



I
•
J

This book was written in the context of the Research Area «Crisis, Sustainability and Citizenship(s)», integrated in the project «Societal Challenges, Uncertainty and Law: Plurality | Vulnerability | Undecidability» of the University of Coimbra Institute for Legal Research (uid / dir / 04643/2019).

EDITION

Instituto Jurídico
Faculdade de Direito da Universidade de Coimbra

GRAPHIC DESIGN

Ana Paula Silva

CONTACTS

geral@fd.uc.pt
www.uc.pt/fduc/ij
Pátio da Universidade | 3004-528 Coimbra

ISBN

978-989-8891-68-6

DEPÓSITO LEGAL

XXX

**COMPLIANCE
AND SUSTAINABILITY**

**BRAZILIAN AND
PORTUGUESE PERSPECTIVES**

ORGANISERS
ALEXANDRA ARAGÃO · GRACE LADEIRA GARBACCIO

2020

CONTRIBUTORS

Alexandra Aragão
António Braz Simões
Clóvis de Barros Filho
Douglas de Barros Lages
Gabriel Lima Fernandes
Grace Ladeira Garbaccio
Inês Pena Barros
Ivan de Paula Rigoletto
João Nogueira de Almeida
Manuel Lopes Porto
Marcio de Castro Zucatelli
Maria João Paixão
Matilde Lavouras
Mónica Faria Batista Faria
Rachel Starling Albuquerque Penido Silva
Soraya Saab
Suzana Tavares da Silva
Vinícius Meireles Laender

TABLE OF CONTENTS

| | |
|---|---|
| COMPLIANCE AND SUSTAINABILITY. INTRODUCTION | 1 |
| Manuel Lopes Porto | |
| FOREWORD..... | 7 |
| Clóvis de Barros Filho | |

I

GENERAL PART

| | |
|--|----|
| 1. | |
| ENVIRONMENTAL COMPLIANCE: OPPORTUNITIES AND CHALLENGES TO ENSURE GREENER BUSINESS PERFORMANCE, REAL AND NON-SYMBOLIC | 21 |
| Alexandra Aragão | |
| 2. | |
| THE PRINCIPLES OF EQUATOR AS STRENGTHENING MECHANISMS OF SUSTAINABLE INVESTMENTS. THE CONFORMITY OF INVESTMENT | 37 |
| Grace Ladeira Garbaccio · Douglas de Barros Lages | |
| 3. | |
| ALIGNING CORPORATE SUSTAINABILITY STRATEGY WITH THE GLOBAL OVERVIEW | 51 |
| Ivan de Paula Rigoletto | |

| | | |
|-----------|---|----|
| 4. | THE ESG INFORMATIONS (ENVIRONMENTAL, SOCIAL AND GOVERNANCE) DISCLOSED ON SUSTAINABILITY REPORTING AS A CURRENT PARADIGM FOR FINANCIAL INVESTMENTS IN CORPORATIONS AND ITS REGULATION IN BRAZIL AND THE EUROPEAN UNION | 63 |
| | Vinícius Meireles Laender | |

II SPECIAL PART

STRATEGIES AND PUBLIC AND PRIVATE COMPLIANCE INSTRUMENTS

| | | |
|-----------|--|-----|
| 1. | COMPLIANCE AUDITS IN THE PUBLIC SECTOR. WHERE ARE WE GOING? | 81 |
| | Matilde Lavouras | |
| 2. | PUBLIC COMPLIANCE AS AN INSTRUMENT FOR PROMOTING SOCIAL AND ENVIRONMENTAL SUSTAINABILITY | 95 |
| | Mônica Faria Baptista Faria | |
| 3. | THE SUSTAINABILITY TAXONOMY OF THE EUROPEAN UNION. ON THE WAY TO THE OASIS OF RESPONSIBLE INVESTMENT | 109 |
| | Maria João Paixão | |
| 4. | ENVIRONMENTAL COMPLIANCE AND TAXATION. THE CASE OF AIR QUALITY IN CITIES | 125 |
| | Suzana Tavares da Silva · António Braz Simões | |
| 5. | CORPORATE SOCIAL RESPONSIBILITY: CAN CONSUMERS AND INVESTORS BE PARTNERS FOR THIS PURPOSE? | 143 |
| | Inês Pena Barros | |

