



Shifting discourses in the struggle over holiday rentals: A comparative socio-legal analysis of social mobilisation, legal reform and judicialization in Barcelona and Edinburgh

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Abstract

This article examines the shifting discourses at play in the unfolding socio-legal conflict around holiday or short-term rentals (STRs). Focusing comparatively on Barcelona and Edinburgh, it carries out an integrated analysis of social mobilisation by activists and lobby groups, reforms by local authorities and parliaments and judicial interventions, in order to (1) trace the emergence of restrictive STR regimes, as STRs have evolved from a mostly innocuous practice to a threat to urban identity and collective life; (2) foreground the decisive role of grassroots activism and democratic processes in driving this shift, alongside resistance from rentier groups through lobbying and litigation; (3) highlight law's dual role as both a tool for regulating STRs and a framework constraining regulatory efforts through judicial scrutiny, while observing significant divergence in this regard in the two contexts; and (4) ultimately push for greater attention to social sustainability and community well-being in tourism governance.

Key words

Short-term rentals, overtourism, urban governance, judicialization, social mobilisation

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Resumen

Este artículo examina los discursos en transformación que intervienen en el conflicto sociojurídico que se está desarrollando en torno a los alquileres vacacionales o de corta duración. Centrándose de forma comparativa en Barcelona y Edimburgo, el artículo lleva a cabo un análisis que abarca la movilización emprendida por activistas y grupos de presión, las reformas adoptadas por autoridades locales y parlamentos, y las intervenciones judiciales, a fin de (1) identificar la emergencia de regímenes restrictivos para los alquileres de corta duración, a medida que éstos han pasado de ser una práctica en su mayor parte inocua a convertirse en una amenaza para la identidad de la urbe y su vida colectiva; (2) poner de relieve el papel decisivo del activismo de base y los procesos democráticos a la hora de impulsar este cambio, junto con la resistencia de los grupos rentistas a través de *lobbying* y recurso a los tribunales; (3) destacar el doble papel del derecho como herramienta para regular los alquileres de corta duración y como marco que limita los esfuerzos reguladores mediante el control judicial, observándose una divergencia significativa en este último respecto en los dos contextos; y (4) en última instancia, ensalzar el rol que deben desempeñar la sostenibilidad social y el bienestar de las comunidades locales en la gobernanza del turismo.

Palabras clave

Alquileres de corta duración, sobreturismo, gobierno local, judicialización, movilización social

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1. Introduction

In recent years, overtourism and housing unaffordability have emerged as urgent social challenges. The two intersect in the lucrative phenomenon of holiday or short-term rentals (STRs), whose rapid and massive growth over the last decade and a half has simultaneously diverted housing stock from residential use and contributed to the touristification of European cities. It is therefore unsurprising that STRs have become a focal point of social and political tensions between residents, tourism stakeholders, STR providers and digital accommodation platforms, and led to a new regulatory framework at the local and legislative levels. An abundant literature now exists on three distinct angles of these developments. Some authors have focused on the socio-economic dimension, to assess the impacts of platform-mediated STRs on cities and housing (e.g. Hoffman and Schmitter Heisler 2021, Garay-Tamajón *et al.* 2022, Gil 2024) or trace their emergent conflictivity (e.g. Novy and Colomb 2017, Milano *et al.* 2024). Others, the most numerous, have concentrated on policy and regulation, to map the diversity of regulatory responses across affected jurisdictions and how each has balanced the different interests at stake (e.g. de la Calle-Vaquero *et al.* 2021, Aguilera *et al.* 2025). Finally, some lawyers have considered how the new STR regulations fit within existing legal frameworks, particularly the EU's, and the main judicial challenges that arise (e.g. Kramer 2024, Martínez Mata 2025).

The present article proposes a comparative socio-legal analysis that integrates these three dimensions of the unfolding conflict around STRs. It will do so by focusing on the discourses and imaginaries articulated by the various actors involved, which until now have received some (e.g. Aguilera *et al.* 2021) but insufficient academic attention. These offer specific or revised understandings of property relations, urban governance and community identity and belonging. The article seeks to identify these discourses and imaginaries as they have arisen—and influenced or competed with one another—, but also to assess the work they have performed in advancing particular interests and justifying certain actions—whether at the level of social mobilisation, regulatory interventions or judicial adjudication. In so doing, our study will serve to emphasise the extent to which law, consistently with the socio-legal scholarship tradition, is embedded within broader societal conflicts and processes, and in particular the extent to which protest and social mobilisation interacts with legislative and judicial interventions to produce new forms of public consciousness (e.g. McCann 1994, Epp 1998; Taekema and Stambulski 2025).

The context chosen for our study are the cities of Barcelona and Edinburgh, which will be examined comparatively. A comparative approach is appropriate given our emphasis on discourses and law's social embeddedness, since it serves to illustrate the degree to which the processes at play in the conflict around STRs are necessarily context-dependent, and connect the specific discourses and imaginaries and the role played by them to concrete locations (e.g. Nelken 2012). While Barcelona features often in the academic literature on overtourism, Edinburgh has yet to capture its attention. Both cities are important tourist destinations and have experienced a large-scale expansion of platform-mediated STRs, leading to significant controversy and regulation. Moreover, the process tracked by this article has followed a similar path in the Catalan and Scottish capitals, starting with the development of influential grassroots movements, leading to

a new STR-restrictive legal regime, and facing fierce resistance from rentier interests through lobbying and litigation. At the same time, however, the context for these processes also shows subtle but important differences, each city being characterised by particular legal standards and mechanisms, institutional cultures, forms of socio-political engagement and social attitudes to tourists. It should come as no surprise, therefore, that, as the study will reveal, the two capitals also diverge in significant respects, in relation to the relevant discourses identified, their connections with the diverse actors and the role that each have played in producing a novel legal framework for STRs.

