

Airbnb Regulation and Property Law.

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Abstract. The Airbnb was created with the intention of intermediating short-term rentals over the internet quickly, easily and without major bureaucracy. Airbnb has become a popular platform for short-term rentals, once it has been credited with disrupting the traditional hospitality industry and making travel more affordable and accessible for people around the world. The hosting platform allows individuals to rent their homes to tourists. However, with its rise, becoming the largest accommodation network in the world, many legal problems arose, as there was no law regulating this type of rental. The question arises about the limits that the government can impose on private property, given that Airbnb is a way of using property not foreseen in traditional legislation. This text discusses the effects of Airbnb regulation in different countries. In Europe, some cities, such as Amsterdam and Barcelona, have strict regulations that limit seasonal rentals. These regulations are justified by the government with the aim of protecting local residents. In Brazil, Airbnb regulation is still in its infancy. The lack of regulation has generated conflicts between property owners and residential condominiums, which often prohibit the practice. The issue in question seeks to highlight the need to strike a balance in Airbnb regulation in order to protect the interests of local residents, property owners and tourists.

Keywords. Airbnb, Property, Regulation.

1. Introduction

The website Airbnb [1] emerged in 2008, in the city of San Francisco in the United States of America. This network allows individuals to rent their homes, whether partially or fully, with the intention of earning extra income through this platform. The platform is constantly on the rise in the world, and, as a result, many questions are raised regarding its legitimacy and how its regulation should be carried out. With the emergence of the Airbnb platform, the hosting service no longer depends solely on hotels. Now any individual can offer their property for rent, if they considered their property to be rentable.

From this perspective, it should be noted that Airbnb is the result of the idleness of a property and someone's demand, who wants to spend time at the property. In this sense, it is correct to say that, in economic terms, the platform is effective and important in the face of this reality resulting from the existing sharing economy.

In contrast to traditional leasing, which has been common for many years and has its appropriate regulations, short-term rentals do not have solid and effective legislation nowadays. The phenomenon of the sharing economy needs to be the subject of analysis regarding rights and duties. Airbnb, however, has become a necessary discussion in

different countries and cities since the lack of regulation means that disputes arising from this absence arrive in the judiciary on a daily basis.

The lack of platform regulation is a problem, however, excessive regulation can become abusive. The analysis presented throughout this research seeks to compare the effects of this dilemma in different places around the world. Therefore, given this situation, the hypothesis proposed in this study is to know what are the limits of the rules that the government can impose on someone's private property.

2. Methods

The methodology used to produce this research was based on a bibliographic review and analysis of current news that deal with the topic, in addition to using data taken from relevant sources, for instance official government websites and Airbnb itself. The technique used was to prepare the text based on a methodological logic of reviewing legal and empirical literature and, consequently, it will also follow a line of inductive reasoning.

Furthermore, it must be considered that the topic is multidisciplinary, residing primarily within the scope of property rights, but also delving into the legal relationships arising from the use of the Airbnb

platform and its consequences.

Overall, the methodology used in this research is comprehensive and well-suited to the multidisciplinary nature of the topic.

3. Airbnb in Europa: Regulation in different cities

In European cities like Amsterdam and Barcelona, Airbnb is highly regulated compared to others, that do not have strong regulations, like Athens and Florence. The study by Bei and Celata [2] discusses the consequences of regulating short-term rentals as well as non-regulation in 16 European cities, bringing out these divergences. They came to the conclusion that there are positive and negative effects of regulation and they work together to produce a balanced market. This balance is due to the reduction of the number of professional hosts, which consequently reduces the pressure on city residents who depend on the number of local housing to have affordable rent. Professional Airbnb hosts are individuals or companies who offer vacation rental services as a business activity. They typically own or manage multiple properties and offer a variety of services to guests.

The city of Amsterdam is now a major regulator of rentals on the Airbnb platform. According to information taken from the company's own website [3], private hosts who wish to rent their space must register with the city hall. Private hosts mean owners who have the apartment or a room available for rent on the platform. Additionally, the website says that, according to Dutch regulations, hosts can only rent the entire space in Amsterdam for a maximum of 30 days a year, unless they have specific permission to rent for more nights. Furthermore, the city hall can block the rent of the property that reaches the maximum nights allowed. As seen above, in addition to registration, a license issued by the city hall authorizing short-term rentals is required.

