

# The Rise of Short-Term Rentals: the issue of parity

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**ATINER**



**13<sup>th</sup> Annual International Conference on Mediterranean Studies**

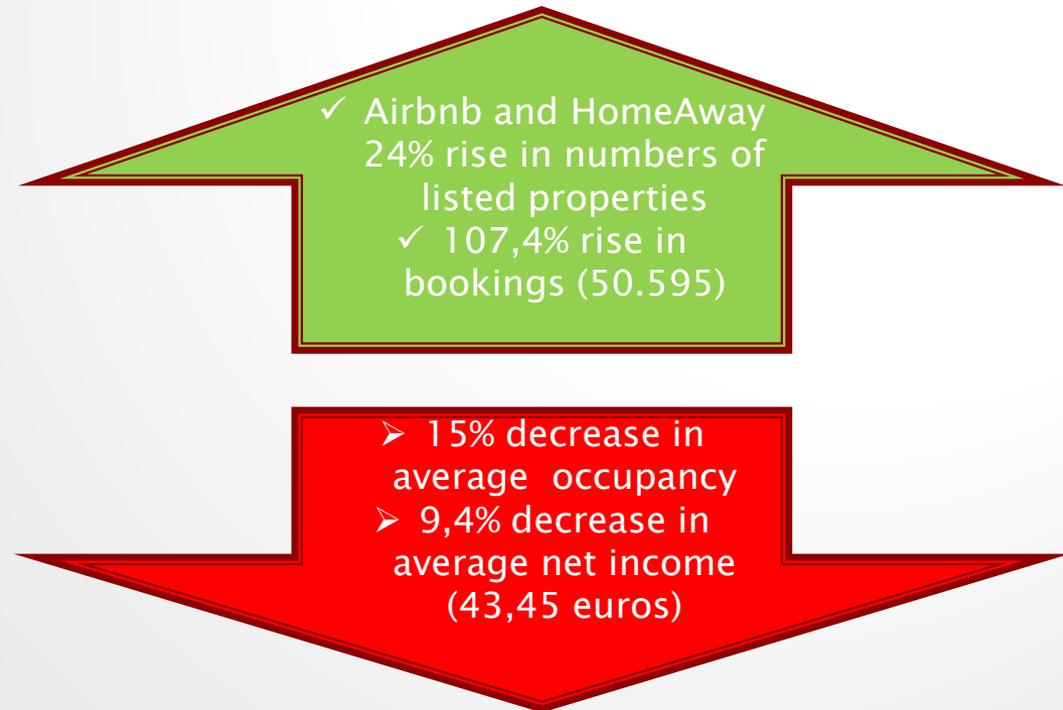
**6-7 April 2020, Athens, Greece**

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# In 2019



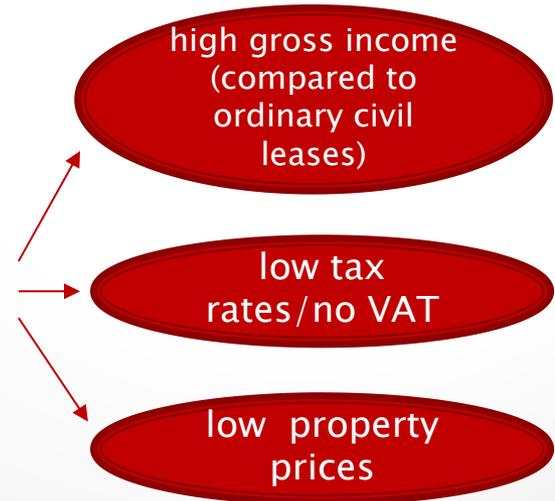
- ▶ Data from AirDNA, presented in BNB Conference, reported by *Kathimerini*  
<https://www.kathimerini.gr/1067079/article/oikonomia/ellhnikh-oikonomia/epistrefei-to-enoikiasthrio-se-2500-akinhta>

# three main categories of landlords/hosts

- Those who have a spare room or dwelling (quite often a summer house) that they themselves use within the year (*idle capacity*)
- those who own more than one property and see in Short-Term Rentals an opportunity for bigger margin for profit compared to traditional annual leases
- non-Greek residents investing in real estate property (*new capacity*)

# Why buy to become a host?

- ▶ high profit from short term rentals



# The market:

- ▶ Available properties: flats within multi-storey buildings

- ▶ Competition:

long-term rentals (small cross-elasticity)

hotels

several alternative forms of tourism

rooms to let

- ▶ Demand: domestic and international (increasing)

# Neighbouring a STR

- ▶ noise, loitering, occupation of communal areas, sense of insecurity
  - ▶ Mutation of the neighbourhood's character
  - ▶ Both augmented by intensive and continuous use
- 
- ▶ 16158/2018 Thessaloniki Court of First Instance
  - ▶ 263/2019 Nafplio Court of First Instance
  - ▶ 1259/2019 Athens Court of First instance
  - ▶ 583/2019 Nafplio Court of First Instance

# 263/2019 Nafplio Court of First Instance

## ▶ FACTS:

- ▶ owner of a 103 sq. meters flat accommodating up to ten tenants.
- ▶ registered property on the internet platform
- ▶ provided services beyond accommodation in the strict sense, whereas visitors caused nuisance in various ways, such as loitering of communal areas, occupation of parking spaces, noise.