On this basis, our article makes four main contributions. First, it historicises the emergence of a new STR-restrictive regime in the two cities by examining the parallel emergence, design and implementation of specific regulations as well as the resistance to them from lobby groups and the judicial challenges that have—sometimes successfully—been brought. By analysing the competing discourses and imaginaries by the various actors involved, we trace the shift from STRs being seen pre-2010s as a generally innocuous practice (of concern only as a potential source of private nuisance), to their framing in the 2020s as directly affecting the city's collective life, identity and sustainability. Second, the article foregrounds the fundamental contribution of grassroots activists and democratic mechanisms in driving this process—an aspect that heretofore has not received sufficient credit in the literature—, while at the same time examining the countervailing role played by STR interests, through lobbying and litigation. Third, we bring to light and problematise the central role that law has come to play in the conflict around STRs, intervening both as a tool to address the socio-political concerns attached to their proliferation and as a framework for monitoring and/or curtailing such efforts—mainly through the right to property, EU internal market law, and general standards of judicial review. In this double role, legal actors have shown considerable receptivity to the emergent discourses and imaginaries, whilst at the same time contributed significantly to these—even though it is on this front that greatest divergence can be observed in the two contexts for our study. Fourth and more broadly, by focusing on the wider social dimension of STRs and the central role played by grassroots activism and judicial institutions, our article suggests new, creative ways for legal scholarship to engage with wider debates on tourism and sustainabilities, while contributing to discussions about the relevance of integrating social sustainability and the well-being of local communities in the governance of tourism-related challenges—a dimension, that of social sustainability, that has generally been underexplored in tourism research, where environmental and economic sustainability have long taken precedence (Pásková and Zelenka 2024, Shirazi *et al.* 2026).

The article is divided into two main sections. The first analyses the activist-led shift through which STRs have come to be viewed as socially corrosive and subject to a new restrictive regime, and the second the resistance by STR associations and subsequent judicial interventions. Each section analyses both cities individually before deploying a comparative analysis.

2. The activist-led emergence of a new STR-restrictive regime

2.1. *Barcelona*

STRs first appear in Catalan legislation in 2007 with the adoption of the *Llei del dret a l'habitatge* (Act on the Right to Housing) by the then-governing left-wing coalition. The concept of “houses for tourist use” is then introduced, defined and subjected to a licence requirement, although at the time no clear concerns are registered around their social impact. The legislative preoccupation came solely from the realisation that STRs were an emerging economic—and above all lucrative—activity that operated in a legal void, allowing for abuse and profiteering. Only three years later, in a new decree regulating STRs in greater detail, the issue is framed as pitting the rights to property and business activity against access to housing and the right of neighbours to rest and live harmoniously (Decret 164/2010). With the new pro-business government that takes office in December 2010, however, the balance tilts significantly in favour of liberalising STRs, which various subsequent reforms (in 2011, 2012 and 2015) come to qualify as an “innocuous” economic activity that would therefore no longer be subject to licencing. This does not mean, nevertheless, that STRs return to a legal void, as the figure remains legally defined and subject to a registration requirement. Responsibility for ensuring compliance with this requirement is even extended to the then-emerging platforms Airbnb and Homeaway, who are fined in 2014 and 2015 by the Catalan government for failure to do so.

It is in this context—of a highly liberalised regime but with STRs already a (modest) object of regulatory and social concern—that the overtourism critique emerges in activism and popular demonstrations, with holiday rentals taking centre stage in the earliest protests. Tourism scholars have labelled 2014 Barcelona’s “Year Zero” of social mobilisation against overtourism, when spontaneous demonstrations demanding the “abolition of illegal tourism flats” are organised in August in the heavily touristified neighbourhood of La Barceloneta (Milano and Mansilla 2018, 19). This leads to a city-wide demonstration, called by the official Federation of Neighbourhood Associations of Barcelona (which had already been campaigning on this issue: Aguilera *et al.* 2021, 1696) and attended by 2,000 people, with the opening banner demanding “the abolition of all tourism flats” (Martínez 2014). This radical slogan, which challenges the framing of the then business-friendly government but also that of its social-democratic predecessor, has ever since been a key demand of grassroots activism in the Catalan city. That summer thus marks a turning point in public discourse on STRs, whose proliferation has thereafter been viewed as a grave social problem.

Riding on the widespread discontent around housing in the post-financial crisis years, a new mayor is elected in June 2015, Ada Colau, a well-known housing activist. Immediately on taking office, a one-year ban on new licenses for tourism accommodation is announced. In this new context, STRs are clearly viewed with suspicion and the focus now lies on their social dimension, yet the approach remains cautious: as Colau noted, the aim is “to assess and diagnose the supply [of tourism accommodation] and its economic and social impact on access to housing, occupation of public spaces, mobility, diversity of uses, and waste production and management” (Blanchar 2015). STRs were thus connected to a number of overarching impacts on

housing and city life; in so doing, the Council aligned with activists' framing, though not with their proposal of outright abolition.

