

Legislative and policy efforts to control ‘sharing economy’ local accommodation as a way to prevent cultural identity loss in Portugal

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ABSTRACT

This study seeks to fill an epistemological gap regarding the legislative and regulatory means of managing local accommodation associated to the ‘sharing economy’, as it relates to the cultural identity of cities and parts of cities in Portugal. We presume such a cultural identity to be a complex entity which is built in part in negotiation with the tourist, but one that is currently risking an imbalanced relationship. This study is conducted from a law studies point of view, seeking to draw conclusions from recent touristic trends in the cities of Porto and Lisbon. As a way to stimulate entrepreneurship in the tourism sector, local accommodation was constructed as juridical concept in Portuguese law, creating a separate regimen from traditional touristic establishments such as hotels, rural tourism and camping places. This also created the possibility to institutionalize a

number of informal situations which operated in these cities (especially in light of the Governmental Decree n°39/2008, March 7th, which extinguished the legal background of businesses as pensions and motels), allowing these to continue their activity - preventing the economic impact which their closing would bring. The specific law which was implemented - Governmental Decree n°128/2014, August 29th brought with it some dangers which have been at times posed to municipal institutions: the risk of ‘desertification’ of the center by local citizens, rent pressure, social polarization, amongst other risks. It is important to note that these factors are very localized in Portugal – one can note that the gross majority of local accommodation of Lisbon is centered on a small and central area. These social factors are aided by complex cultural transactions which may force out specific cultural forms of neighbourhoods and areas of these cities – although this question may be less linear than one would which. And likewise the economic impact of the informal local accommodation sector poses a risk which ought to be taken seriously in lack of effective policing. With such an appealing legal structure, which made local accommodation a viable opportunity not only for homeowners but also property developers – which also brings urban regeneration – one has to wonder what sort of policing and regulation is made on these spaces. Noting that this function belongs to ASAE (Authority for the Safety of Economic Activities), whose contingent and power has been reduced, can one truly delegate to a national organism a localized factor such as this? Or ought we to look at community or private enterprise options for this task? On the course of this study we propose to approach this problem with a solution-oriented approach that seeks to hint on possible solutions for Portugal which might be of interest on an international level.

Key Words: Local accommodation; cultural identity; digital platforms; control efforts; tourism.

INTRODUCTION

Before Decree Law n°39/2008 of March 7th, the Portuguese legal regime on touristic enterprises was rather opaque and prone to produce informal economies – whether through temporary or occasional occupation of houses – which were by definition neither subject to minimum lodging requirements nor any fiscal measures (Quintas, 2003). The above cited diploma sought to regulate those same forms of lodging, providing them with the legal framework of “local accommodation” or “local lodging”. This was followed by Ordinance n°517/2008 of June 25th, which sought to extend the activity of some extinct forms such as pensions, motels, lodging houses and inns, which did not fulfil the requisites for touristic enterprise, providing them with the legal characteristics allowing lodging of tourists, statistical accountability and taxation (Quintas, 2014).

This Ordinance described three types of local lodging: apartments, houses, and hospitality establishments, with specific safety and hygiene minimums to be followed. Furthermore, the exponential growth of the local lodging dynamics led to a successive update of its legal regime with Decree Law n°128/2014 of August 29th, which took into account the consistent and global

nature of the phenomenon, as well as its social, economic and cultural relevance. Seeking to better adapt the recent figure of “local lodging” to the wide array of temporary accommodation services, this diploma established the legal terms of exploration of local lodging establishments, giving it a new and autonomous treatment (Cunha, 2013). Likewise, it also provided specific norms regarding the supply of lodging services and their distribution, noting the need to densify the “hostel” regime appointed by the above mentioned Ordinance.

However, so as to minimize dispersion of normative instruments over a single reality, and taking into account the simplification of the access to temporary lodging activities and enterprises, the densification of the “hostels” is well justified in incorporating the textual body of the Decree Law on local lodging, with the Decree Law n°63/2015 of April 23rd establishing norms and rules that seek to minimize the sociological, cultural and economic impacts of local lodging through unregulated and arbitrary forms – which we will be exploring throughout this paper.

OBJECTIVES

General goals

To demonstrate the need for active inspection and supervision of informal local lodging, so as to minimize the potential loss of cultural identity of certain areas of the main cities of the country. Likewise, to point out some of the unused mechanisms to control such a touristification.

