

ATINER CONFERENCE PRESENTATION SERIES No: TOU2019-0151

**ATINER's Conference Paper Proceedings Series**

TOU2019-0151

Athens, 4 September 2019

**Ordination of the Tourist Territory Special Reference to Insularity**

Felio José Bauzá Martorell & Marta Vidal Crespo

Athens Institute for Education and Research

8 Valaoritou Street, Kolonaki, 10683 Athens, Greece

ATINER's conference paper proceedings series are circulated to promote dialogue among academic scholars. All papers of this series have been blind reviewed and accepted for presentation at one of ATINER's annual conferences according to its acceptance policies (<http://www.atiner.gr/acceptance>).

© All rights reserved by authors.

**ATINER's Conference Paper Proceedings Series**

TOU2019-0151

Athens, 4 September 2019

ISSN: 2529-167X

Felio José Bauzá Martorell, Professor of Administrative Law at Balearic  
Islands University, Spain

Marta Vidal Crespo, University of the Balearic Islands, Spain

**Ordination of the Tourist Territory Special Reference to Insularity**

**ABSTRACT**

Different reasons contribute to a massification of the number of tourists, especially in summer. This fact is particular important in island territories, because of the logical limitation of the natural resources, and specially for increasing the prices of housing, that make local residents very hard to reach a house. In this article we study how Spain regulates this problema in Canary and Balearic Islands, with policies of ordination of territory and zonification.

Keywords: Insularity, Ordination of Territory, Tourism.

## Approach

In a short time a new model of accommodation has been gestating and consolidating with unusual speed, very different from the traditional hotel and extra hotel one (apartments, bungalows, rural tourism...) which consists of the temporary rent of the usual homes.

This fact is explained mainly by the emergence of technical means that allow the remote hiring of residential houses with knowledge of the environment (near the coast or the historical town center, transport network...) and, what is more important, from the opinion and valuation of other clients.

This new model of tourist accommodation has been led by the private sector, mainly by technical platforms and web sites and has known a strong demand, while the public sector has reacted with the traditional tardiness that the bureaucracy supposes<sup>1</sup>.

Beyond social issues (problems of coexistence, noises...), as far as we are concerned, this fact created legal problems<sup>2</sup>:

- A. Competition law. It has been raised whether the tourist exploitation of houses is constitutive of unfair competition with respect to the hotel activity, subject to an administrative (legal requirements) and tax intervention higher than the holiday house.
- B. Urban planning. The tourist house means to allocate a residential ground to tourist use, when the first one does not have the endowments and infrastructures of the latter (parking, garden areas, of recreation...) <sup>3</sup>.
- C. Environment. The consumption of essential resources such as energy or water supply, and the generation of waste are experiencing exponential growth<sup>4</sup>.
- D. Control of the quality of the accommodation offer and the clandestinity of commercial relations.

---

<sup>1</sup> Boix Palop, A. (2007) De McDonald's a Google: la ley ante la tercera revolución productiva *Teoría y Derecho: Revista de Pensamiento Jurídico* núm. 1. pp. 124 a 146. Doménech Pascual, G. (2015) La regulación de la economía colaborativa (Uber contra el taxi) *Revista CEF Legal* núm. 175-176. pp. 61 a 104.

<sup>2</sup>Theng, S. – Qiong, X. – Tatar, C. (2015) Mass Tourism vs Alternative Tourism? Challenges and New Positionings. *Études Caribéennes* núm. 31-32. Août-December.

<sup>3</sup>Suay Rincón, J. (2002) Turismo y urbanismo: la ordenación turística del espacio. El caso de Canarias, In Blanquer Criado, D. *Ordenación y gestión del territorio turístico*. Tirant lo Blanch. Valencia, pp. 285 - 348. Razquín Lizárraga, M. M. Urbanismo, medio ambiente y turismo. Una integración necesaria. In Font I Llovet, T. – Díez Sánchez, J. J. (Coords.) *La Ordenación jurídica del Turismo. Actas del XXI Congreso Ítalo-Español de profesores de derecho administrativo. Benidorm-Alicante. Del 26 al 28 de mayo de 2016*. Atelier. Barcelona, 2018. pp. 201 - 210.

<sup>4</sup>Ávila Rodríguez, C. M. (2010) Turismo y medio ambiente: especial referencia a Andalucía, In González Ríos, I. (Coord.) *Turismo sostenible, especial referencia a Andalucía*. Dykinson. Madrid, pp. 79 to 123. Fernández de Gatta Sánchez, D. (2013) El séptimo programa ambiental de la Unión Europea 2013-2020. *Revista Aragonesa de Administración Pública* núm. 41-42, pp. 71 – 121.

In parallel, the traditional tourist model, settled on tourist soil, has also been the subject of territorial management, as a consequence of adapting the infrastructures and facilities suitable to this type of economic activity: garden areas, parking spaces, potable water supply, public transport, waste collection...