## ▶ LEGAL GROUNDS:

- nuisance
- violation of the multi-storey building/condominium regulation, which *prohibited the operation of a hotel*

# 263/2019 Nafplio Court of First Instance

the landlady run a business akin to a hotel.

▶ was the law misapplied?

❖ “akin” ...

❖ “the respondent [...] proceeded to registering the aforementioned property [...] at the websites brand-named “...” as touristic business- accommodation facility”.

Do short term rentals constitute, by definition, touristic business?

# 263/2019 Nafplio Court of First Instance

- ▶ However:
- ❑ the respondent indeed de facto ran a hotel (in the broad sense), thereby violating the building's bylaws.
- ❑ the applicants in this case could have achieved the same result by basing their claim on the prohibition of using the property in a way that disturbs neighbouring owners.

# 1259/2019 Athens Court of First instance

## ▶ FACTS:

- ▶ owner of a 104 sq. meters flat accommodating up to sixteen tenants.
- ▶ registered property on the internet platform
- ▶ visitors caused nuisance in various ways

## ▶ LEGAL GROUNDS:

- nuisance
- violation of the multi-storey building/condominium regulation: *prohibition to run an "oikotrofeo"* (dorm)

# 1259/2019 Athens Court of First instance

the landlady did not run a “oikotrofeo” .

- ▶ was the law misapplied?
- ❖ No: term has specific meaning in Greek, which is restricted to hospitality addressed to students
- ❖ complaints on nuisance could stand a chance of being successful, on the ground of the general prohibition; but evidence did not suffice to prove a regular and repeated disturbance

# 1259/2019 Athens Court of First instance (obiter)

- ❖ short-term rentals do not constitute touristic business
- ❖ different from rooms to let, a quasi -hotel category of touristic accommodation under Greek law.
- However, what if a de jure short-term rental is de facto a touristic business?

# Some points:



panic is, to an extent, a very specific factual background; the Court of First Instance concerned an injunction; created no binding – or even judicially persuasive precedent. It concerned a very specific factual background; the landlady offered extra services (e.g. cleaning, laundry)



running a short-term rental business is not ipso facto prohibited



the wording of the condominium regulation is key



pro-actively, owners might consider amending the regulation, as they already do (buyers beware!)



From the short-term landlord's standpoint: need to keep close oversight of how business is run.

# fairness, equal treatment and consumer welfare

- ❑ Both decisions show that running a de facto a touristic business may have legal implications, illustrating also the potential of private enforcement in combating abuse. This may extend well beyond condominium regulations:
  - ▶ under Greek law, touristic accommodation is subject not only to several special regulations, specific to the nature and size of the business,
  - ▶ but also to a tax regime different to that of civil rentals.
  - ▶ Quality assessed by visitor's reviews: malleable; ex post facto.

# tax treatment

- ▶ understandably this was the area first considered seriously by the legislature.
- ▶ Law 4172/2013, art 21: if short term rentals operate in a way that services beyond accommodation *stricto sensu* are provided, then the income accrued is taxed as income from professional activity
- ▶ threshold lower than that of ascertaining the operation of a *de facto* hotel facility

# Enforcement/ identification

- ❑ how can the authorities be aware of short-term rentals and their real duration?
- ▶ the inspections of the tax authorities indicate that about 20.000 properties were not registered. according to the Panhellenic Union of Property Managers, when it comes to AirBnB the actual number of undeclared rentals in Greece rises to 30.000–35.000.
- ❑ how can the authorities prove which short term rentals constitute business activity for the purposes of Law 4172/2013?

# health and safety

- ▶ there is **no regulation specific to short term rentals**, which fall outside the scope of the law on touristic businesses.
- ▶ **questionable whether** many flats registered on short term rental platforms yet engaged into full scale touristic operations **could successfully meet even the most basic requirements** for the operation of rooms to let (let alone hotels), such as, inter alia, those related to the size of the flat and construction of the edifice and those concerning the business owner. providing access to supporting facilities further complicates things.
- ▶ highly unlikely that the owner is insured and dubious whether inkeeper's liability would apply

# Further concerns



well- documented rises in rental rates, pointing to a looming housing problem in certain areas  
(internationally too: Garcia-López, Jofre-Monseny, Martínez Mazza, Segú 2019; Valentin 2019)



over-motivating buyers in real estate property may lead to a housing bubble.

# the way forward

Going against the platform is difficult and largely unfair.

Court of Justice of the European Union ruled that AirBnB is simply providing an "information society service"

striking at the heart of the problem would be a **systematic approach** of treating short term rentals which de facto are hotel or rooms to let equally to the latter; that is, not only taxing them similarly, but also subjecting them to the same health and safety regulations, planning law restrictions etc.



## difficulties

❖ deregulatory race to the bottom. Fine balance to be struck.

❖ public enforcement. However, as both examined cases show, private enforcement may come to the rescue

# Conclusions



Panic unwarranted



Difficulty in trying to apply old rules, be them hard or soft ones, to new realities



Unregulated STRs may lead to abuse



There is need to set a level playing field, rather than placing arbitrary restrictions which are difficult to enforce anyways



Private enforcement may play a significant role

# Thank you for your attention

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