



Tourism ► Legal modification

The AEAT describes the moratorium license as an «unfair disadvantage»

The owners of tourist accommodation in the process of sale are the main «damaged» by the law

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The Enterprise Association of Tourist Accommodation (AEAT) defines as an «unfair disadvantage» the distinction of the type of apartment that can benefit from a license in the next two years established by the Government in the new General Law on tourist accommodation that is approved today. In this sense, the president of the AEAT, Àlex Ruiz, stated that, previously, they had already met with the Minister of Tourism and Telecommunications, Jordi Torres, and he indicated to them that there would be an extension of the time in which no new licenses will be granted. «We were surprised when we read the law at the BOPA yesterday, since only apartments considered to be five stars will be able to carry out tourist activities», said Ruiz, adding that in order to achieve this status «a great investment in real estate is necessary.»

In the second instance, another of the points of the amendment of

Buildings in a real estate transaction situation will lose their economic exploitation capacity for two years

the legislative text of tourist accommodation that surprised the AEAT the most was the situation of owners who are in the process of buying and selling some of their assets. In this way, if the properties are in either of the two transactions, they will lose their status as tourist accommodation, and therefore, the right to exploit it economically over the next two years. «Once the apartment has been sold or bought the ability to become tourist accommodation will be lost in the hands of the new owner.»

Following the same line, Ruiz emphasized that after two years of having fulfilled the moratorium, in the event that the licenses can be granted again, the buildings with more than 50% of floors for tourist use they will not be able to reach a higher capacity of properties intended for seasonal economic exploitation. In this way, «this is another situation in which the owners of the accommodation will find themselves which also contributes to the comparative grievance». He also added that, if any of the property owners



TONY LARA

►► Archive image of a tourist accommodation area.

need to sell their assets for economic reasons «they will be disabled by the new amendment to the law».

At the same time, the AEAT took a position against the imminent approval of these measures because «there are many buying and selling operations that are taking place at the moment; in some cases there are commitments with the banks and they see how the process is in jeopardy in order to fulfill its objective». In fact, he affirmed that the transactions must be signed in less than nine days, because the law enters into force in this period of time and «the notaries are giving two or three weeks notice, therefore, the tempo plays against the owners in the purchase and sale». However, in line with the Government's purpose in favor of housing, Ruiz stressed that «we understand that it is aimed at new buildings, but the existing ones will not be able to carry out the transactions they need to carry out».

On the other hand, the AEAT expressed that between 80% and 90% of tourist flats are in the upper parishes, from the Tarter area to the



Àlex Ruiz
PRESIDENT OF THE AEAT



«Only the five-star apartments will be able to carry out tourist exploitation and [to achieve this] a large investment is necessary»

«There are many operations that are being developed at this moment that are in danger of not achieve their objective»

Franco-Andorran border. In this sense, Ruiz indicated that in this part of the territory «we have many difficulties due to the lack of essential services and communications; if we add to that the fact that we can hardly sell, rent or exploit the properties for tourism, it seems very unfair to us.» He also stressed that many times the cataloging of the flats does not match the reality of the services provided, since «sometimes, a three-star hotel can offer you the characteristics of a five-star hotel and vice versa».

Finally, the AEAT's forecast for the winter is good and it does not anticipate that this legislative amendment will have a major impact during the season of maximum tourist effervescence. In fact, Ruiz recalled that, for the time being, the main ones affected will be the owners who have to sell or those developers who are building blocks of flats intended for seasonal economic exploitation. In relation to the contacts with the Government, Ruiz stated that he spoke with the Minister of Tourism yesterday, who assured him the impossibility of making allegations. ≡

Some lawyers believe that the new law may be unconstitutional

They warn that it is an «expropriation» that should be compensated

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The announcement by the head of government, Xavier Espot, of the amendment to the general law on tourist accommodation, which will be approved by the General Council this afternoon, could be unconstitutional according to some lawyers consulted. The text establishes the temporary suspension of the granting of new housing authorizations for tourist use in apartments and studios and the consequent suspension of the registration of new registrations. Likewise, it is expected that the change of owner of a tourist apartment for the reason of sale entails the automatic suspension of the registration of the home in the register, and, if it is necessary, the obligation to request it again.

«I understand that the bill contains articles that could be declared unconstitutional. Article 3 section 2 of the Constitution provides that the guarantee of the principle of non-retroactivity of restrictive provisions of individual rights or that entail an effect or establish an unfavorable sanction, and also protects the principle of legal security», explains a lawyer in statements in EL PERIÒDIC. And he adds: «The expression restriction of individual rights in Article 3 section 2 must be equated with the idea of penalty,

which is why the limit of the article must be considered to refer to limitations introduced in the field of individual rights and in the sphere of the protection of the person».

In the same vein, the lawyer asks to bear in mind that the Constitutional Court recognizes among the principles liable to be violated the cases in which a rule is given retroactive effect, as is the case of this bill, and the principle of legal security «It is clear that the wording of the bill would affect consolidated situations and acquired rights», point out the sources, who to make it more understandable give an example: «Suppose that an owner of apartments for tourist use has agreed to a contract of promise of purchase and sale, and it is pending formalization and it is found that the buyer renounces the acquisition because, obviously, the new law will prevent him from maintaining the currently valid tourist use authorization». In this sense, it should be noted that the bill does not provide for any kind of compensation for owners who are affected by the limitation of their right to private property, a fact that experts predict will generate an «avalanche» of complaints against the Executive to consider it an «expropriation». «Legal provisions cannot be retroactive when they affect rights acquired, consolidated, assumed and integrated into the subject's patrimony. In the case presented by the owner of the apartment building in this example, the law constitutes a restriction of consolidated rights».

And it is that the Magna Carta



►► Archive image of tourist accommodation in Tarter.

The Government does not plan to compensate those who are not being able to make a previously agreed sale

itself guarantees that «no one can be deprived of their property and rights, if not for justified reasons of public interest, through fair compensation and in accordance with the procedure established by law». «The right to property is the broadest real right that contemplates all the possibilities in favor of the one who holds it, and in the case of the bill, this right is significantly affected and this affectation leads to a restriction of the right to private property», say the same sources. «This compensation obligation that regulates the constitutional guarantees of forced expropriation is obviously imposed on all pu-

blic authorities», they insisted, since the constitutional doctrine also recognizes exceptional cases, such as this law - «drafted by the extreme urgency procedure»-, which implies an expropriation or a restriction of consolidated rights or a legislative expropriation not included in the Constitution.

«According to my criteria, the bill is unconstitutional because it transgresses the principle of non-retroactivity of the restrictive rules of individual rights, the principle of legal certainty, prohibition of arbitrariness and deprivation of rights to compensation», concluded one of the lawyers consulted. ≡

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