Both causes -the traditional and the new- force the public authorities to plan the space in which the tourist activity will be developed, in order to adapt it and to make it suitable to the demands and to avoid the tourist overcrowding.

This problem is especially pronounced in the island territories, because their space is limited and therefore it becomes essential the territory planning. From now on turistic policies cannot be designed without taking into account territorial ones. In following pages we study the measures of ordination of territory implemented in Canary and Balearic Islands directly related to tourism.

### **Planning of the Island Territory in Terms of Tourism**

The overdosis of tourism has become an alarm that puts environment in a serious risk. This massification is specially worrying in islands, due to small territory and preservation of the local population and landscape.

The Italian island of Capri is limiting the tourism of cruise ships: in 2016 one ship arrived every five minutes; now only every twenty minutes are allowed to arrive at the island.

Greek islands are also affected by this massification. Mikonos or Santorini are some examples: specially in summer roads and streets are crowded with people, cars, bikes, bicycles and donkeys. A solution the authorities are implementing is a limitation of the number of visitors.

In Spain the measures implemented to regulate the increasing number of tourists are related to territorial planning. Let's see the regulation in Canary and Balearic Islands.

#### *Canary Islands*

The Canary Islands (Spain) regulate the ordination of the territory in Law 4/2017, 13th of July, of the soil and the protected natural areas of the Canary Islands.

The Autonomous Community of Canary Islands<sup>5</sup> has a specific regulation for holiday homes, Decree 113/2015, 22nd of May.

This standard defines holiday homes as those houses, which are furnished and equipped under conditions of immediate use and meeting the legal requirements, are marketed or promoted in tourist supply channels, to be temporarily and entirely to third parties, in a continuous way, for holiday accommodation purposes and in exchange for a price.

---

<sup>5</sup>According to the Spanish Constitution, Spain is organized in Autonomous Communities, that are the regional government in every territory. The relationship between the State and the Communities is based on the principle of competence.

It also defines the tourist supply channels such as travel agencies, booking centres and other companies for the intermediation and organization of tourist services, including the electronic intermediation channels; promotional, advertising, booking or rental websites; and publicity made by all means of communication.

From the urban point of view, the Canarian decree requires that the tourist houses must be built according to the urban regulations and the determinations of the planning on land use and construction (art. 3.1), vetoing the possibility of commercializing illegal homes. The legality of housing is a matter of the utmost importance for the Canarian administration, recalling the need for compliance with tourism, safety, sanitation, urban, technical, habitability, accessibility and in general the of classified activities (art. 4).

Like other autonomous communities, the standard requires the display of a badge (art. 6) and information and publicity requirements, including the registration number and a service telephone with a minimum schedule of 8:00 a.m. to 8:00 p.m. (art. 7). It also requires functional requirements, which refer to the rules on habitability (art. 9) and minimum equipment (art. 10).

The beginning of the activity is conditional upon the presentation of a responsible statement to the corresponding insland government, which will register in the General Tourist Register of the Autonomous Community. The statement of responsibility must include, among other requirements, the capacity of the house, so that a higher number of users cannot be accommodated than those entered in the statement (arts. 5, 12 and 13).

Finally, regarding the system of single-family or horizontal property, the Canarian decree does admit the tourist dwellings in buildings of property lying down, while the prohibition of cession of rooms was repealed by Court ruling (art. 12.1). Like Catalonia and the Balearic Islands, the owner must send the identification of the users to the General Directorate of Police (art. 8.2).

On the other hand, the decree 113/2015, 22nd of May, by which approves the regulation of the vacation dwellings of the autonomous Community of the Canary Islands, in its initial regulation prevented that the vacation dwellings were established in tourist zones (art. 3.2), forbade the rent of rooms separately (art. 12.1) and demanded a responsible declaration contingent on the inscription in a register to be able to exercise the activity (art. 13.3). The National Commission on Markets and Competition (CNMC) – based on its economic report LA/03/15-challenged these precepts, which were cancelled by the High Court of Justice of the Canary Islands of Santa Cruz de Tenerife by Veredict of 21st of March of 2017. This judgement was confirmed by the Supreme Court in a judgement of 15th of January of 2019.

### *Balearic Islands*

Balearic Islands is the territory that registers the highest index of tourism intensity in the world. In 2018 a total amount of 16.583.654 people visited the

islands<sup>6</sup>, which implies that the – if the average index of tourist intensity is 100, Balears registers 6.572 ' 61<sup>7</sup>.

This requires the adoption of active policies for integrating the territorial and environmental elements in the tourism sector. Even though the vacation rental is one of the driving factors of this index of tourist intensity, the zoning – directly linked to the capacity of the tourist population<sup>8</sup> – becomes a key factor in the tourism management.

Law 14/2000, 21st of December, of territorial planning of the Balearic Islands, articulates the planning of the territory around three elements: the Territorial Planning Guidelines (DOT), the Inland Territorial Plans (PTI), and the Sectorial Director Plans.

