

The Legal Status of the Airbnb Services from the Polish Perspective

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Abstract: Airbnb is a form of sharing economy phenomena. Apart from its obvious benefits for both consumers and home owners, it created also new threats for them, as well as for the traditional hotel industry. The aim of the article was to analyse the legal status of the Airbnb services according to the Polish regulations. The analysis was done three-fold: the position of the Airbnb services in the light of standard hotel services, the possibility of restriction the services by the accessible means of the Polish planning law and lastly, the usefulness of consumer protection regulations. In conclusion, the following aspects were analysed: the need for the State to intervene in the Airbnb services and the appropriateness of the existing regulations in Poland.

Keywords: Airbnb, competition, consumer protection, hotel services, local land use plan, Poland, rental, State intervention.

I. INTRODUCTION

Airbnb is one of the most popular electronic services which operates as a peer-to-peer platform for vacation rentals, enabling secure transactions between hosts and guests [1]. Airbnb gives consumers in a broad sense (both natural persons who don't conduct business activity, as well as natural persons who conduct business and professional activity) the possibility of finding the best offer of rental dwellings, homes, accommodation. Airbnb can be seen as a platform which offers a double win to both owners and renters - owners can earn extra income by renting out their unused houses or even single rooms and at the same time tourists can book accommodations at lower costs than using regular hotel services.

The system is based on trust and reputation [2]. The decision as to which accommodation should be chosen in the given location is mostly not accidental. Is based on judging by the millions of reviews left by the previous guests on the Airbnb platform. However, this "trusted community marketplace" can sometimes be misleading [3].

The Airbnb has been criticised a lot so far. The criticism towards Airbnb can summarised that it is called as a form of 'disruptive innovation' [4] with safety concerns [5], race discrimination issues [6] and also a high negative impact both on traditional hotel industry [7,8] and long-term rental [9,10,11].

The aim of the article is to analyse the legal status of the Airbnb services according to the Polish regulations in search for justification for the need of improvement of the particular acts and the partial or total legal injunction. The particular examples of restricting the Airbnb activity will be given. The analysis was done three-fold: the position of the Airbnb services in the light of standard hotel services, the possibility of restriction the services by the accessible means of the Polish planning law and lastly, the usefulness of consumer protection regulations. In conclusion, the need for the State to intervene in the Airbnb services will be analysed and the appropriateness of the existing regulations in Poland will be evaluated.

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II. REGULATIONS CONCERNING TOURSIM FACILITIES IN POLAND

The regulation dealing with tourism in Poland is the Act of 29 August 1997 on Tourism Services [12]. According to Article 35 of the above Act hotel services can be provided in hotels that meet:

- 1) Requirements to the size of the facility, its equipment and the range of services provided, set the type and category, for which the object has been classified;
- 2) Sanitary requirements, fire and other specific separate regulations.

Hotel services can be provided also in other facilities, if these facilities meet the minimum requirements for the equipment and sanitary requirements, fire and other specific separate regulations. As other objects, in which hotel services can be provided, are also considered: rented by farmers rooms and places to set tents in the conduct of their farms, if these facilities meet the minimum requirements for the equipment and sanitary requirements, fire and other specific separate regulations. The Airbnb is regarded not only as competition to traditional hotel services, but also as a serious threat. The economic studies show a decree in the hotels income in the areas, where Airbnb has risen its popularity [13]. In Poland, however, the problem can be only observed in Cracow.

There are the following types of hotel facilities:

- 1) hotels - objects with at least 10 rooms, including a majority of seats in single and double rooms, providing a wide range of services related to the stay of customers;
- 2) motels - facilities located along the roads, with parking, with at least 10 rooms, including a majority of seats in single and double rooms;
- 3) pensions - objects having at least 7 rooms, providing to its clients full board;
- 4) campings - guarded areas, allowing accommodation in tents, cars, campers and trailers, motor, prepare meals, car parking, as well as providing services connected with the stay of customers; these areas can also allow the tourist accommodation in cabins or other solid objects;
- 5) dormitories - objects that have at least 30 beds, adapted for self-service customers and providing a minimum range of services connected with the stay of customers;
- 6) Youth Hostels - facilities for individual and group youth tourism, tailored to customer self-service;
- 7) hostels - objects located outside built-up areas, the hiking trails, providing a minimum range of services connected with the stay of customers;
- 8) Campsites - objects unguarded, allowing overnight in tents.

The launch of the hotel services is subject to a specific procedure, including application, categorization, control and entry into a register decision.