The summer of 2015 marks a further consolidation of grassroots critique of overtourism through the birth of Barcelona's *Assemblea de Barris pel Turisme Sostenible* (Assembly of Neighbourhoods for Sustainable Tourism, hereafter ABTS). Amalgamating almost 30 local grassroots groups and neighbours' associations who had already been active combating the "tourism overexploitation of the city" (ABTS 2015), the ABTS became the leading activist organisation on the STR issue. Its critique of the latter is part of an intensifying denunciation of the broader tourism model of the city, which is accused of "displacing residents, increasing work precarity, weakening the social and economic fabric, triggering the growing privatisation and overcrowding of public space". Linking with the left-wing critique that developed post-financial crisis, the model is also condemned as a form of economic exploitation by powerful "tourism lobbies and non-elected ruling elites", leading to the "privatisation of benefits and socialisation of costs" (ABTS 2015).

Following the initial moratorium, the City Council approves the PEUAT (Special Tourist Accommodation Plan), which enters into force in January 2017. Whilst it falls short of banning STRs, it does pursue a zero-growth policy by introducing a maximum tourist vs. resident homes ratio that is neighbourhood-dependent and which, in practice, forbids new STRs in the most affected parts of the city. The PEUAT also innovates by linking the regulation of STRs to specific urban conditions, such as street width, availability of public spaces, presence of residential accommodation or the building's architectural features (Ajuntament 2017). The ultimate goal is to ensure that Barcelona is a city "to live in", and to guarantee the residents' "right to the city" (Ajuntament 2016). Nevertheless, this approach, as explained by the then Councillor for business and tourism, does not seek to combat tourism but rather "tourist-phobia", by making the sector "sustainable" and "compatible with the life of the city" (Alcobendas 2017).

The following years are marked by significant transformations in grassroots activism, characterised by its increasingly transnational dimension and the radicalisation of its demands. October 2018 sees the launch in Barcelona of the network *Southern European Cities Against Touristification* (SET-NET), which in its early stages brings together fifteen activist groups from cities across Spain, Italy and Portugal, with the ABTS taking a leading role. The manifesto identifies the lack of affordable housing as "the most significant and widespread" challenge in the network's cities (Alba Sud 2018). This is linked to the "cycle of real-estate market speculation" following the financial crisis and the associated large-scale acquisition of housing assets by investors, which, according to the manifesto, have been mostly dedicated to tourism uses, thus contributing to the "unchecked rise in rental prices". For SET-NET, this phenomenon provokes gentrification, eviction and displacement leading to the loss of neighbourhoods' residential role, but also socio-cultural transformations in city life, from overcrowding and the disappearance of traditional commerce to strained public transport services and the banalisation of heritage. Thus, at stake is not only "the right to a decent and affordable housing", but also a broader "right to the city" (Alba Sud 2018). The transnationalisation of the activist movement again prefigures that of the City Council's approach, which in 2020 joined other European city governments to call for tighter

controls of STR platforms and measures to curb illegal listings, albeit again within the more moderate framework of balancing tourism promotion with the rights of city residents (Eurocities 2020).

In parallel, activists' position is also radicalising. During the summers of 2017 and 2018, the anti-capitalist youth organisation *Arran* carried out direct actions against tourism-related infrastructure, including vandalising a tourist bus and rental bicycles (Hughes 2018, Sobot 2018). The radicalisation of the conflict is encapsulated by the ABTS' change of name in 2019 to *Assemblea de Barris pel Decreixement Turístic* (Assembly of Neighbourhoods for Tourism Degrowth—hereafter ABDT), which signals the mounting conviction that tourism can only expand at the expense of resident populations. Although the COVID-19 pandemic temporarily interrupts the social concerns around STRs, these reemerge in the post-pandemic period and quickly lead to more transformative regulation. In November 2023, new legislation is approved by a left-wing majority in the Catalan Parliament (Decret-Llei 3/2023). The goal is to clamp down on STRs, which the regional minister responsible for the statute characterises as a “perversion” of residential housing (Parlament 2023, 54). The bill emphasises that STRs do not appear as a result of new building developments, but instead replace already existing homes. Moreover, their proliferation is presented as a highly corrosive phenomenon, given its contribution to unaffordable housing, gentrification, the destruction of neighbourhood relations and the saturation of local services and infrastructure.

The statute therefore introduces a new regime that is markedly hostile to STRs. Their specific regulation will depend on whether they are located in one of the 462 municipalities listed as affected by “lack of access to housing” (meaning residential rent has surpassed a certain threshold) or an at-risk urban environment (meaning the number of STRs exceeds 5% of residents). In those municipalities (which cover most of the Catalan population), STRs in residential properties must be terminated within five years. While local authorities may choose to continue to authorise them, this is now subject to appropriate justification and to a licencing system that is limited in number and duration. In June 2024, new mayor of Barcelona Jaume Collboni announces that the City Council will not take advantage of this exception, and therefore that STRs will no longer be lawful in the Catalan capital from 2028. Meanwhile, rental platforms are again fined for failing to ensure that STRs meet the legal registration requirement, but this time by the Spanish government (Sánchez 2025).

