

Part I
The Sources of Tourism Law
and the principle of sustainable industry

Chapter 1

An introduction to sustainable tourism

Contents

1.1	Definitions of tourism	3
1.1.1	Tourism, movement and leisure	3
1.2	The periods of tourism	4
1.2.1	A brief history of tourism	4
1.2.2	ICT and Tourism.....	6
1.2.3	Tourism and virtual reality	7
1.2.4	Tourism in the “society of uncertainty”	7
1.3	Peculiarities of Tourism from the legal point of view	10
1.3.1	Tourism is a global phenomenon	10
1.3.2	Tourism is a non-stop phenomenon	11
1.3.3	Tourism needs to be sustainable.....	11

1.1 Definitions of tourism

1.1.1 Tourism, movement and leisure

Tourism is one of the forms of recreation along with sports, hobbies, and other uses of leisure time.

Different definitions have been proposed. Tourism could be defined as the movement of people away from their normal place of residence. This definition is incomplete. Purpose and distance are also determining factors in the phenomenon of tourism.

The Institute of Tourism in Britain suggests the following definition: “Tourism is the temporary short-term movement of people to destinations outside the places where they normally live and work, and the activities during their stay at these destinations; it includes movement for all purposes, as well as day visits or excursions”. According to the International Conference on Leisure Recreation Tourism held in Cardiff in 1981, “tourism may be defined in terms of particular activities selected by choice and undertaken outside the home environment. Tourism may or may not involve overnight stays away from home”.

All of the above definitions are quite general. The concept of tourism can be defined broadly in order to embrace all forms of the phenomenon.

Of course, coming up with a technical definition for the sake of statistical studies is possible, but to define the concept of tourism is a difficult task and one that may not be necessary.

In fact, from the legal point of view, this phenomenon is composed of different situations ruled in different ways and by different sources of law (acts of parliament, customary laws, contracts).

It might be more important to focus our attention on certain peculiarities of tourist products. It has often been said that “Selling holidays is selling dreams”. When someone books a hotel room, a journey, or a holiday package, he/she is also buying the temporary use of a particular environment consisting of novel geographical features, cultural benefits, services, atmosphere, hospitality, and other intangible benefits. Therefore, it is correct to say that the product of tourism is largely psychological and that it is an instrument for the development of the personal identity of individuals. Thus, it is right to maintain that tourism it is not only an economic matter.

1.2 The periods of tourism

1.2.1 *A brief history of tourism*

The word ‘tourism’ comes from the word ‘tour’, which was associated with the idea of a voyage, peregrination, or route. The word ‘tourism’ did not appear until the early nineteenth century.

Historical studies usually distinguish three principal epochs: the first starts with the railway age (around 1840); the second covers the second industrial revolution (around 1870) that completely changed the way people travelled; the third covers the years between the two world wars, characterized by a significant development in private motor cars, buses, coaches etc.⁽¹⁾.

There is another epoch that we must add to this list, one that started after 1950, and was characterized by mass tourism, an increase in business travel and a significant change in the products offered by tourism. Someone observes: “Although the nineteenth century produced a considerable change in the size and nature of tourism, it was not until well into the twentieth century that “mass” tourism can truly be said to have come about. There were two main periods of growth. A) First between the two World Wars the European countries in particular underwent a period of social upheaval out of which came higher

¹ See Lickorish, Jenkins 2016; Baranowski, Furlough 2001; Smith 1998.

expectations by the masses of holiday entitlement, incomes and material living standards...B) In the 1950s and 1960s pre-war growth was resumed but spread much more widely so that international tourism began to reach mass markets in many countries”².

Of course, even before the industrial revolution people used to travel for pilgrimage, business, and official purposes.

For example, the Greeks hosted international visitors during the first Olympic Games, held in 776 BC, and Romans also travelled on holiday as far away as Egypt. In addition, spas were well established during the time of Roman Empire.

From the end of the sixteenth century, individuals travelled for educational purposes in order to learn about foreign countries and their inhabitants.

However, we have to consider that during these periods the concept of tourism was different, because the concept of leisure time was different.

Before the Industrial revolution, foreign travel was part of the education of an aristocratic man. The majority of the population hardly travelled beyond their village.

The contemporary idea of leisure time did not exist, because there was no separation between the working day and holiday.

The industrial revolution brought about changes in the economy and in society. Until the eighteenth century, the most common form of transportation was the horse. In the eighteenth century, the increasing demand for travel, the improvement of new forms of transportation, and the development of road systems were associated with an increase in coach services.