In the field of tourism Law 2/1999, 24th of March, of Tourism of the Balearic Islands, contemplated in its art. 5 the plans of management of the tourist offer, which were repealed by the current Law 8/2012, which contemplates in its art. 5 the intervention plans in tourism areas as sectoral directors plans whose purpose is to regulate the planning, implementation and management of the general systems of infrastructure, equipment, services and resource-exploitation activities in the field of Tourism Management.

They are the insular councils on each island, according to article 11.2 of Law 14/2000 of the competent ones for the elaboration and the approval of the intervention plans<sup>9</sup>, which will be coordinated by means of general management instruments and, more specifically, by the territorial guidelines and the inland territorial plan.

The Law enables the intervention plans and, if necessary, the inland ones to establish the maximum total population density, to delimit zones and tourist and protection areas, and to fix the size and the characteristics, as well as to establish minimum or maximum parameters of surface, volumetry, buildability and equipment. They can also delimit the saturated or mature tourist areas, according to the criteria established in this law. And they can also point out the exceptions that the location or the special features suggest. They can also determine these parameters in relation to the residential areas adjoining the tourist.

## **The Emergence of the Tourist House in the Balearic Islands**

Given the inland condition of the Balearic Islands, this area has noticed with special fury the phenomenon of the tourist overcrowding as a consequence of

---

<sup>6</sup>Bauzá Martorell, F. J. (2019) Islas Baleares. *La Actividad Turística Española*. AECIT. Madrid.

<sup>7</sup>Report of the Balearic Islands University of February 2018.

<sup>8</sup>López Bonilla, J. M. – López Bonilla, L. M. (2008) La capacidad de carga turística: revisión crítica de un instrumento de medida de sostenibilidad. *El periplo sustentable* núm. 15. pp. 123 a 150.

<sup>9</sup>The plenary of the Insular Council of Majorca in session of 28 July 2017 (BOIB No. 95, of 3 August 2017) gave conformity and exposed to the public the progress document of the PIAT, which is in the process of elaborating the documentation for initial approval.

several factors (the lack of citizen security in part of the Mediterranean, or the tourism of cruises), but especially the tourist rent<sup>10</sup>.

Since 2016 and from one year to the other the figures of number of visitors grow and grow: number of passengers at airports, number of flight operations, number of cruises and passengers, number of rental vehicles transferred from the continental territory...

With data from September 2017, the island of Mallorca has 290,057 beds in hotels or similar establishments, and 9,519 in processing. On the contrary, the number of beds in tourist dwellings of vacations reaches the figure of 40,073, being in processing a total of 45,149 seats, and other 11,000 pending to begin the processing<sup>11</sup>.

These data make it possible to draw a map in which the tourist housing squares are close to 30 by 100 of the hotel squares, which confirms the change of tourist model that we have referred to, and all this without having the illegal offer into account.

Indeed, in the city of Palma de Mallorca official statistics calculate that two thirds of the tourist accommodation are carried out in homes and that only a 10 per 100 of them are regulated<sup>12</sup>.

It is true that holiday rental is a direct benefit for the owners of the real estate and indirect for the complementary industry<sup>13</sup>; However, it is certain that this transformation-abrupt and unforeseen-carries out a series of collateral consequences that cannot be underestimated:

1.-Incidence in the rustic soil.

The rustic soil by definition is the one that is preserved from its transformation and that can only be devoted to agricultural, livestock, forestry or hunting uses.

The tourist occupation of dwellings in this type of soil brings pressure on the territory to the point that 37 ' 7% of the tourist dwellings in Majorca are in rustic soil. With effects on the use of rural roads, wastewater, dumping into septic tank...

2.-Population density.

According to the studies carried out on the basis of the Register of Tourist Establishments of the Balearic Islands, the ratio by building is of 6 ' 1 seats, compared to the 2 ' 5 squares envisaged in the instruments of management of the territory.

3.-On load of natural resources.

---

<sup>10</sup> Blasco Esteve, A. (2004) Planificación y gestión del territorio turístico de las Islas Baleares. In Melgosa Arcos, J. *Derecho y Turismo*. Ediciones Universidad de Salamanca. Salamanca, pp. 385 a 436.

<sup>11</sup> Data extracted from the supporting memory of the delimitation of the zones suitable for the commercialization of tourist stays in residential dwellings. Provisional approval agreed by the plenary of the Insular Council of Majorca in session of 25 January 2018.

<sup>12</sup> According to the Intervention Plan in Tourist AreasT of the Island of Mallorca. July 2017.

<sup>13</sup> For home owners, vacation rental income is an extraordinary income that contributes to balancing domestic economies. Recent statistics on tourism point to an increase in average daily spending by this class of tourists (105 ' 99 euros per tourist and day), approaching the average spending of tourists staying in hotels and similar (117 ' 55 euros per tourist and day).