There continues to be a gap, however, between grassroots activism and public authorities. Collboni's announcement has been met with scepticism, notably by the ABDT and the *Sindicat de Llogateres* (Barcelona's tenants union), for whom the 2028 target is too distant and politically uncertain, and thus fails to match the urgency of the housing crisis (ABDT 2024, Sindicat 2024). Moreover, while welcoming the curbing of STRs, they decry the exclusive focus on this phenomenon; in particular, the proposal is denounced for leaving hotel numbers intact, thus “merely confirm[ing] the strategy of the hotel lobby: a city sold to a model of tourism based on conferences, events and an increasingly exclusive market” (Sindicat 2024). The ABDT and the *Sindicat* advocate instead for a more holistic alternative, based on tourism degrowth. Despite this criticism,

there is little denying that Collboni's announcement encapsulates a new state of affairs for STRs in Barcelona.

2.2. Edinburgh

Although holiday rentals have a long history in Scotland (for instance accompanying sporting events), until very recently they have lacked a dedicated legal regime. This has created difficulties for planning authorities, who would struggle to determine if STRs should be subject to planning permission. Before 2019, Scottish legislation (Town and Country Planning (Scotland) Act 1997) required owners to obtain such permission where a dwellinghouse underwent a "material change of use", but provided no indication of whether offering a property commercially as leisure accommodation would qualify as such. Some judges have insisted that the focus should be on the property's material characteristics, namely, whether it contains "facilities required for day-to-day private domestic existence" (*Gravesham v Secretary of State*; *Moore v Secretary of State*)—an approach that makes it hard to legally separate commercial rentals from residential homes. Other courts, however, have turned instead to the different uses and lifestyles that characterise each (and their incompatibility), which allows for a clearer distinction between the two. In one decision, for instance, emphasis was put on the "natural boisterousness of holiday makers who may keep irregular hours and have little consideration for other people living in the vicinity" (*Blackpool v Secretary of State*, 1980).

With the massive increase in STRs in the Scottish capital throughout the 2010s, such tourist behaviours begin to generate more and more resident discontent, as shown by the growth in STR-related complaints to the City Council due to noise, anti-social behaviour and disruption in shared stairwells, with 21 recorded cases in 2016 and 32 in 2017 (City of Edinburgh 2022a, 23). As in Barcelona, therefore, concern around STRs focuses initially on nuisance to neighbours. In 2017, however, this issue emerges as of broader social and political concern. On 19 January, Andy Wightman, Edinburgh Member of the Scottish Parliament for the Green Party, for the very first time raises alarm about the lack of regulation for STRs before Parliament, reporting complaints from constituents. He cites instances of anti-social behaviour ("very audible sex parties"), but also denounces the hollowing out of residential buildings ("an elderly couple are now living out the rest of their years lonely in a tenement³ stair that has lost all its other permanent residents") and abusive profiteering ("young families live in a state of stress and anxiety due to the rent-seeking behaviour of a growing number of property owners") (Scottish Parliament 2017, 7). Wightman's is one of the first instances in which STRs are connected in the Scottish capital to the lack of affordable housing and impacts on community cohesion. Building on this early intervention, Wightman launches in November 2017 the "Homes First" campaign to "control unregulated growth" of STRs (Scottish Greens 2017). These early initiatives put the debate in the public realm and have since been recognised to be the cause of much critical media coverage of STRs (Harris 2018). As such, they mark the Year Zero of public discontent with the dynamics of overtourism in Edinburgh, the point at which the tensions and anxieties around STRs become politicised and the conflict a central issue in the socio-political agenda.

³ Scottish term for a building containing multiple flats and sharing a common entrance and staircase.

At this stage, the government simply denies that any changes in regulations are necessary in relation to STRs (Scottish Parliament 2017, 7), which therefore continue to operate in a hazy area of the law. In January 2018, however, Living Rent—Scotland’s tenants and community union—begins campaigning on this issue, with the release of its policy on STRs in the city. This organisation had been created in 2014 as a campaign to push for rent controls and, thanks to its quick success, become a national tenants union in 2016. As such, similarly to the Catalan *Sindicat de Llogateres*, its work is not exclusively focused on tourism but housing in general, even if it has become the leading activist organisation in Edinburgh in relation to STRs. The policy document expresses grave concern about the “holiday let boom” recently seen in the city, which it claims aggravates the scarcity of affordable housing and damages “community cohesion and the character of neighbourhoods” (Living Rent 2018). This critique thus connects affordable resident housing with the reproduction of community life in the city, therefore emphasising the collective dimension of the former. Living Rent also makes a series of actionable proposals, the most important being for local authorities to acquire the regulatory power of restricting the number of days per year that an entire property can be offered as an STR without a licence. Wightman’s late-2017 campaign and Living Rent’s early-2018 document constitute a clear break from the past, in relation both to how the issue of STRs had previously been viewed (as a fringe practice that is only problematic when a source of nuisance to neighbours) and regulated (as subject to planning permission only on a case by case basis).