The evolution of the railway and road systems deeply affected the type and amount of accommodation used in conjunction with travel. Accommodation for travellers can generally be viewed in two ways: terminal accommodation or transit accommodation. At the destination, accommodation, catering, and entertainment constitute the primary tourist services.

In the second half of the nineteenth century, in the main European and American cities, the management of the larger hotels began to change from single owners and their families to company organisations. Hotel companies and hotel chains came onto the scene with several establishments under the same management and usually the same name.

When journeys consisted of taking several different types of transport, specialist organisers began to assemble the travellers' more complex journeys on their behalf, issuing tickets as agents for the transport companies.

During the time between the two world wars, governments began to recognize the economic importance of tourism, particularly in the balance of payments. Many western countries have established networks of tourist offices and invested massively in advertising and in tourism literature.

²Holloway 2016, p. 22 and p. 33.

1.2.2 ICT and Tourism

Finally, a new era needs to be added: technology and tourism. Internet has provided many advantages to tour operators: better dissemination of commercial communication through websites and social media; more effective product communication; the display of the product on an international market; greater and more efficient access to information, both on the customer side and on the retailer side. The customer can benefit from an enormous amount of information, using it to their advantage, while the retailer can exploit Big Data to their own benefit. As we will see, technology has changed the way that tourism works with the possibility, for example, for the customer to assemble the services of tourist packages independently and to access platforms that allow citizens to exchange travel or accommodation tourist offers³.

Technology has introduced new players into the tourism market: meta-searches and online travel agencies (OTAs). OTAs, as the word itself implies, carry out intermediary activities between customer and supplier (hotels, carriers, etc.), like traditional agencies. These are booking portals through which customers, in this case tourists, can compare different hospitality offers for the destination they have chosen, and if satisfied by the search, they can book directly online. On each booking made, a commission that varies from company to company is usually withheld, which is almost never charged to the end customer, but is paid almost entirely by the supplier. The rule that is usually presented in contracts between OTAs and suppliers states that OTAs can sell those products and services at the same prices as their suppliers, usually asking for a fee for each sale made through their channels. The meta-search groups together the prices and rates of many, if not all, OTAs and websites on the network onto a single platform. In this way, customers, or users, are able to focus on a single site, finding almost all of the offers that are available on the web. Their differences with OTAs lie in the marketing strategy. Unlike OTAs, meta-searches do not apply commissions to their affiliates, but charge the costs to the booking sites they promote, which can be expressed in fees per click or in fees for the visibility that the page has collected.

1.2.3 Tourism and virtual reality

Another innovation in the tourism market is related to virtual reality⁴.

Virtual reality is a simulated three-dimensional reality and is often very realistic thanks to specific software and hardware. It is a three-dimensional,

³ Xiang, Gretzel 2010, pp.179-188; Ray 2015, pp. 78-96.

⁴ Hobson, Williams 1995, pp.124-135; Steuer 1992, pp. 73-93.

computer generated environment which can be explored and interacted with by a physical person. He/she becomes part of this virtual world or is immersed within this environment and whilst there, is able to manipulate objects or perform a series of actions.

Virtual reality can be used, for example, by coaches and players to train more efficiently across a range of sports, as they are able to experience certain situations repeatedly and can improve their performances. Essentially, it's used as an aid to help measure athletic performance and analyse techniques. Virtual reality can help in medical training. Virtual patients are used to allow students to develop skills which can later be applied in the real world.

Even in tourism it can find different applications. Below is a summary of its possible applications:

- ✓ marketing of destinations or facilities. With the creation of 360 videos, a potential customer can visit places, accommodation facilities and entertainment venues in advance, so that they can choose their destination with greater awareness.
- ✓ didactic videos on the attractions and places they will visit.
- ✓ in-room entertainment in hotels. This is more suitable for hotels that aim to offer something other than pay TV in their rooms.

It is difficult to consider virtual reality that is enjoyed at home as a substitute for tourism. The absence of physical movement excludes the presence of a tourist phenomenon.

1.2.4 Tourism in the “society of uncertainty”

Another evolution in tourism is determined by the present condition of the “society of uncertainty” that we live in: natural catastrophic events (including pandemics) and human events make it difficult to plan, especially when traveling. We are witnessing more and more last minute and flexible tourist choices (with the possibility of unlimited cancellations) or assistance by insurance coverage that offers reimbursement in the case of travel for the chosen destination becoming impossible⁵.

The insurance contract has always been the main risk transfer tool and can therefore become an effective measure to implement resilience against unexpected events.

Tourism law provides many hypothesis of mandatory insurance: article 7 of Regulation (EEC) No 2407/92 provides mandatory insurance for air carrier; national law usually provides mandatory insurance for travel agency.