35 ' 9% of the water masses are on exploited, and 37 ' 5% salinized. The tourist consumes almost twice as much water as an urban resident and four times what a person in rural areas<sup>14</sup>. There are also treatment plants with serious problems of sufficiency. The energy consumption of a resident is 3'95 kw/hour per capita and day, compared to 14 ' 7 kw/hour per tourist and day.

4.-Increase in the price of renting a house.

Accessing a home presents serious problems for residents, who cannot reach the prices that the market offers for the short-lived tourists. It is simply declining exponentially the offer of rent of houses of long stay, extreme that presents serious problems for displaced workers.

5.-Problems of coexistence.

The tourist use of homes that were planned for residential use creates problems of noise, overcrowding, dirt and waste generation... and that leads to a tiredness of the resident population, and sometimes to manifestations of tourism phobia.

All this prevents the legislator and the Tourist Administration from being insensitive to this problem, having to regulate this phenomenon of the tourist rent, and paying special attention to the linkage between the tourism and the planning of the territory and, by extension, from natural resources. In other words, planning becomes an essential element in the management of tourism, with a clear integration of the urban, territorial and environmental issues<sup>15</sup>.

## Legal Regulation

### *Legislation's Evolution*

As a result of the exposed situation, the Balearic Islands is without a doubt the Autonomous Community in which the tourist housing has created an important debate and has undergone different and successive normative reforms. In this sense, the traditional administrative intervention on tourism as a general character<sup>16</sup>, has added the specific of the holiday home<sup>17</sup>.

Indeed Law 2/1999, 24th of March, General of Tourism already contemplated the tourist dwelling of vacation in its art. 23, which defined it

---

<sup>14</sup> The average water consumption of a resident is located on the 136 ' 16 liters per inhabitant and day, and that of a tourist around 466 liters per person and day.

<sup>15</sup> Sola Teyssiere, J. (2004) La ordenación del turismo y sus relaciones con la legislación de ordenación del territorio, del urbanismo y de la protección del medio ambiente. *Revista Andaluza de Administración Pública* núm. 53, pp. 109-131. Blasco Esteve, A. (2010) La planificación territorial de las zonas turísticas en España.. *Revista de Derecho Urbanístico y Medio Ambiente* núm. 262, pp. 17 to 70. Bouazza Ariño, O. (2007) *Planificación turística autonómica*. Reus. Madrid. Herraiz Serrano, O. (2006) La ordenación territorial del turismo. La planificación turística, In Tudela Aranda, J. (Dir.) *El derecho del turismo en el Estadio autonómico. Una visión desde la Ley del Turismo de la Comunidad Autónoma de Aragón*. Cortes de Aragón. Zaragoza.

<sup>16</sup> Pérez Guerra, R. (2014) La intervención administrativa en el sector turístico español: la política turística. *Revista Aragonesa de Administración Pública* núm. 43-44, pp. 408-409.

<sup>17</sup> Bauzá Martorell, F. J. (2018) Intervención administrativa en la vivienda turística vacacional>> *Revista Española de Derecho Administrativo* núm. 189. Enero-marzo.



like that isolated family establishment in which it is provided lodging service, with an unlimited number of beds, which provides, by structure and services, the appropriate facilities for the conservation, processing and consumption of food within the establishment, and which uses the usual routes of tourist marketing or offering tourist services. This general rule was displaced by Law 2/2005, 22nd of March, of commercialization of tourist stays in houses, which regulated fundamentally in the legal system of the owner, the user's one, and the typology of the houses.

These two Laws were repealed by Law 8/2012, of July 19, of Tourism, which regulated the concept, the requirements for the commercialization, the tourist services, as well as the capacity, the minimum equipment and the presentation of the statement of responsibility (arts . 49 to 52). In turn this rule was subject of development by Decree 20/2015, 17th of April, which – as far as tourist dwellings – regulated the typology of houses to be commercialized, the minimum requirements, the identification plate and the legal system applicable to the marketer of the tourist stays in houses (arts. 106 to 109).

The social debate that provoked the overcrowding of the summer seasons of 2016 and 2017 led to a normative reform of the holiday housing regime, which was carried out with Law 6/2017, 31st of July, amending the Law 8/2012, 19th of July, of the Balearic Islands Tourism, concerning the commercialization of tourist stays in houses. However, this reform lasted only a few days and the Governing Council issued Decree Law 3/2017, 4th of August, amending Law 8/2012.

In any case, this feverish activity of the legislator gives an idea of the importance of tourist housing in the Balearic Islands and of the social, economic and ideological sensitivities that it arouses.

### *Concept and Requirements*

The Balearic legislator dedicates importance not so much to the tourist house itself, as to the commercialization of the tourist stays in houses, which is defined in art. 49 as the natural or juridical persons that commercialize the whole of a residential housing, for periods of short duration, under conditions of immediate use and with lucrative purpose, commercialization that can be alternated with the proper use of housing that characterizes them.

