In many liberal democracies, private property is considered a fundamental freedom or even a human right. In the case of Spain, private property is not considered as a “human” or fundamental right but as a *simple* constitutional right, whose use can be intensively interfered or regulated by the law in order to ensure that it fulfills a *social function* (art. 33, Spanish Constitution).

governmental regulation, then they will have to migrate to other regions in search of a decent job. Is that fair?

Sexto.- The tourists who are prevented to visit a specific place or iconic tourist destination because there are strong limitations to do that (due to sustainability considerations): can they claim that their right to move freely around the country⁴⁶ is unduly hampered?

6. Conclusions

The precedent lines allow us to draw a series of final conclusions. The first one is that, in many parts of the world that promoted in the past the model of mass tourism, a powerful trend appears to be gaining ground, which challenges that model and advocates for a reinvention of tourism based on environmental sustainability considerations. The second is that this debate may have implications from a human rights perspective, which this article has briefly outlined.

The third is that the national and European legal frameworks contain numerous techniques and instruments to reconcile, from the outset, tourism facilities and activities with environmental protection. The key techniques are planning and the environmental assessment of projects and of plans.

In the case of Spain, which is a good example of “multi-level dialogue,” regulatory and planning powers belong to all territorial levels, within their respective jurisdictions. Furthermore, alongside traditional regulatory instruments, there is an abundance of plans and strategies, as well as administrative encouragement measures, by which all relevant levels of government are currently fostering the blossoming of the sustainable tourism paradigm. In light of so many legal rules and policy documents, it seems clear that the future development of tourism in Spain will hinge on the full embrace of the paradigm of environmental sustainability.

Therefore, it can be said that sufficient techniques and instruments exist to achieve eco-sustainable tourism, and that the clear trend for the future is a tourism activity fully pervaded by environmental sustainability considerations. Therefore, let us hope that decision-makers will be fully responsive to the public demands that are increasingly calling for a reconciliation between tourism and environmental protection.

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⁴⁶ See: art. 13 of the Universal Declaration on Human Rights; art. 19 of the Spanish Constitution, etc.

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