III SPECIAL PART

SECTOR COMPLIANCE: ENERGY, AGRICULTURE, TOURISM AND MINING

- 1.**
SOCIO-ENVIRONMENTAL COMPLIANCE AND
ENFORCEMENT IN THE BRAZILIAN ELECTRICAL SECTOR.
AN APPROACH TO REGULATION IN THE ELECTRICITY
SECTOR AND SOCIO-ENVIRONMENTAL COMPLIANCE
THROUGH THE STUDY OF LEGISLATION AND OTHER
LEGAL ASPECTS REGARDING ENVIRONMENTAL LICEN-
SING RESTRICTIONS TO MITIGATE THE SOCIO-
-ENVIRONMENTAL AND ECONOMIC RISKS OF THE
GENERATION AND DISTRIBUTION OF THE ELECTRIC
POWER INDUSTRY 161
Márcio de Castro Zucatelli
- 2.**
COMPLIANCE AND SUSTAINABILITY.
ENVIRONMENTAL IMPACTS AND RISK MANAGEMENT
ASSOCIATED WITH WIND FARMS IN BRAZIL 181
Rachel Starling Albuquerque Penido Silva
- 3.**
THE SUSTAINABILITY OF BRAZILIAN AGRIBUSINESS
IN THE ASPECT OF FOREST PRESERVATION.
A COMPARISON OF FOREST DATA FROM BRAZIL
AND PORTUGAL 197
Soraya Saab
- 4.**
INVESTMENT IN (SUSTAINABLE) TOURISM IN LISBON.
ON THE WAY TO A TRAGEDY OF THE COMMONS? 211
João Nogueira de Almeida

5.

MARIANA AND BRUMADINHO.

WHY DID COMPLIANCE PRACTICES NOT PREVENT
THOSE TRAGEDIES?219

Gabriel Lima Fernandes

CONTRIBUTORS 235

III

SPECIAL PART

SECTOR COMPLIANCE:
ENERGY, AGRICULTURE,
TOURISM AND MINING

**INVESTMENT IN (SUSTAINABLE)
TOURISM IN LISBON
ON THE WAY TO A TRAGEDY
OF THE COMMONS?**

JOÃO NOGUEIRA DE ALMEIDA

Abstract: Tourism activity has been developing at increasing rates in major European cities, because of its history, beauty and monumental wealth. This development brings with it serious problems of resource depletion and sustainability, which can lead to a new “Tragedy of the Commons”.

Keywords: sustainable tourism; tragedy of the commons

1. Introduction

Tourism activity has been developing at increasing rates all over the world, particularly in Europe. First were the major European cities, such as London, Paris, Vienna, Madrid, Amsterdam, Barcelona, Berlin and Rome. Later, the same happened to smaller cities, such as Venice or Florence, by virtue of their history, beauty and monumental wealth.

In recent years, much of Portugal has been “discovered” by tourists. Certain regions of Portugal, such as the Algarve and Madeira, have been favourite vacation destinations for many Europeans since the 1960s. However, the changes that have been seen in recent years are something new. Lisbon and Porto have experienced an increase in tourist demand far beyond what would have been expected only a few years ago.

In Lisbon, tourist demand has been attracted by, among other factors, the unique climate and environment, the charm of the historic districts, the human dimension, well expressed in the existence of urban huts and their dwellers, their own cultural roots and the safety and kindness of the city residents. All these elements have contributed to the fact that people are increasingly finding reasons to visit Lisbon or even to reside there, temporarily or permanently¹.

However, more tourists in Lisbon implies more pressure on the collective infrastructure, such as the cleanliness of public transport, hospitals, parks, museums or even restaurants and entertainment venues, and the de-characterization of the conditions that make the city unique and attractive. The desire to live in Lisbon has led to a spiralling rise in real estate prices, “expelling” many people from Lisbon. Therefore, the growth of tourism in Lisbon, if it is

¹ *Turismo e Lazer na Região de Lisboa, Report*, <<http://www.ccdr-lvt.pt/uploader/index.php?action=download&field=http://www.ccdr-lvt.pt/files/a2f708eed5afa853d751697ba080d12351abd926.pdf&fileDesc=Turismo-e-Lazer-na-Regiao-de-Lisboa>>.

initially to be applauded (bear in mind the benefits it provides) also contains the germ of the city's destruction.

2. The “tragedy of the commons”

Lisbon's dilemma is a classic case of the “tragedy of the commons”, of resource depletion by over-exploitation. According to Hardin², when facing access to a good or resource that is free but of a finite dimension, individual rational behaviour (maximizing profits) will quickly lead to its exhaustion. Hardin's pessimistic prediction would later be disproven by Nobel laureate Elinor Ostrom. This author showed that it is possible to manage common resources in a lasting manner and without public intervention, thus avoiding the announced tragedy of the exhaustion of resources.

Commodities³ are a kind of ‘tertius generus’, leases between private goods (rivals and excludables) and public goods (non-excludables and non-rivals)⁴, which are characterized by being rival goods, on the one hand, as goods of free access and use. The rivalry of the commons implies, on the other hand, that

² Garrett HARDIN, “The Tragedy of the Commons”, *Science* 162/3859 (13 de dezembro de 1968) 1243-1248.

³ On the commons, see J. C. CALDAS, “A economia dos bens comuns: visões rivais. Bem Comum - Público e/ou Privado”, in J. PATO / L. SCHMIDT / M. E. GONÇALVES, *Imprensa de Ciências Sociais*, 2013, 109-128.