In principle this regulation makes feasible exclusively the rent of the complete house, and not in vain art. 50.15 understands that the tourist stays are incompatible with the formalization of contracts by rooms or with the coincidence in the same house of user persons who formalized different contracts, without prejudice to the regulation of tourist stays in rooms that can be established.

Notwithstanding the foregoing, this same article in point 20 contemplates the modality of rental of main house, which consists of the marketing carried out exclusively by natural persons in a house of their property, which is their main house, regardless of the single-family or multi typology, for a maximum period of 60 days in a one-year term. In this modality the coexistence of the

people living in the house with the users is allowed, provided that this fact is clearly indicated in all the publicity and the total number of people does not exceed the number of places of the certificate of habitability or title of similar habitability of the dwelling.

From the urban point of view the Balearic legislator passes over the distinction of use and in a standard with legal status as is the law of tourism expressly allows that short-term tourist stays can be marketed in residential homes whenever this marketing is carried out by the person who owns or is made by operators or any of the channels of tourist marketing in the terms covered by the legal system (art. 50.1). Of course, the Law requires that the houses have a valid habitability card, except for the houses expressly excluded by sectorial regulations, for example of historical patrimony (art. 50.2).

Also in this area, it prevents the commercialization of tourist stays in any house with respect to which it is imposed firm sanction for serious or very serious infringement of the urban legality, until this legality is reconstituted (art. 50.4). In addition, residential dwellings may only market tourist stays by the maximum number of places permitted by the habitability card (art. 52.1).

In terms of resources and connections, the residential houses that are the object of tourist marketing must prove sustainability by obtaining, prior to marketing, the energy certificate (art. 50.5), as well as control systems of the water consumption and individual electricity and gas meters (art. 50.6).

A singular fact that affects the right of competition is zoning<sup>18</sup>. In this sense, in accordance with the Balearic Law, only new statements of responsibility to start commercial activity of tourist stays in houses can be presented and, therefore, to carry out a new tourist marketing, if these statements refer to residential dwellings that are located in areas declared to be expressly accepted (art. 50.4).

In all cases, the presentation of the statement of responsibility for initiating tourist activity that refers to tourist stays carried out in residential homes subject to the horizontal property regulation, or to those of the typologies to be determined regulations, enables for the exercise of the activity for the period that is legally allowed and which, by default, is five years since the presentation to the Tourist Administration. After the established deadline, it is possible to continue with the tourist marketing only if they continue fulfilling all the specific legal or regulations requirements, including that the zone remains suitable, for periods extendable of the same period.

During the month preceding the end of each period, if the housing continues to meet all the specific legal requirements, the homeowner, or the marketer, may submit to the Tourist Administration a communication concerning the fact that the term of marketing is extended for the same period, which continues to meet the regulatory requirements and has the certificate of the Tourist Administration that proves that it can dispose temporarily of the beds for another period. In the event that the deadline is fulfilled and this

---

<sup>18</sup> Sola Teyssiere, J. (2005) *Ordenación territorial y urbanística de las zonas turísticas*. Instituto Andaluz de Administración Pública. Sevilla.

communication has not occurred or that the house no longer meets the normative requirements established at that time, including urban planning, it must cease the activity of commercialization of tourist stays, the housing has to go to a definitive low situation and the beds must return automatically to the management agencies of beds or to the Tourist Administration.

Another issue that may affect the right of competition is the requirement that the stays must be short-lived and that they do not exceed one month of duration (art. 50.13).

Among the prohibitions, the Balearic Law impedes the tourist marketing of residential housing subject to official protection or priced rate (art. 50.8) or that is found in protected rustic soil, unless the instruments of territorial planning allow it (art. 50.18).

In terms of security and like the Catalan regulation, Law 8/2012 obliges the marketer of tourist stays to send to the Directorate General of the Police the identification of the users (art. 50.11), which in turn have to comply with the uses of coexistence and public order, as well as the rules of internal regime of the community of owners in cases of horizontal ownership (art. 50.12).

In this area of the type of property, in its point 7 this article contemplates the possibility that the tourist house is in a building of horizontal property, although it declares illegal the tourist use in the cases in which the statutes of the community of the whole building determine that it is not possible to use for different purposes than residential housing.

In the event that the constitutive title or the statutes do not prevent from tourist marketing, it is necessary to have an agreement of the board of owners in which by majority the possibility of tourist marketing is expressly accepted, agreement that must be registered in the Land Register. This agreement is not necessary if the constitutive title or the statutes already admit the tourist marketing of houses.

Finally, and without prejudice to other minor requirements (compliance with the labour or tax legislation of the marketer, art. 50.10; or the subscription of the insurance policy of civil liability, art. 50.16), another singularity of the Balearic regulation consists of the minimum age required for real estate destined for tourist housing, which will be five years (art. 50.17), so that a building with a lower antiquity may not be subject to commercialization Tourist.