Specific goals

The specific objectives of this research are:

- To analyse the legal evolution regarding the new classification of local lodging;
- To analyse the suggested or apparent impact produced by this new supply of lodging, with the visible positive and negative outcomes;
- To analyse the control mechanisms and supervision efforts, whilst suggesting new forms of institutional intervention which may allow the minimization of the pernicious effects of touristification.

Methodology

The Methodology includes:

- Comparative analysis of diplomas which regulate the legal figure of Local Accommodation;

- Analysis of current data on the registration of property for local lodging purposes, in various booking platforms;
- Analysis of a study elaborated by ISCTE-IUL where the need for a re-vitalization of the touristic market supply is considered;
- Analysis of data from the National Tourist Office (Turismo de Portugal) about RNAL (National Registration of Local Lodging) in which the operational capacity of local power to regulate those properties allocated to this touristic offer.

ANALYSIS

It is first of all important to consider that the legal figure of Local Lodging was created in 2008, by Decree Law n°39/2008, since many properties which provided touristic lodging did not meet the required standards of health and quality to provide as such on formal terms (Quintas, 2015).

As such, the mentioned diploma was introduced to define the essential parameters of a given enterprise that enable it to be qualified as touristic, allowing the owners of apartments, houses and other types of lodging sites such as inns, motels or pensions, to continue benefitting from the providing of touristic services. These were given the possibility to convert to Local Lodging, legalizing their status through a registration with the municipal authorities, who were in turn responsible to attest the minimum requirements of the establishment.

This phenomenon has seen in Portugal, much like on a global scale, a tremendous increase in the last few years, and has served to a great extent to revitalize historical city centers, where long term abandonment and disinterest had led to degradation and need of intervention (Gagliardi, 2009). This follows suit with many of the recent tendencies of a "return to the center" in Portugal as in other countries - namely "gentrification", economic "core" activities concentration, and wide-scale urban regeneration efforts - which brings with it many associated risks (Richards, 2014). Specifically, in terms of tourism, three major concerns can be seen as vital: economic sustainability, assuring that local assets are not wholly overturned by touristic activities, which might put the territory in a path-dependent development with few options should tourism fade in time; social concerns regarding the demographic conditions of inner city, the logics of social displacement caused by housing market price fluctuations as well as limited political action; and cultural sustainability, presuming the risk to cultural assets by action of tourism (Richards, 2016). Namely, the latter question can be thought of in the following way: how would the cultural value of Lisbon or Porto's city centers be changed with the influx of touristic lodging in its old buildings? Can there be tourism without a threat to the 'cultural identity' of these spaces? (Gottdierner & Lopoulos, 1986)

To properly consider this, it might be necessary to briefly introduce some concepts of cultural identity. Following Bourdieu, and placing it in an urban context, we can consider the cultural identity of a "city" or a "neighbourhood" as a definition of entities which belong to such identity, to the exclusion of others, with a valuation of them, in a complex and unequal process between inhabitants, local and national authorities, transnational actors (such as tourists) and specific group identities, towards specific processes of social and cultural distinction (Bourdieu, 1984). In what concerns us, this reading allows us to see a specific factor: that "authenticity" is not an ontological factor, but a discursive one, and one which derives from collective bargaining and conflict (Shepherd, 2002). As such, neither the sardine nor the castle nor any actual fact about the history of Lisbon best represents it on an essential level, although many can be collectively agreed to better represent it.

With this said, the risk becomes that tourism can, through its demands and localization, shift the interest to some of these entities to the detriment of others, leading to loss of heritage (Wang, 1999). These concerns however, hinge on a certain understanding of the massive nature of the phenomenon - if one is concerned for instance with "traditional" ways of living, it becomes a problem when none of the "original population" live in the city centers. And more so, it can hardly be seen as a singular phenomenon, divorced from its social, economic and urban conditionings. In that sense, one must pose the question: can the cultural value of traditions overrule the regenerative potential of touristic activity in urbanistic and social terms? (Grazian, 2010).

As one can note by their location, and the term "sharing economy", the ideal of local lodging is for the tourist to share the way of life of those individuals who host him, in typical and well-located properties. For various reasons - many of which economic, as captured by Neil Smith's concept of "rent-gap" - the regeneration of heritage towards these ends was widely seen in Lisbon and Porto by private initiative as a safe investment. Although the reasons are not explicit, it seems safe to assume that a great part of the 10.000 buildings regenerated in these two cities (40% of which were abandoned) were due to investment in local lodging and tourist activities.