According to the local authority's official website [4], this license has an expiration date and requires the payment of a fee to issue it, which, in 2023, is worth 48.10 euros. The website also shows all the rules to be followed by Airbnb hosts. According to them, these measures are adopted to prevent houses from being rented only to tourists and not local residents with the aim of keeping the city habitable. Those who fail to comply with the rules imposed by the municipality are subject to paying a fine of up to 21,750 euros. This value corresponds to more than 10 times the minimum wage in the Netherlands in 2023 [5].

Quantitative research produced by Ključnikov, Krajčik and Vincúrová [6] showed relevant data regarding the use of the platform in the Czech Republic compared to other countries. Factors such as supply, demand, applicable taxation and profits resulting from the platform were analyzed. Given the information gathered in the research and the legal

analysis that covers Airbnb, it was observed that the legislation of the city of Prague is prepared for this specific business segment.

In cities identified as not having regulation, such as Athens, for example, they already have a proposal to regulate Airbnb. The Greek government confirmed that new laws will come to regulate the market for this type of rental, as the country has tourism as its main economic activity [7].

In accordance with the example above, with the high demand for the short-term rental platform, the need to define standards for the proper functioning of legal relationships arising from the use of the platform is clear. However, the question in focus in this study is reiterated: Can the government regulate and impose abusive rules on private property? It is possible to observe that important European cities are, little by little, introducing rules to define the limits of short-term rentals.

4. Discussion in Brazil: Conflicts between owners and condominium

In Brazil, the Airbnb discussion mainly revolves around the ban on renting through the platform in a residential building. There are many cases of conflicts regarding the prohibition, through the condominium agreement, of the owner renting their apartment on the platform, which reach the judiciary.

The research carried out by De Seixas and Cabral [8] raises the following questions about the topic under discussion in Brazil: "Is it possible to restrict property rights in Brazil? Can the Condominium Convention restrict the use of the Airbnb platform by owners of autonomous housing units? Is the generic prohibition that prevents the provision of part of the autonomous housing unit to someone via Airbnb proportionate?"

This debate, most of the time, is based on the internal security of the building's residents, given the high turnover in the condominium. On the other hand, the owner has the right to property guaranteed in the Brazilian Constitution [9], which in turn raises doubts as to whether the owner can be prohibited from using his autonomous housing unit in any way they see fit.

A residential condominium in the city of Porto Alegre, Rio Grande do Sul, prohibited a mother and her son from renting the two apartments they owned in the building. The case in question went to the judiciary and was judged by the Brazilian Superior Court of Justice, which decided that residential condominiums could prevent the use of rental properties through Airbnb [10]. Therefore, it is evident that there is no fixed understanding on the topic in Brazil, just as there are no legislations that define the matter, and it is up to the judiciary to analyze the specific case and decide according to its

legal analysis.

5. Conclusion

The Airbnb platform has become increasingly popular in recent years, but its regulation is still a complex issue in many parts of the world. The discussion is present in different countries around the world and should continue to be the subject of debate given the various dilemmas surrounding the topic. The platform's conflict with the proposed standards is clearly a problem. In Brazil, for example, there are not any regulations on the subject, which, consequently, leaves room for the judiciary to decide according to its own understanding. On the other hand, cities like Amsterdam, as demonstrated throughout the study, over-regulate in ways that can be considered abusive.

Therefore, the need to find a balance for the regulation of Airbnb is evident since in Europe it regulates too intensely in some cities, preventing the owner's freedom over their property and, in Brazil, the lack of regulation leaves room for the judge to decide without legal basis.

For example, the study notes that strict regulation can help to address concerns about the impact of Airbnb on housing affordability and the quality of life for residents. However, it also points out that excessive regulation can stifle innovation and economic growth.

Consequently, it is necessary to determine a good regulation that does not allow the legislators to create abusive rules for the property owner, and also does not allow the judge to decide without concrete basis. Furthermore, it is necessary to carry out future studies to find a middle ground that avoids a lack of legal guidance, as this can lead to abusive limitations imposed by the city's legislator and judicial decisions without a consistent basis.

Overall, the study provides a valuable overview of the current state of Airbnb regulation around the world. It is a timely and important contribution to the debate on how to manage the sharing economy.

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