It is only a few months later, in August 2018, that Edinburgh City Council, as complaints continue to grow (with 117 recorded in 2018, City of Edinburgh 2022a, 23), comes to acknowledge the concerns of constituents and campaigners. The City Council’s first report on STRs voices “strong concern about the impact of certain aspects of the [STR] industry on the city” in relation to six key challenges: availability of housing, erosion of the sense of community, noise and antisocial behaviour, safety standards for visitors, taxing and, finally, the inappropriateness of STRs in tenements (City of Edinburgh 2018). The Council’s assessment largely aligns with that of Living Rent, as does its stated frustration at the lack of a “specific regulatory regime” for STRs and “powers which would allow the Council to license or demand registration of [STRs] in the city”.

It is in this shifting context that the Scottish Parliament finally intervenes in 2019, adopting an amendment to planning legislation that for the first time recognises STRs’ specificity. As in its Catalan counterpart, the debate here follows a left-right divide. The Greens and Labour push to require that conversion to STR should always be subject to planning permission, thus giving local authorities greater control. Their proposal is, however, defeated by the Scottish National Party and the Conservatives, who now acknowledge the social problems attached to the proliferation of STRs (including its impact on affordable housing), but nevertheless form a majority to approve a more limited proposal—one that will achieve a “balance between happy tourists and happy residents” (Scottish Parliament 2019, 43). According to the newly adopted section 26AB, STRs will be subject to planning permission only when the local government designates a relevant perimeter as a “short-term let control area”; elsewhere the previous case-by-case assessment will continue to apply. It is therefore a modest reform, as any meaningful intervention is postponed until a control area is locally approved. There is here a notable gap with Living Rent’s campaigning, who at this point has embraced more

critical and conflictive vocabularies, as illustrated in the petition requesting the Scottish First Minister to develop national regulation to “stop holiday lets destroying our communities” (Saunders 2019). Notable is also the fact that, while Airbnb is named in Parliamentary debates as the main culprit driving housing unaffordability and the degradation of communities (and denounced for lobbying intensely against the reforms), the law continues to be addressed only at individual owners and operators, with no legislative initiative aimed directly at platforms.

Despite its limited nature, the 2019 legislative amendment is the first to give STRs a specific legal treatment and recognise a shared socio-political concern around their expansion. Two additional reforms follow. First, the 2021 Control Area Regulations for Short-Term Lets, which, as provided in the 2019 amendment, establishes the procedure for local authorities to designate STR control areas. Second, the 2022 Licensing Order, which requires STRs to obtain a licence from local authorities (Civic Government (Scotland) Act 1982). The result is that the latter are now empowered—as Living Rent and the Edinburgh City Council had pleaded—to address the growth in STRs, subject to local knowledge and circumstances.

Edinburgh City Council quickly readies to exercise its newly acquired powers and organises a public consultation, in preparation of the city’s novel licensing policy and the designation of an STR control area. Living Rent responds to the Consultation launching the palpably more critical campaign “Homes, Not Holiday Lets”. The petition document’s title reads “Stop holiday lets from clearing out Edinburgh”, a terminology that clearly recalls the Highland Clearances of tenants that took place in the eighteenth and nineteenth centuries and form part of Scotland’s collective memory. The petition opens: “[o]ne third of Scotland’s short-term lets can be found in Edinburgh: each one of these properties could and should be a long-term affordable home” (Living Rent 2022). Thus, while not campaigning for the abolition of STRs as Barcelona’s ABDT, Living Rent builds a clear-cut dichotomy—it is either homes for residents or vacation rentals for tourists. Concrete policy proposals are also presented, such as reducing (rather than merely capping) the number of STRs, strengthening enforcement through meaningful penalties and precluding exemptions for major events.

Following the consultation, the City Council designates the whole city of Edinburgh as an STR control area (from 5 September 2022) and adopts its first STR licensing policy (29 September 2022). STRs thus have come to be subject to a considerably more restrictive regime in the Scottish capital. As in Barcelona, redirecting residential property for STR provision is now viewed with suspicion and framed very much as an exception to continued use for long-term residents. Indeed, planning permission will be refused where the property’s conversion to STR results in “unacceptable impact on local amenity or the character of a neighbourhood or area” or “loss of residential accommodation where such loss is not outweighed by demonstrable local economic benefits” (2023 National Planning Framework 4, Policy 30e). For this reason, such permission is now consistently denied in residential buildings, thus implementing a de facto near-zero growth policy for STRs.⁴

⁴ All STR planning applications received in 2025 and decided in that year were refused (with the remaining pending assessment) (City of Edinburgh 2026, item 10.21).

2.3. Comparative analysis

While the evolving regulation of STRs in Barcelona and Edinburgh has followed divergent paths and engaged with different political cultures, a series of broad commonalities clearly emerge. Starting with the most obvious, STRs in the two cities have shifted in less than a decade from operating under very lax conditions to being subject to severely restrictive regimes, jointly crafted by local and regional authorities. How this has happened and the specific timelines vary: Catalan legislation already recognised the singular features of STRs before their massive Airbnb-driven surge in the 2010s, while in the Scottish context these lacked a specific regime until 2019. Also, Barcelona, unlike Edinburgh, is now advancing towards a complete ban. Nevertheless, the processes in the two capitals partake in the same broadening of STRs' dimension as a social phenomenon, from being seen initially as implicating only immediate neighbour-to-neighbour and owner-tenant relations, to raising questions of belonging, equality and city life. On this shared basis, the proliferation of STRs has caused the legal framework to shift, from approaching these benignly as a peripheral (and revenue-generating) practice that at most might raise nuisance concerns, to treating them as a socially dangerous exception to the long-term residential use of properties.