However in over 60% Local Lodging is the primary economic activity of house owners in the touristic business, with the incomes from short term rental largely surpassing more traditional forms of rental. This leads precisely to a professionalization of these activities, which defeats the concept of sharing economy, and raises concerns over mass tourism, with the economic monofunctionalization and cultural degradation to which we alluded. It was in this sense that Decree Law n°63/2015 was passed with the idea of putting into one decree the regulation of the hostels as a way to provide local accommodation and also make sure that the owners of the buildings will not turn the building as the owner will not be able to explore more than nine places of local accommodation in the same building. This regulation answers the need to clarify some aspects of the local accommodation legal regime (Silva, 2017).

So as to contain the unreined growth of this type of accommodation, the National Tourism Office determined an analysis of the state of art of the touristic supply, so as to contribute to an evaluation of its strong points, and to attempt to tackle the weaknesses (Brito, 2011). This study

notably realized that the eclectic educational trajectories of individuals in the sector lead often to an amateurish understanding of touristic management, which in turn raises the question of their efficiency and long term sustainability. This led the Portuguese Hotel, Restaurant and Similar Activities Association (AHRSEP) to propose a standard of service program to the sector: Program "Quality", developed by the association towards an apt response to the growth of the sector. It served namely to institute those standards and regulations which the hotel sector already has. As Ana Jacinto, coordinator of the program, notes: "Let those new spaces of local lodging come, but in such a way as not to taint the expectations of tourists and taint Portugal's reputation as a destination of excellence". This program has served in a way, to complete Decree Law n°63/2015 in a double bind: whilst the latter provides specific rules and limitations to the number of professional owners, the former seeks to capacitate and help individuals in terms of management.

This implies also many questions which relate to the cultural and social conditions of touristic areas, and which have often been the subject of justified complaints: noise and ecological limitations, much like these activities integration in their area, producing a benchmarking manual in terms of management - and eventually in a "seal" to be attributed by the AHRESP, certifying lodging units in quality norms. The pilot project took place in Mafra, in the periphery of Lisbon, and seeks to extend throughout the country.

Amongst the over 35.000 Local Lodging units in Portugal, the potential for these dynamics in terms of cultural heritage is indeed notable, since it allows the rehabilitation of spaces with collective identity and memory - such as "Casa Balthazar" in Lisbon, one of the more distinguished properties in the digital platforms, which had a long family and local history, and which under the local lodging regime gained sufficient economic return to merit a full scale intervention.

One of the points we notice is lacking in the recommendations of the AHRESP, and which might merit some attention, is the importance of local resources to touristic activity - specifically, the need for interaction between territorially adjacent economic actors - and could merit some attention in terms of associative as well as political actors.

Arriving at this point however, it has become clear that the problems often touted as a result of local lodging are more than anything a problem of regulation - namely the informal status of most of these enterprises - which raises the question: is the legalization in this sector subject to many bureaucracies, in a long and/or expensive process?

Seeing as though the process was placed on a municipal level, and made to run swiftly, this does not seem to be the case. The requirements are the local inscription of the location of the property, so that a registration number can be produced, and which is communicated to the National Tourism Office in the National Registration of Local Accommodation platform. No proof of titularity of the property is required, and currently, no inspection of the previously noted requirements is made, which has fomented the parallel economy to which we have alluded. This tends to be circulated in the digital platforms in a non-indexed manner, whether these platforms are legalized or not, and regardless of their fiscal status - most of them not issuing receipts, multiplying biddings, and incurring in massive fiscal flight (Castells, 1996).

This was noted in the above mentioned study by ISCTE, which noted that the owners of local accommodation houses in the parishes of Santa Maria Maior and Misericórdia in (the city center of) Lisbon and the center of Porto, are the ones with the highest rates of fiscal flight, which was noted by crossing the data between those online platforms such as Airbnb or Booking.com and the National Registration platforms - with 59% more units in Airbnb than those listed in RNAL, a number that reaches 98% in Porto, as well as a difference between the 45.000 units in Airbnb compared to the 31.330 officially listed ones.

This raises an important, if slightly prosaic, question: if such numbers point us to the sort of concerns which we previously noted could bring tremendous consequences, why does the supervising entity make no effort to fight this tendency by using the same methods (i.e. cross-checking official and non-official data)?

In Portugal, the entity responsible for the inspection of touristic supply registration in RNAL is the Authority for the Safety of Economic Activities (ASAE) - which notably has a very wide range of action, from night-time entertainment to restaurants and shops, which leads to its few human resources being overtly extended, and a lack of effective monitoring of local lodging activities. This leads to many cases of activities which fail to meet even the minimum standards of health and safety conditions. This importantly threatens not only the specific experiences of costumers, but the sustainability of the business, by risking the jeopardizing of reputation, as seen earlier in the quote of Ana Jacinto.