The Airbnb accommodation does not meet any of the requirements and does not belong to any of the above categories; therefore (though not directly excluded from the scope of the Tourism Services Act) is not regulated by it. Accordingly, the accommodation provided through Airbnb doesn't have to fulfil the strict criteria established for the particular type of hotel service, including, for example, facilities for the disabled, parking space or safety issues. As regards their function, it is claimed that Airbnb was taking over the role of low-end hotels [14].

III. CAN AIRBNB BE REGARDED AS RENTAL SERVICES UNDER POLISH LAW?

Under Polish Law, it is easier to say what Airbnb is not, than what it is. This occurs to be not only a specific Polish problem, it is quite a challenge to find proper "traditional" regulations for the sharing economy and the need to create the new appropriate regulations has been pointed out in the literature [15, 16]. Therefore it should be analyzed if Airbnb services can be regarded as any form of rental services under Polish law.

For sure, Airbnb is not what is called the occasional rental, which is one of the forms of renting housing, provided by the law, which actually gives the landlord the greatest protection of his property. The rules providing suspending the eviction

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of tenants until the owner finds them an alternative accommodation have no application here. Therefore it enables easier eviction of the former tenant, but is subject to greater formalities and additional costs.

When renting an occasional rent it is necessary to conclude the contract at the notary, because the contract must include: firstly, statement of the tenant (notarized) on voluntary submission to enforcement and commitment to the issue of empty and used the premises on the date specified in the request the lessor; and secondly, indication by the tenant an another apartment, where he can live, if it comes to an enforcement and empty premises. It must be observed that these strict requirements are not applicable to Airbnb contracts.

In Poland, a traditional rental dwellings, rooms (so-called lodgings) for students or, pupils have been functioning for a long time. This type of lease is based on the principles stipulated in the Act of 23 April 1964 - Civil Code [17]. In addition to private initiatives there are lease contracts concluded with the participation of real estate broker who is professionally engaged in real estate transactions. In addition, there is a lease of so-called municipal premises on the terms specified in the Act of 21 June 2001 on the Protection of the Rights of Tenants, Housing Resources of Municipalities and Amending the Civil Code [18].

When concluding the contract between the flat or room owner – on one hand and Airbnb – on the other - is must be pointed out that Airbnb can't be regarded as an estate agent under the Polish law. The reason for it is that the real estate agency contract shall be concluded in the written form, otherwise is null and void. The terms of use of Airbnb does not entail it.

Certainly, this service is complex in terms of regulations dealing with it. The creation of an Internet platform is regulated by the Act of 18 July 2002 on Electronic Service [19], giving the property to use is regulated by civil law, the transfer funds between the parties is financial law and civil law, the obligations of personal data protection is regulated separately [20].

IV. THE POSSIBILITY OF RESTRICTING COMMERCIAL ACTIVITIES IN THE LOCAL LAND USE PLAN

The main instrument regarding local planning is a land use plan. The Article 4 of the Act on planning and development of 27 March 2003 [21] provides that a local land use plan designates the use of land. It sets out the conditions for implementation of specific investment projects feasible in the area, including the conditions of use of the infrastructure. Therefore, before an undertaking enters into an economic activity, it must check whether it is possible on the basis of the local zoning plan. It is possible that in one plan residential areas and commercial services are together, but usually services that compliment residential function. However, in the same plan some plots of land can be excluded from service activities. Therefore we can have three types of zoning in one plan: residential, commercial and mixed (residential that allow services). The compliance with residential function means services that do not cause nuisance to the residents and/or the environment. Moreover, when in the local plan zoning plan is allowed to exist only service activity, it can't reasonably argue that this includes manufacturing activities. Where such activity is authorized, a local legislator expressly so provides. Citizens reading the zoning plan, must have confidence in what they read. The opposite statement is undermining the credibility of law and confidence in the positive law. This would be undesirable phenomena from a social point of view. The local plan determine or change the use of land for a specific target set in this plan. It is also possible that some plans restrict commercial activities due to the location of an existing building object (e.g. cemetery or airport).

In some cities, the restriction of the Airbnb was done by means of the local land use plan provisions. A good example here would be Barcelona [22, 23]. Such attempts were not undertaken in Poland, the existing regulation about planning does not allow such restrictions.

V. AIRBNB AND CONSUMER PROTECTION

AS regards consumer protection, the activity of Airbnb isn't explicitly regulated by a single legal act in Poland. We are dealing with distributed sources of law in this field. Depending on whether a contract will be concluded only between consumers or between consumers and entrepreneurs legal relations will be subject to different legal regimes.