### **Zoning in the Balearic Islands**

As far as we are concerned, the Intervention Plans must establish the criteria for the delimitation of the areas suitable for the commercialization of tourist stays in residential homes. On the basis of these criteria, the municipalities have to implant the zones suitable for the commercialization of tourist stays in residential houses incorporating the delimitation to the respective urban planning by means of the corresponding cartographic documentation.

The Intervention Plans and, if necessary, the territorial ones can also determine the maximum limit by island of tourist beds in tourist lodgings and the maximum limit of beds in residential houses capable to be commercialized, according to the existing resources regarding facilities, population densities and other relevant parameters of its scope.

Article 50.3 of Law 8/2012 contemplates the so-called zoning of the tourist rent, to the extent that it only allows to present new statements of responsibility for beginning the activity of commercialization of tourist stays in houses and, therefore, to carry out a new tourist marketing, if these declarations relate to residential dwellings that are located in areas expressly declared to allow tourist stays according to the procedure laid down in article 5 or provisionally delimited in accordance with the provisions of article 75 of the aforementioned legal text.

According to art. 75.2 a zone suitable for the commercialization of tourist stays in residential homes are the ones in which, motivated, with the corrective measures that can be established and fulfilling the forecasts legally established or regulations in housing matters, the competent Administration to carry out zoning considers that this extraordinary use of residential housing is compatible with the ordinary use of residential housing.

At its next point this same article allows that, on a provisional basis, while the Inland Councils do not develop through the Intervention Plans or, if necessary, the territorial ones, the delimitation of the zones suitable for the commercialization of tourist stays in dwellings of residential use, the inland entities can declare and temporarily delimit the zones suitable for the commercialization of tourist stays in residential houses, that can differentiate by typologies building. This agreement has to be published in the Official Gazette of the Balearic Islands and will be current regulation until the city councils establish the respective delimitation in municipal urban planning.

#### A.-Majorca.

Based on this legal basis, the plenary of the Insular Council of Majorca at its meeting of 28th of July of 2018 approved the provisional delimitation of the areas suitable for the commercialization of tourist stays in residential homes.

This agreement recognizes that the tourist rent encloses positive factors to stimulate the economy, while at the same time it affects the over-exploitation of the resources, while affecting the access to the housing.

Consequently, it divides the island of Majorca in seven zones:

1.-Protected rustic soil, formed by the natural areas of special interest of high level of protection, the natural areas of special interest, the rural areas of landscape interest, the areas of risk prevention and the areas of territorial protection.

2.-Common rustic soil, composed of all the rustic soil that is not particularly protected.

3.-Saturated interior zones, comprising the areas of Alcudia, Randa (Algaida), Ariany, Banyalbufar, Port des Nonge (Banyalbufar), Orient (Bunyola), Ullaró (Campanet), Deià, Llucalcari (Deià), Sa Cala (Deià),

S'Empeltada (Deià), Ses coves (Deià), S'Esgleieta (Esporles), Estellencs, Es Carritxó (FELANITX), Fornalutx, Marratxinet (Marratxí), Polença, Es Vilà (Pollença), La Font (Pollença), Santanyí, Llombards (Santanyí), Ruberts (Sencelles), Ses Salines, Sóller, Biniaraix (Sóller), L'Horta (Sóller), Valldemossa, Es Port (Valldemossa), S'Arxiduc (Valldemossa), and Son Ferrandell (Valldemossa).

To determine the saturated indoor nuclei, four indicators have been taken into account, affecting the territory and the Residents: (1) the incidence of vacation rental on infrastructure and territorial resources, (2) the incidence on social characterization of the nucleus, that is, how the identity of the municipality can be affected in case of a drastic increase in the number of tourists, (3) the access of residents to housing, which has been weighted 50% above all other factors, and (4) the territorial equilibrium of the nuclei, for which has been taken into account the relation between dwellings destined to tourist stays on the total park of houses.

4.-Unsaturated indoor cores,

5.-Saturated littoral nuclei, considering those that have been normatively declared mature: Palmanova, Magaluf, Santa Ponça, Peguera, as well as the area of the beach of Palma of the municipality of Lluçmajor (Bellavista, Cala Blava, Son Verí Nou and the Arenal).

6.-Unsaturated littoral nuclei, which are all the rest.