Nevertheless, it is notable that, even though there is a clear awareness in the two contexts that the social impacts of holiday rentals are similar in multiple tourist destinations across Europe, the actual development of a new framework for STRs has happened independently in the two cities, with little evidence of transplantation or cross-borrowing. Rather, public authorities have resorted to administrative law and local government techniques such as licensing or planning that are well-known at the domestic level, and which have in the two cases increasingly been made to depend, in relation to STRs, on specific urban features. Indeed, the urban residential context in which vacation rentals are located emerges as a key factor, as illustrated in policy documents from the two local councils: if Barcelona's PEUAT imposes restrictions on streets below a certain width and considers the architectural characteristics of the building, the City of Edinburgh Council emphasises the relevance of "the location, character and suitability of properties" (City of Edinburgh 2022b). This points to a key discussion about the specific challenges that STRs bring in urban settings by contrast to more rural ones, given the spatial concentration of vacation rentals in urban apartment blocks.

A further commonality is the central and effective role played by activists in developing influential discourses and providing energy for reform. Indeed, their work has contributed decisively to inserting the critique of STRs in the public agenda, changing social perceptions of holiday rentals and generating support for new regulatory frameworks. Their success is to be contextualised within Novy and Colomb's discussion of the emergence of urban tourism as a source of contention across the 2010s and its consequent politicisation (2017, 4–7). The process of change has been swift: the advent of Airbnb in 2009 creates the conditions for the vast expansion of STRs in urban spaces, which is then problematised by grassroots activists across the 2010s as part of the growing critique of overtourism. The Barcelona and Edinburgh city councils have proven receptive to the discourses articulated by grassroots groups—a fact that doubtless reflects the large appeal of the anti-STR cause in the two cities, but also the

operation of local democracy. Indeed, both local authorities have largely embraced the critical assessment of STRs' impacts on housing and urban life and in certain instances deployed similar perspectives and vocabularies to those of activists, whether in relation to the "availability of housing supply", the "erosion of the sense of community" or the need to preserve "cities to live in". While this critique has eventually also influenced the Catalan and Scottish Parliaments and governments, the process has in the two cases been more delayed, and resulted in polarised parliamentary debates following a left-right divide.

In relation to new discourses around STRs, both the ABTS/ABDT and Living Rent have based their construction in terms of belonging and vulnerability, denouncing that long-term residents who contribute to building city life are in danger of displacement. Nonetheless, differences also appear between the two contexts. In Barcelona, the focus has been more clearly on the survival of local communities threatened by overtourism, and it is surely not a coincidence that the ABTS/ABDT is ultimately a neighbourhood association. Its vindication of a "right to the city"—a term that signals residents' collective reclaiming of urban spaces (Attoh 2011)—is also telling in this regard—as is its adoption by Barcelona's City Council. By contrast, Living Rent, fittingly as a tenants union, has not tended to articulate a specific notion of rights explicitly connected to the impacts of STRs on housing and city life, but rather a more general one regarding tenants' housing experience and their relationship to landlords as a separate class.

The different systems and traditions of political participation and protest also sets the Catalan city apart from Edinburgh, given how the former has seen instances of direct protests symbolically targeting visitors and tourism industry assets (such as slaying the tyres of a tour bus and vandalising rental bicycles in 2017 and 2018 or, more recently, the well-known images of protesters spraying visitors with water pistols in the summer of 2025), whereas activism in the latter has exclusively focused on campaigning, lobbying and organising public contestation. Notable in this respect is the fact that a spontaneous community demonstration against tourist flats marks the "Year Zero" of overtourism in Barcelona, whereas in Edinburgh it is a Member of the Scottish Parliament bringing the issue into the public sphere after complaints from his own constituents—a direct channel of communication between citizens and representatives that is not common in Spain and reflects the closer proximity of Parliamentarians to local constituents in the British political system.

Finally, the territorial framing of the conflict shows a series of convergent and divergent discourses and practices in the two cities. This concerns, first of all, the tendency to reduce the struggle around STRs to primarily a local affair, so that it would be for individual local authorities to preserve housing stock and residential spaces under their municipal jurisdiction to guarantee the rights of their residents. This tendency is most visible in the Scottish context, where neither activists, the Edinburgh Council, nor Scottish parliamentarians have visibly engaged with the transnational dimension of the phenomenon—other than through nods to the cautionary tales of resident's protests in European tourist hotspots or to Scotland's attractiveness to foreign visitors. Such localist focus is also evident in their tendency to pay little to no regulatory attention or campaigning to the role played by foreign-headquartered platforms such as Airbnb—in spite of their decisive role in enabling the proliferation of STRs and potentially in

ensuring legal compliance by STR providers, as discussed in the following section. In Barcelona, by contrast, there is a certain movement towards transnationalising the conflict, as shown by ABDT's participation in SET-NET, the City Council's joint action with other European cities through Eurocities and the targeting by the Catalan and Spanish governments of STR platforms for failing to monitor illegal offerings. While some of this divergence can no doubt be attributed to the political and institutional severance caused by Brexit, it may also be partly attributed to the broader scale of tourism and associated STR impacts across Spain—which are certainly not unique to Barcelona—, by contrast to Scotland, where they are more clearly contained in Edinburgh and the Scottish Highlands and Western Isles.