Firstly, with respect to the entities which conduct electronic service Airbnb the aforementioned Electronic Services Act undoubtedly applies.

Secondly, in terms of rental contract concluded between the persons that have been matched in the platform, with no doubt the provisions of the Civil Code will apply. The contract between the consumers will be subject to the regime of the Civil Code (Article 659 – 692). However, in relation to the contracts concluded at a distance or off-premises between the service providers who are entrepreneurs and service recipients – consumers, the provisions of the Act of 30 May 2014 on Consumer Rights [24] should apply. The legislature imposes a number of information obligations on the service providers who conduct services off-premises and at a distance.

Thirdly, with regard to entrepreneurs who conduct electronic service Airbnb and entrepreneurs whose business activity involves short-term rental undoubtedly the Act of 16 April 1993 on Unfair Competition [25] and the Act of 16 February 2007 on Competition and Consumer Protection [26] will apply. These laws will also apply when business practices used by entrepreneurs will be practices which infringe collective interests of consumers.

In the practice of providing services through Airbnb violations of consumer interests can appear in a case of using unfair contractual terms by entrepreneurs in patterns of contracts with consumers, or through the application of practices infringing collective consumer interests, such as breaching the duty of providing consumers with reliable, truthful and complete information, unfair market practices or unfair competition.

Currently, the rules of providing services are available on the website of Airbnb, but only in English. This practice proves that Airbnb violates the rights of Polish consumers. Under the Airbnb Host Guarantee program there is a protection for the hosts up to 1 000 000 \$ in a case of damages caused by guests when it's value exceeds the amount of fixed deposit - or if the deposit was not included in the offer. Airbnb excludes it's liability in cases of law infringement. There is also a problem of jurisdiction for consumer redress arising in connection with performance of the contract, both in criminal and civil cases.

VI. CONCLUSION

Today, in the era of information society, we can see a bigger interest in a form of renting through web portals (e-services). More and more people also buy real estate premises in attractive neighbourhoods for purposes related to short-term rental. The observation refers especially to the areas of Old Towns, mostly of bigger cities. In fact, through Airbnb the service providers (usually natural persons who conduct business activity, but also entrepreneurs) offer services for accommodation, and the service recipients (consumers) can find competitive prices. The providers can advertise their services in the portal. This portal is matching the parties. In Poland, this activity is becoming more popular, especially in large urban areas, due to the attractive financial conditions.

The Airbnb services can raise some serious competition concerns. The services provided are neither – so far – regarded under Polish law as any kind of hotel services in the above meaning, nor manufacturing services. Undoubtedly, providing accommodation services do bring an income, which should be taxed. The problem with legality of the activity and imposing the proper tax has been a problem in many countries [27, 28, 29]. In Poland, the freedom of economic activity rule provides, that an economic activity is deemed to be legal, unless otherwise provided by the law. Therefore the question of legality does not arise in Poland. Another matter is the proper taxation. It looks like the usual income tax applies, but the efficiency of tax collection is another issue.

The Airbnb and other forms of sharing economy are not, so far, considered as a threat and real competition to traditional tourism services. However, one should expect that as time goes on and the development of the popularity of these services will grow, there may be a problem, at least in the most popular Polish cities. For now, different kinds of national and regional policy documents are promoting the development of tourism. Their main concern is rather, what could be called “a quality” of tourism, not the quantity. In order to illustrate what is meant by that an example of the city of Toruń could be given. The main sources of tourists in Toruń are children on school tours and pilgrims. They usually don't stay overnight and don't go to the restaurants. So the promotion of tourism in Toruń is directed to other groups of tourists, like those on business trips and families in order to balance the other types of arrivals.

Currently, any land use plan could prevent from providing Airbnb services in Poland right now. Renting an apartment via Airbnb could be regarded as commercial activity (which could be banned in the plan, as above) only when offered continuously, not from time to time.

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Airbnb is a form of sharing economy phenomena. Apart from its obvious benefits for both tourists and home owners, it created also new threats for them. The users of the portal – consumers – are not appropriately protected.

For sure the business activity of the portal has its advantages and disadvantages. Certainly its advantage is offering competitive prices in comparison to hotels and other entrepreneurs professionally engaged in renting rooms, apartments, or houses. The disadvantages include the lack of legal regulations, exclusion of liability of Airbnb arising from abnormality in connection with the performance of contracts, claims in civil, administrative or criminal cases. Therefore the appropriate rules should be created by the State in order to protect competitors to the Airbnb in tourism industry and the consumers as well.

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