⁴ Private goods are rival and excludable goods. They are rival goods because if a person satisfies a need with a particular good, it means that others will not be able to satisfy their needs as well. They are excludable goods because it is possible to exclude from their enjoyment all those who are not willing, for example, to pay a price to obtain it. Public goods are non-rival because the enjoyment of a good by one person does not exclude their enjoyment by another. They are non-excludable because one person cannot exclude others from their enjoyment. On the concept and distinction of private goods and public goods, see J. J. Teixeira RIBEIRO, *Lições de Finanças Públicas*, Coimbra: Coimbra Editora, 1997.

an individual's share of the holding is reduced in proportion to the available quantity of that good. Pastures and fishing grounds are good examples of common properties. In these two cases, the pursuit of individual interest in maximizing benefits would lead more or less rapidly to the exhaustion of both pastures and fishing grounds.

In the case of tourism, in which a group of private goods is operated, each owner seeks to maximize his or her profits, from the owner of the restaurant to the owner of the hotel to the travel agencies, ending with taxi drivers and stores that sell "souvenirs". Each of these assets is private (restaurant, hotel, brokerage service, shop or taxi). However, each of these private property owners indirectly exploits common goods, whether the quiet or the hustle and bustle of various Lisbon environments, traditional neighbourhoods teeming with life, the charm of the city, its authenticity, or the collective transportation services of the city. These are precisely the factors that make tourists decide to visit Lisbon.

However, the pursuit of the maximization of benefits in the logic of the use of private goods indirectly causes the exhaustion of the common goods mentioned above and, in the long run, the depletion of the greater common good, Lisbon.

3. Possible solutions: brief sketch

It is necessary to regulate the management of common goods. It is important, in the wake of Ostrom's teaching (Ostrom 1990, pp. 90-102), to (1) clearly define the common resources to be preserved and their users or ultimate beneficiaries. Next, (2) appropriate rules (3) should be laid down for the local conditions of use of the common goods. This definition should include the participation (4) of all stakeholders (hence the last users, or beneficiaries). The benefits (5) provided by common management should be commensurate with the costs of use. Community rules (6) must be recognized by external

authorities. Compliance with the agreed-upon rules should also be monitored (7). Finally, penalties should be provided for offenders (8)⁵.

In this order of ideas, the solutions advocated by Ostrom⁶ are, in abstract terms, of several orders:

1. Regulation by the state
 - 1.1. Limitation of access and exploitation (prohibitions, quotas, etc.)
 - 1.2. Privatization
2. Self-management





Some of these solutions have been discussed, and some are even in the process of being implemented.

Certain cities, such as Venice, want to limit the number of visitors owing to the very high proportion of visitors to inhabitants. In a report published in 2015, a group of students from the Worcester Polytechnic Institute⁷ proposed some measures. A first step should be to determine the maximum occupancy limit of the city by non-residents. Then, it is necessary to calculate the number of visitors and occupants of the city.

⁵ João SIMÕES / Marta MACEDO / Pilar BABO (2011), Elinor Ostrom: “Governar os Comuns”, disponível em: <https://www.fep.up.pt/docentes/cchaves/Simoes_Macedo_Babo_2011_Ostrom.pdf>.

⁶ For a deeper understanding of Ostrom’s thinking, consult Ostrom *et al.*, “Revisiting the Commons: Local Lessons, Global Challenges”, *Science* 284/5412 (1999) 278-282; Elinor Ostrom, *Governing the Commons: the evolution of institutions for collective action*, Cambridge: Indiana University / University Press, 1990; IDEM, *Design principles and threats to sustainable organizations that manage commons*, Center for the Study of Institutions, Population, and Environmental Change, Workshop in Political Theory and Policy Analysis, Indiana University, 1999.

⁷ *Safe and Sustainable Tourism: Managing Venice’s Millions of Visitors - An Interdisciplinary Qualifying Project submitted to the faculty of Worcester Polytechnic Institute*, disponível em <<https://web.wpi.edu/Pubs/E-project/Available/E-project-121815-095808/unrestricted/2015TourismFinalReport.pdf>>.

| |  Overnighters |  Daytrippers |  Commuters |  Residents |
|-------------------|---|--|--|--|
| Daily | 17,600 | 45,580 | 22,700 | 55,700 |
| Annual | 6,425,000 | 16,635,000 | 7,600,000 | 20,330,000 |
| Percentage | 12.6 % | 32.6 % | 14.9 % | 39.9 % |

For example, in Venice, with a resident population of 55,700 inhabitants, 17,600 people daily sleep in the city, 45,580 remain a few hours and 22,700 arrive in the city to work and return at the end of the day to their places of residence⁸.

Hence, the logical measure is to determine the maximum quantity and optimal quantity of visitors and to act accordingly in limiting their number.

This measure could lead to charges for entering and staying in the city, reducing the influx into certain areas of the city, limiting the construction of hotels, limiting the offer of accommodation, imposing rules of “sustainable” behaviour for visitors (restrictions on access to public transport during peak periods for residents, prohibitions on travel on certain residential streets, etc.).

⁸ The referenced data and table can be consulted in the document referred to in the previous note.

Conclusion

Tourism is not an innocuous activity that produces only benefits. The growth of tourist activity in certain cities is motivated by the willingness of visitors to enjoy the common goods there. However, common goods are not free goods. In addition, to a certain point, tourism activity will degrade the common goods on which it depends, so its regulation and limitation must be considered to guarantee its sustainability and the legitimate rights of residents.