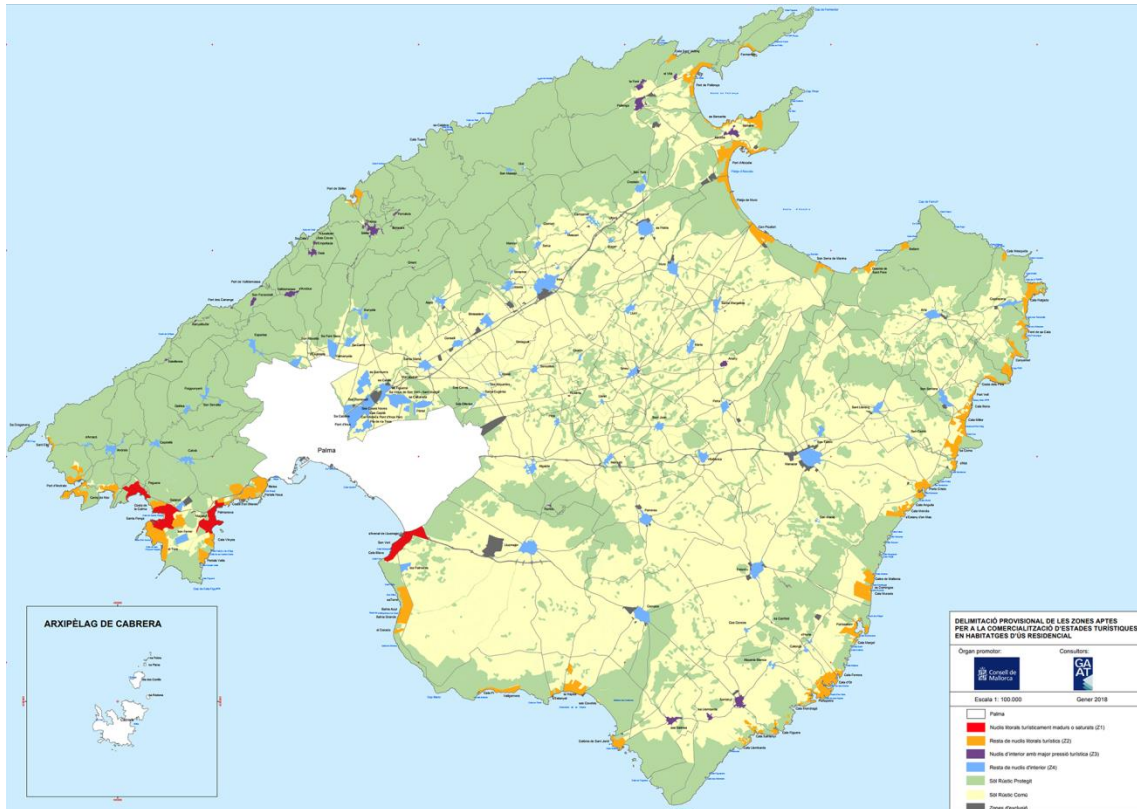
7.-Exclusion zones, comprising industrial estates and areas affected by the airport acoustic footprint.

The initial approval document of the zoning-subject to the definitive text resulting from the estimation or dismissal of allegations of municipalities and the formality of public information-prohibits holiday rental on the protected rustic soil and in the exclusion zones.

In common rustic soil is allowed the tourist housing in single family throughout the year and in those squares of sixty days yearly.

Only the tourist stays in single-family homes and multifamily of sixty days a year are allowed in the saturated coastal and interior nuclei.

The three types of holiday rental are allowed in unsaturated nuclei.



The municipality of Palma in plenary session of 28 July 2018 approved zoning in its municipal district, prohibiting the tourist rent in the multifamily buildings. It is only allowed in single family homes, excluding the beach of Palma because it is considered a mature tourist zone.

#### B.-Menorca.

Unlike the other islands of the Balearic archipelago, Menorca has been able to preserve its landscape identity of the tourist industry, with a policy of planning the territory that has kept until recent dates a scrupulous balance between the Controlled growth and protection of the environment and the environment.

By agreement of 16 of July of 2018 the Insular Council of Menorca has initially approved the document of zoning of the tourist rent. The holiday home will only be possible in one of the 42 tourist areas listed in annex II of the Insular Territorial Plan, as well as six coastal nuclei: Fornells, Es Grau, Sa Mesquida, Es Murta, Cala Sant Esteve and Cales coves.

#### C.-Ibiza.

The island of Ibiza presents a peculiarity regarding the rest of the Balearic Islands and it is the extraordinary difficulty in the access to the house. In this sense, the tourist rent is practically monopolizing the rental market, being very burdensome, if not impossible, the leasing of a property for a domestic economy. This situation has come to be described as a housing emergency.

This fact makes zoning a controversial issue, still unresolved. The Inland Council requested the municipalities of the island its appearance and the city of Ibiza replied in February 2018 that the entire municipality be declared a zone unfit for the tourist rent-either in single-family houses or multifamily ones- as consequence of the population density and the problems of coexistence that causes the mixture of uses. The town hall of Ibiza proposes to prohibit the tourist rent in its urbanistic planning.

In the rest of the municipalities there is a predisposition to be authorized only in single family members, although the areas are still subject to analysis.

#### D.-Formentera.

The island of Formentera poses singularities in many sectorial regulations and it cannot be forgotten that – like the island of Ibiza – it accuses the phenomenon of overcrowding in a very small territory.

In terms of holiday rental it is not possible today to make any zoning for the simple reason that there are no holiday housing places.