Joined efforts by the Government and Airbnb, issuing statements for owners to register their properties, and direct inspections by ASAE (which in the 1st semester of 2016 produced over 500, where 15% of properties detected were irregular) have been undertaken, and have indeed lead to the increase in registration. However, besides not being able to carry out more thorough inspections, ASAE has difficulties of action since it is limited to a supervisory role - it cannot produce persecution processes, without verification of irregularity in loco, that is, the cross-referencing of data from lodging platforms does not presently constitute any form of evidence.

In that sense, the production of mechanisms which serve to make the supervision and counter-ordinance processes more swift would serve to combat parallel economy and would be a way for proprietors to legalize their situation, as well as help them give a better service. The possibility offer to the police to relate all the signs that apply to a local accommodation as well as the report to court of illegal cases noted, with the possibility of a fee application would prevent the use of a parallel economy.

The effort made by the government to recruit and give special formation to a new kind of inspectors whose intervention would be confined to the respect of all the rules applied to the local accommodation, providing the power to make them pay in case of failure, would surely compensate the salaries and the profits taken from the state (Silva, 2017).

Another way to control these counter-ordinance could be carried out by the report of digital platforms such as Airbnb or Booking that identify that the offer sent to be published doesn't have

a registration in the National Registration System. In this case, the notification would be much easier and the proprietors could have some time to fulfill the demands or otherwise, the ASAE must go there and take measures such as to forbid that activity.

If measures are not taken, and the owners are not identified and charged with the responsibility of legalize the local accommodation they provide, we take a serious risk of giving a bad idea of our system, which is wrong because we have a perfect regulation but an inefficient way of controlling the appliance of rules. The Portuguese people are not prepared to the revolution taken by this touristification and we must be able to provide excellent experiences to the tourists, to let them contact with our way of life and to live amongst us, if only for a day or two but also controlling this economic activity and make sure that we all pay our taxes. That is why the Government as delivered some mechanisms of tax inspection to control the existence of a parallel economy and identify the tax evasion. If so, the proprietors are able to pay the fines and the opportunity to apply the rules to have a legal situation.

CONCLUSIONS

The Portuguese touristic offer has become more diverse and adapted to the demands of tourism, which follow suit with the wider social and economic transformations (Cunha, 2013). Local lodging in the capital and in the city of Porto is a sector with a great margin of development but which must invest in the quality, certification and diversity of its communication platforms.

It is likewise relevant that, in considering the cultural and economic conditionings, entrepreneurs of the sector should consider the need to regularly change the supply and offer aggregatory solutions “which allow tourists to know the characteristics of the destination, the local inhabitants conditions, marking the difference in the moment of choice.” That means investing in the production of sectoral partnerships with proximity commerce and which can allow social, economic and cultural sustainable patterns of production – and in that sense, minimizing the risks of strain in these respects (Russo, 2012).

The impact of local lodging for the regeneration of cities has produced many positive consequences, and has led to many spaces of degradation and abandonment in city centers regaining their status. The need to analyse the impact of this legal figure has led us to conclude that the present substantial legislation is not the issue, but rather the processes of inspection and supervision have been in the lacking. These are in themselves crucial for the very sustainability of tourism: the expectations and responses of tourists are crucial in the reproduction of localities as touristic attractions, and the dismantlement of cultural factors considered important by these social actors can lead to the decline of tourism as a central activity.

A way that this can be produced – and one to which we have alluded throughout this text – is the investment in affective projects which lead some owners of old properties, such as buildings of historic interest, small palaces and similar properties, to comply with the regulations present in the

remaining hospitality business, allowing the experiencing of lifestyles which are considered peculiar or quaint by tourists.

As of now, the present mechanisms – with the registration in RNAL – does not guarantee this regulation, with weak inspection efforts by ASAE, and the proliferation of parallel economies in digital platforms. However, the production of mechanisms which quicken the processes against illegal situations – so as to dissuade such practices – can seek to fulfill this gap, and can be carried out in such ways as heavy fines.

In some other countries, as a way to guarantee the regulation, the government allows companies to be built with the aim to identify the illegal situations and report them to the legal institutions, so these can take action. But what could it be in a country where the people as reacted against local accommodation in such a strong way that court as already taken decisions in favor to local accommodation, but remembering the owners that they must assure the rules of each building, such as noise making, as well as garbage and the use of common parts of the building.

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