A final point related to the territorial framing of the conflict is the fact that discussions on STRs in Scotland and Catalonia have tended to stay entirely away from nationalist narratives. Indeed, debates have mostly focused on local conflicts and followed a left-right divide, with no visible attempts at framing the struggle of local communities as part of a broader national Catalan or Scottish one. The rise of housing and overtourism as a key area of socio-political divide from the mid-to-late 2010s onwards thus signals a discontinuity with the previous period of nationalist mobilisation. However, this reading needs to be nuanced, given the connections between pro-independence activism and social justice demands during the nationalist cycle in both Scotland and Catalonia. In the former, speaking for the Living Rent Campaign in 2015, Alasdair Clark noted that “the conversation around housing and its problems was boosted by the Scottish independence referendum campaign, which dramatically increased political engagement across the board (...) during the referendum, social justice issues dominated. Post referendum, there was an opportunity to instigate these campaigns” (Common Weal 2015). Similarly, in Catalonia, the pro-independence political party *Candidatura d'Unitat Popular* and youth group *Arran* have been at the forefront of campaigns against the tourism industry due to its effects on housing and city life (Hughes 2018). In light of this, it can be argued that, after the failed pro-independence pushes in Catalonia and Scotland, grassroots activists in the two cities redirected their energy to the struggles around affordable housing and tourism's impacts on communities, (re)framing these as local rather than national.

3. Resistance to STR restrictions and judicialization

The increasingly restrictive STR regime has been met with fierce resistance by a number of actors in the two contexts. Key among them are associations of STR providers (which include owners and property managers) and platforms such as Airbnb. These actors have engaged in intense lobbying against the growing restrictions, articulating different discourses and imaginaries in relation to STRs and their relationship to local communities. While their perspectives have found support among conservative politicians, the most notable aspect of their resistance has been the turn to the courtroom. A large number of lawsuits have successfully translated the case against STR regulations into functional legal terms by arguing that these constitute a violation of the right to private property, EU internal market law and/or general standards of judicial review. These lawsuits have placed judges as a central actor in the struggles around STRs, and thus “judicialised” the conflict (Aguilera *et al.* 2025). Indeed, courts have defined the extent of public powers to meaningfully regulate STRs, but in so doing also articulated

specific perspectives that at times align with those of the pro-STR lobbies, at others prove closer to those of activist groups and local authorities, and on some occasions develop entirely different constructions.

3.1. *Barcelona*

In Barcelona, the most influential lobby group for the interests of STR providers is Apartur (Barcelona Association of Tourist Apartments). Since the growth of anti-STR discourses in the mid-2010s, the association has been very active in public debates, arguing against the restrictions on STRs and lobbying for more favourable policies. In its discourses, the association has tended to advance two key (re)framings. The first presents STRs as a market service, which as such should be celebrated for its contribution to the local economy. Here Apartur touts increased visitor spending and job generation, but also a more sustainable tourist economy: STRs alleviate overcrowding in certain neighbourhoods by dispersing tourists across the city, and redistribute tourism's benefits to new actors (Edensor 2015). The second (re)framing is identity-focused, and concerns STR providers themselves: these are not large businesses but hard-working families who use the extra income to make ends meet (Muro 2024). This vulnerable and locally-integrated constituency thus stands in contrast to the large corporation model of the hotel sector, who, in the words of the lobby group's president, pursue "a campaign to give us a bad name because we take market share away from them" (Edensor 2015). Similar versions of these two lines of argument appear in Parliamentary debates for the approval of the Decret-Llei 3/2023, in the objections voiced by conservative representatives. While the centre-right Catalan nationalist party (Junts) spoke against the new legislation mainly on account of its the negative impact on the tourist economy (Parlament 2023, 59), the far-right Vox centred on the plight of hard-working families who invest in second homes to sustain their livelihood (62).

In parallel, lobbies, conservative representatives and individual STR providers have resorted to courts to challenge the legality of the new regime—this has indeed become the central strategy of resistance. A key lawsuit relates to Ciutat Vella (one of the most popular tourism neighbourhoods), where the implementation of the 2017 PEUAT amounted, in effect, to a ban on any new STRs. This, the claimants argued, violated the freedom to provide services as guaranteed by the EU Services Directive 2006/123. The case was initially adjudicated by the Superior Court of Justice of Catalonia (SCJC, the uppermost judicial body in the region), on 15 July 2019 (STSJ-C 719/2019). Its judges proved to be wholly aligned with the framing of Barcelona City Council and fully sympathetic to residents' concerns. To begin with, the Catalan court does not consider the Services Directive to be applicable. Much emphasis is put on its Recital 9, which expressly exempts "rules concerning the development or use of land, town and country planning, (...) which do not specifically regulate or specifically affect the service activity but have to be respected by providers in the course of carrying out their economic activity". The SCJC concludes that the restrictions on STR contained in the PEUAT fall within this exemption, since they are not primarily economic but rather targeted at guaranteeing the residential use of urban land. The decision also highlights the extent of social disruption entailed by STRs, noting *inter alia* that, as argued earlier by activist groups, their proliferation disproportionately impacts residents of more modest means, who are forced to migrate to the suburbs or other municipalities. In so doing, the ruling

signals that residents have a claim to the city that tourists lack, but also that the social dimension of the problem exceeds Barcelona's municipal boundaries.