In this sense, the first issue to be resolved – prior to zoning-will be the creation of tourist beds, which can only be given through the modification of the inland territorial plan. No one escapes the misdirection that means reforming an instrument of territorial planning not to contain growth, but to the contrary.

### **Conclusions**

From all the above it follows that the phenomenon of tourist rent has come to stay and has caused a radical transformation of the tourist model.

The emergence of the technical means in the tourist accommodation has triggered a mass with a combination of effects: favorable on the one hand in the stimulous of the economy, but at the same time pernicious in the access to the housing and the consumption of resources.

Before the mixture of uses – the residential, permanent and stable, and the tourist, occasional-reaction of the Balearic legislator goes through a zoning system that limits those places where it is permissible to rent tourist and those others in which temporarily limit or directly exclude.

In any case this mechanism is still in embryonic situation and will undoubtedly be a reason for normative development and research, always conducive to innovative solutions that must have lace in the legal system.

### **Bibliography**

Ávila Rodríguez, C. M. (2010) Turismo y medio ambiente: especial referencia a Andalucía, In González Ríos, I. (Coord.) *Turismo sostenible, especial referencia a Andalucía*. Dykinson. Madrid, pp. 79 - 123.

- Bauzá Martorell, F. J. (2018) Intervención administrativa en la vivienda turística vacacional. *Revista Española de Derecho Administrativo* núm. 189. Enero-marzo.
- Bauzá Martorell, F. J. (2019) Islas Baleares. *La Actividad Turística Española*. AECIT. Madrid.
- Blasco Esteve, A. (2010) La planificación territorial de las zonas turísticas en España. *Revista de Derecho Urbanístico y Medio Ambiente* núm. 262, pp. 17 to 70.
- Blasco Esteve, A. (2004) Planificación y gestión del territorio turístico de las Islas Baleares. In Melgosa Arcos, J. *Derecho y Turismo*. Ediciones Universidad de Salamanca. Salamanca, pp. 385 - 436.
- Boix Palop, A. (2007) De McDonald's a Google: la ley ante la tercera revolución productiva. *Teoría y Derecho: Revista de Pensamiento Jurídico* núm. 1, pp. 124 - 146.
- Bouazza Ariño, O. (2007) *Planificación turística autonómica*. Reus. Madrid.
- Doménech Pascual, G. (2015) La regulación de la economía colaborativa (Uber contra el taxi) *Revista CEF Legal* núm. 175-176, pp. 61 - 104.
- Fernández de Gatta Sánchez, D. (2013) El séptimo programa ambiental de la Unión Europea 2013-2020. *Revista Aragonesa de Administración Pública* núm. 41-42, pp. 71 - 121.
- Herráiz Serrano, O. (2006) La ordenación territorial del turismo. La planificación turística, In Tudela Aranda, J. (Dir.) *El derecho del turismo en el Estado autonómico. Una visión desde la Ley del Turismo de la Comunidad Autónoma de Aragón*. Cortes de Aragón. Zaragoza.
- López Bonilla, J. M. – López Bonilla, L. M. (2008) La capacidad de carga turística: revisión crítica de un instrumento de medida de sostenibilidad. *El periplo sustentable* núm. 15, pp. 123 - 150.
- Pérez Guerra, R. (2014) La intervención administrativa en el sector turístico español: la política turística. *Revista Aragonesa de Administración Pública* núm. 43-44, pp. 408-409.
- Razquín Lizárraga, M. M. (2018) Urbanismo, medio ambiente y turismo. Una integración necesaria, In Font I Llovet, T. – Díez Sánchez, J. J. (Coords.) *La Ordenación jurídica del Turismo. Actas del XXI Congreso Ítalo-Español de profesores de derecho administrativo. Benidorm-Alicante. Del 26 al 28 de mayo de 2016*. Atelier. Barcelona, pp. 201 - 210.
- Razquín Lizárraga, M. M. (2013) Globalización y calidad turística: la respuesta de la Unión Europea y su inclusión en la planificación territorial y turística española. *Revista de Derecho de la Unión Europea* núm. 24, pp. 373 - 410.
- Sola Teyssiere, J. (2004) La ordenación del turismo y sus relaciones con la legislación de ordenación del territorio, del urbanismo y de la protección del medio ambiente>> *Revista Andaluza de Administración Pública* núm. 53, pp. 109-131.
- Sola Teyssiere, J. (2005) *Ordenación territorial y urbanística de las zonas turísticas*. Instituto Andaluz de Administración Pública. Sevilla.



- Suay Rincón, J. (2002) Turismo y urbanismo: la ordenación turística del espacio. El caso de Canarias, In Blanquer Criado, D. *Ordenación y gestión del territorio turístico*. Tirant lo Blanch. Valencia, pp. 285 - 348.
- Theng, S. – Qiong, X. – Tatar, C. (2015) Mass Tourism vs Alternative Tourism? Challenges and New Positionings. *Études Caribéennes* núm. 31-32. Août-December.