⁵ Baumann 2007.

Moreover, travellers usually buy optional travel insurance that generally covers medical expenses, financial default of travel suppliers, and other losses incurred while traveling, either within one's own country, or internationally. Temporary travel insurance can usually be arranged at the time of the booking of a single trip to cover exactly the duration of that trip, but is possible also to buy a "multi-trip" policy covering an unlimited number of trips within a set time frame.

The most common risks covered by travel insurance are:

- ✓ Medical emergency both in case of accident and sickness;
- ✓ Emergency evacuation;
- ✓ Repatriation of remains;
- ✓ Return of a minor;
- ✓ Trip cancellation;
- ✓ Trip interruption;
- ✓ Accidental death, injury or disablement benefit;
- ✓ Overseas funeral expenses;
- ✓ Lost, stolen or damaged baggage, personal effects or travel documents;
- ✓ Delayed baggage (and emergency replacement of essential items);
- ✓ Flight connection was missed due to airline schedule;
- ✓ Travel delays due to weather.

Not all risks are covered. Insurance companies will often exclude coverage for ongoing known events to new policies, for specific catastrophic events, such as volcanic activity, pandemics and endemics, acts of war, and terrorism.

Other common exclusions in travel insurance policies include undeclared pre-existing medical conditions, travelling for the purpose of receiving medical treatment, elective surgery or treatment, or injury or illness caused by alcohol, drug use, or reckless behaviour.

Ways of flexibility in tourism offers have been recommended by Eu Commission. On 5 March 2020 the Eu Commission published on the Commission's website a tourism and transport package composed of guidelines and a recommendation to help the travel and transport industry. The EU Commission maintains that the traveller has the right to have the ticket reimbursed when the trip is cancelled due to COVID-19 according to Eu Directive on Package Travel Directive (EU) 2015/2302. On the other hand, the European Commission recommends vouchers as an attractive alternative to reimbursement.

On 13 May 2020, the European Commission published its guidelines and recommendations on how to resume tourism and transport after the pandemic using vouchers and rerouting:

- ✓ The voucher should have a minimum validity period of 12 months. The air carrier or travel provider should automatically reimburse the amount after the end of its validity period if the voucher has not been redeemed.

- ✓ If the voucher is valid for more than 12 months, the air passenger or traveller should have the right to ask for reimbursement 12 months after the issuance of the voucher concerned.
- ✓ The air passenger or traveller should be able to exchange the voucher for all new booking before the expiry date of the voucher, including for trips with departure after this date.
- ✓ The air passenger or traveller should be able to use vouchers for payments for all departures or package travels offered by the air carrier or travel provider.
- ✓ The air carrier and the travel provider should be able to offer the same route or package travel under the same service conditions as detailed in the original booking.
- ✓ The air carrier or travel provider should consider whether the voucher can be used by other air carriers or travel providers within the same group of companies.
- ✓ The air passenger or traveller should be able to use the voucher for new bookings through the same travel agency which booked the original booking.
- ✓ Vouchers for transport services should be transferable to another passenger without any additional cost. Vouchers for package travel should also be transferable to another traveller without any additional cost, if the providers of the services included in the package agree to the transfer without any additional cost.
- ✓ In order to make vouchers more attractive, air carriers and travel providers could consider issuing vouchers with a higher value than the amount of any payments made for the package travel or transport service originally booked, for example through an additional lump sum or additional service elements.
- ✓ Vouchers should indicate their validity period and specify all the rights attached to them. They should be issued on a durable medium; such as email or paper.
- ✓ The voucher must be secured against the bankruptcy of the airline or travel provider.

The Commission published a report on the application of the Package Travel Directive on 1 March 2021.

The report moves from the experience gained with the application of the Package Travel Directive since its entry into application in July 2018. It presents preliminary results of the assessment of national measures transposing the Directive. It also assesses the rules in the context of the challenges that have since emerged during the pandemic crisis.

The Commission stressed also on travel insurance. As noted the insurance contracts usually contain exclusions of catastrophic events including pandemic and endemic.

In its report, the Commission noted that these exclusions limit the possibility of travellers to insure themselves against possible losses due to cancellation of a trip caused by a pandemic.

Some travel business stakeholders have suggested that organisers should be allowed to include appropriate personal travel insurance in a package with an opt-in/out option. Within the Package Travel Directive stakeholder group, consumer organisations however stressed that any insurance taken out by the travellers themselves should in no way limit existing travellers' refund rights and the protection under the mandatory insolvency protection.

