Tourism in administrative law.

Tourism represents a concrete hope, a job opportunity for young people, a horizon for families and an opportunity for economic operators.

Tourism law is and remains connected to the pleasure of traveling and the serenity of holidays; to the adventure of discovering new places and to the knowledge of other cultures; tolerance for different civilizations and openness to the world; the pleasure of the meeting and the ability to welcome the other.

Knowing the law of tourism is a way to fully enjoy your trip. It is a new chance to invest in the centrality of the person and trace a concrete perspective of change in our economic and social reality. Tourism is in fact taking on new content, continuing on its path towards «sustainable tourism». The United Nations General Assembly has often supported sustainable tourism for development.

The current Constitution does not present any useful provision for the systematic positioning of "tourism". However, the phenomenon can be traced back to some of the principle provisions expressing constitutional values. The different interests involved - those of the tourist, of the entrepreneurs in the sector, but above all the public interest in the protection of environmental and cultural goods - express distinct constitutional values (freedom of movement and protection of the contractual relationship; freedom of business; principle of conservation environmental and cultural heritage), but sometimes conflicting.

It is therefore essential to establish a graduation between these interests, all constitutionally protected: for this purpose, the constitutional jurisprudence, which has recognized in the protection of cultural and environmental assets a supreme constitutional value, with respect to which the others must yield. Finally, tourism can also be linked to social rights clearly delineated by the Constitution (right to health, education) as an instrument aimed at giving consistency to these rights. By virtue of the expansive process of the notion of social rights advocated by the Constitutional Court, as tools to ensure that everyone can develop their own personality, tourism could be considered as "social freedom".

The system of sources that regulate the tourism sector is very complex: it is in fact made up of regulatory sources of different degrees, with different areas of competence, produced by multiple legal systems (state, regional, local authorities, international, European Union). Legislation under both public and private law. Following the constitutional reform of 2001, "tourism" is now a matter of residual regional legislative power, limited however to substantial administrative law, given that for some relevant disciplinary areas pertaining to the tourist phenomenon - related to civil, criminal and procedural law - the Legislative power has remained with the state. The consistency of the regional legislative competence is further reduced both by the passage to other "matters", of concurrent or exclusive state power, of some sectors that prior to the reform made up tourism, and from the application of the principles of subsidiarity and adequacy for the

conferment of administrative functions. In order to reorganize and consolidate tourism legislation, a state tourism code was recently issued (Legislative Decree no. 79 of 2011), widely censored by the Constitutional Court, in particular where it contained innovative provisions relating to relations

State-Regions and reintroduced fundamental principles in a matter of residual regional legislative competence (sent. N. 80 of 2012).

In an open and globalized world, where exchanges and relations between peoples become safer and faster, in an era marked by major changes in the means and methods of communication (also thanks to the Internet), tourism occupies a place of great importance. relief. It is a complex event (cultural, social, economic, legal), which responds to the need of the man of movement, of cultural exchange, of knowledge of the other and of the universe, and is therefore at the center of new perspectives also in the world of law. There is a close link between tourism and hospitality, between travel and hospitality, as evidenced by the definition of a tourist package, "pre-established combination of at least two of the elements indicated": transport, accommodation, non-accessory services, contained in art. 86 of the Consumer Code, and the duration of the trip must include at least one night. In an organized trip, therefore, accommodation, overnight stay, as a necessary element is always provided. Hospitality qualifies the trip and colors the cause of any type of tourist contract. It also refers to the national tourism reform law (Law no. 135/2001), which includes the management of accommodation facilities among the tourism professions. Some of these activities are managed by the local host communities, thus enhancing local cultural heritage and traditions, for the purpose of sustainable tourism development. On the community side, however, the Council of Europe supported the tourist phenomenon, promoting the Cultural Routes and founding the European Institute of Cultural Routes. Thus, various paths are identified that rediscover the influences of different cultures and relaunch the historical and naturalistic heritage of Europe. Travel, a manifestation of individual freedom, and the interpersonal relationships that hospitality fosters, become the soul of civilization, allowing you to study the different cultures and their changes. The hospitality relationship, which arose as a courtesy service, still survives today both in the pre-juridical or social world and in the world of law. It is now necessary to check whether, in the latter area, there is a single category of contracts for tourism purposes, to which the various stores already analyzed can be traced, for not only systematic, but also methodological purposes, to extend the same discipline to all. A single contractual typology will thus be created, to which different existing or even emerging cases can be traced, in order to identify a common protection for the traveler - tourist, weaker subject in the national and international tourism market and in need of protection. Grouping together different manifestations of the same phenomenon in a single genus is a useful operation also for the interpreters of the law, for a total understanding of reality and the problems in the matter.

It should therefore be investigated whether it is possible to extend the same discipline to all contracts, in the presence of a single common denominator that refers to all and qualifies them all.

This operation is not simple because it concerns a reality, the tourist one in general and the receptivity in particular, complex and multifaceted, where new needs arise, needs and interests that are increasingly sophisticated and difficult to satisfy. Such work can only take place by investigating the cause of the tourist contract and all its multifarious cases, as an identifying element that connects the various species to the genus, whose prototype is the travel contract, capturing the specific differences that distinguish the various contracts attributable to the category. The cause of the tourist contract or of the other hospitality contracts, understood as "paid hospitality function", has a limit of elasticity so that, in the presence of services which are exceptional in nature compared to those normally provided and which they assume for the their cost is of prevalent importance, that

limit is exceeded, moving towards other contracts. This is the case of the hotelier who provides accommodation and conference organization services, in relation to which the jurisprudence has identified two different and connected contracts, one for the hotel and the other mixed with elements of the lease and service contract. Therefore accommodation, a significant and prevalent element of hospitality contracts, can become a parallel or accessory component, but in any case not qualifying, of a different contract (mixed or typical), even if implemented by the same person and in the same structure. For a correct classification of the case in one or another contractual type, it is necessary to conduct an investigation into the structure of the interests agreed by the parties in concrete terms, identifying the contractual cause, according to its recent notion, intended as an economic-individual function, summary of the effects. that the parties intend to pursue in concrete terms, in order to attribute pre-eminence to one or another obligation. The hospitality contract can be the subject of a separate and autonomous stipulation, or an element of a "tourist package", subject of a travel contract. In this hypothesis, the accommodation, which takes place in a hotel or in another accommodation facility assimilated to it, together with the transport and possibly other services, constitutes one of the elements of the package, a unitary synthesis and not the sum of elements that, combined together, become parts of a whole. Here the contractors are the organizer or seller of the package and the traveler: for any breach by the hotelier, the consumer will have to contact the seller of the package, without prejudice to the latter's right to take recourse against the hotelier. Analyzed in detail the travel contract and the discipline of the sale of tourist packages, in light of the d. Legislative Decree 111/95, having examined the various atypical cases and their specific legislation, we will move on to the study of the possibility of extending the identified discipline of the "New Hospitality" to all contractual cases, after referring to this general contract.