1.3 Peculiarities of Tourism from the legal point of view

1.3.1 Tourism is a global phenomenon

As a result of the above considerations, we can highlight some peculiarities of tourism that are of interest in a legal perspective.

Firstly, tourism is a global phenomenon. Many people choose to travel to learn about different cultures. It is not only cultural travellers that visit historic and culturally significant sites⁶.

For the poorest countries in particular, tourism is one of the greatest economic sources. For that reason, governments and multilateral policies (multiple countries working together on a specific issue) impact on tourist activities. Governments can encourage tourism through regulations, official statements, collaborations, and incentives across multiple governmental bodies. The United Nations World Tourist Organisation (UNWTO intergovernmental organization) serves as a global forum for tourism policy issues, helping developing countries with sustainable tourism policies and providing technical and financial assistance to countries seeking to attract foreign tourists.

1.3.2 Tourism is a non-stop phenomenon

As we have seen, tourism is also a phenomenon that continuously evolves. It is difficult to regulate it, moreover massive and detailed national laws can become a burden for the tourism industry. Many governments decide against strongly regulating the private law of tourism according to a policy of minimal regulation.

Thus, the main sources of tourism private law are customary law and pri-

⁶ Zuelow 2011; Chakraborty 2007.

vate autonomy, which are clearly limited by national law (i.e., consumer's protection law, environmental protection law, etc.) and fundamental international principles. In fact, tourism can affect fundamental rights (sex tourism, for example) (4), on the fundamental principle of solidarity and on the principle of hospitality in particular.

Hospitality is not synonymous with aid or charity. It simply means extending a welcome to others, who have rights and who must be guaranteed a status and a stability of existence, according to the fundamental principles of living together.

Moreover, tourism can affect environmental sustainability. Natural attractions might themselves be destroyed by the multitude of tourists visiting them. Governments must raise awareness about the natural environment needing protection from pollution caused by economic activity which allows for the environment to be enjoyed by many people⁷.

1.3.3 Tourism needs to be sustainable

Sustainable development is a key concept in United Nations actions. It aims to meet the needs of present generations without impacting on the ability of future generations to meet their own needs. It provides a comprehensive approach bringing together economic, social and environmental considerations in the perspective to mutually reinforce each other.

The UN's 2030 Agenda, adopted by world leaders in 2015, represents the new global sustainable development framework and sets 17 Sustainable Development Goals, that provide concrete objectives for the next 15 years, focussed particularly on: human dignity; regional and global stability; a healthy planet; fair and resilient societies; prosperous economies.

In November 2016, the European Commission outlined its strategic approach towards the implementation of the 2030 Agenda, including the Sustainable Development Goals. Sustainability informs key principles and concept of national and international legislation and it is guide for the entire legal system.

The relationship between environmental quality and tourism success is discussed, focusing on ways to protect the world's tourism destinations for future generations.⁸

Sustainable tourism can be defined as tourism that considers its current and future impact on the environment, society and the economy.

Sustainability is a key word in tourism. It has become a priority to combine the growth of the tourism sector with the preservation of cultural properties:

⁷ George, Varghese 2007.

⁸ Bosselmann 2016.

both the so-called cultural property (museums, archaeological sites, etc.), and environmental heritage (natural beauty, parks, etc.).

Sustainable tourism is important because travel shouldn't be harmful. We should travel in a way that can benefit the people and communities we're in, and that mitigates negative impacts of travel on the environment. Sustainable tourism is about showing we care the world. Thanks to sustainability principle tourism has the potential to make the world a better place by bringing economic benefits to poorer destinations, through cultural exchange and understanding and through self-growth.

Sustainable tourism and ecotourism are two possible ways of addressing the many environmental and social problems associated with tourism. The UNEP (United Nations Environment Programme) and the UNWTO list 12 principles of sustainable tourism: economic viability, local prosperity, employment quality, social equity, visitor fulfilment, local control, community well-being, cultural richness, physical integrity, biological diversity, resource efficiency, and environmental purity. UNEP has a long history of contributing toward the development and implementation of environmental law. DELC is the focal Division within UNEP which oversees the many facets of this global legal framework. Hence, the role of DELC within the framework of UNEP is primarily to ensure the progressive development of environmental law across different environmental sectors and levels of governance.

At a global level, DELC has been pivotal in the facilitation of intergovernmental platforms for the promotion and implementation of multilateral environmental agreements (MEAs) and defining international environmental norms.

As result of these considerations, we must say that private tourism law is mainly composed of rules arising not from institutions, but from what happens in a changing society (customary law and contracts) according to the principles of hospitality and of environmental sustainability⁹.

⁹Hunter, Green 1995.