This decision was appealed to the Spanish Supreme Court. Before it was able to rule, however, the Court of Justice of the EU (CJEU) rendered on 22 September 2020 a crucial judgment, *Cali Apartments* (Cases C-724/18 and C-727/18), which will thereafter heavily influence how national judges deal with challenges against STR restrictions. The case arose from a lawsuit brought by two apartment owners in Paris, who had been fined for illegally using them as STRs and ordered to revert to residential use. Under the French legislation in question, STR provision was conditional on prior authorisation subject to an "offset requirement" (i.e. the concurrent conversion of non-residential premises into residential use, so as to ensure and regulate a certain level of available housing stock). At stake were therefore very similar restrictions to the ones in Barcelona's PEUAT.

The outcome of the case was mixed. On the one hand, contrary to the SCJC's ruling but consistently with the pro-STR position, the CJEU approves that STRs should be framed as economic services and thus subject to the Services Directive (para. 42). This entails that the interests of STR providers are a European-wide concern—as lobbied by Airbnb (CEO 2018, Culpepper and Thelen 2020). The Recital 9 exemption is thus rendered irrelevant for challenges against STR restrictions, opening wide the possibilities of future EU law-based litigation. As a result, such restrictions must be justified on a case-by-case assessment as an exception to the stringent liberalising regime of the EU internal market (Domurath 2019).

On the other hand, however, the CJEU also accepts that the proliferation of STRs carries a number of social risks that public authorities can legitimately address through proportionate restrictions. It notes in particular the relevance and legitimacy of ensuring access to housing, protecting the "urban environment" and promoting "social diversity"—even though such goals are presented as purely local or national rather than European concerns. The Court then validates the lawfulness of the Parisian authorisation scheme, as effective in promoting those individual goals—particularly, it interestingly notes, in relation to owners of multiple properties, who are thus identified as posing the most significant social risk (para. 69). The CJEU also finds the quantitative limitations on the number of available STR authorisations to be a proportionate measure, if administered by local authorities with knowledge of the particular needs and objective circumstances of each locality or neighbourhood—thus presenting the problem as spatially highly contained. Within this framing, however, local authorities are not handed a blank cheque: the CJEU places emphasis on the quality of the evidence (including "studies or other objective analyses") submitted by the French government and the City of Paris (paras 69 and 88)—a type of evidence that, it is implied, will be necessary to resist future challenges to similar STR regulations, thus requiring an administrative capability and resources that may not be available to many municipalities if faced by similar court challenges (Kramer 2024). The Court also appears to suggest that public authorities cannot go as far as to entirely destroy the STR market as a whole (para. 89).⁵

⁵ Later the CJEU also appeared to suggest that STR operators should be allowed to trade authorisations for STR provision (para. 94).

Thus, when the case against the Ciutat Vella restrictions reaches by appeal the Spanish Supreme Court, the EU law framework for assessing the legality of STR restrictions has been set by the CJEU, in terms formally and uniformly binding on all domestic courts. In its decision of 26 January 2021 (STS 75/2021), the Supreme Court does rely heavily on *Cali Apartments* to validate the PEUAT, subjecting the city's exercise of urban planning to EU law, whilst finding that it is justified in the public interest. Nevertheless, the reasoning actually followed shows subtle yet important differences with the CJEU's. Indeed, *Cali Apartments* has been understood in Spain as practically handing a blank cheque to public authorities in addressing the social risks posed by STRs (Macho Carro 2022), thus instantiating a more variable and country-dependent approach to the interpretation of EU law (Marketou and Mendes 2025).

To begin with, the Supreme Court notes that the kind of measure adopted by local authorities, consisting in setting a maximum ratio of tourism to resident homes, is one typical of urban planning—thus implying, contrary to *Cali Apartments*, that the exercise of such powers does largely escape the EU Services Directive, at least if in the form of the measures at hand. In addition, much of the Spanish Court's emphasis is on the scale of the problem faced by the city, rather the instrumental ability of the PEUAT to address it. The focus is therefore not on technocratic market governance, but on the greater importance of social concerns over economic interests. Moreover, those social concerns are identified differently from the CJEU: where the latter references individual goals whose advancement can be empirically measured and objectively evidenced (such as facilitating access to housing), the Spanish judges focus instead on the preservation of the “way of living” of the Ciutat Vella and on the tension between residents' way of life and that of tourists. It follows that deference is owed to the local government, as the one who “best knows the city of Barcelona”. It is the defence of the city itself, taken as an “interdependent whole” (de Witte 2025, 26), that thus justifies the restrictions. In light of this, it is worth pointing out that the Supreme Court joins the CJEU in constructing the conflict as primarily a local issue, echoing the tendency identified in the previous section.

The Spanish Constitutional Court has taken a similarly (or even more) deferential line, when hearing a challenge brought by a number of conservative MPs against the Decret-Llei 3/2023 (STC 64/2025). Even if the challenge was for an alleged violation of the Spanish Constitution, we see again a notable contrast with the CJEU's more rigorous scrutiny of STR restrictions—even if the Spanish judges again present their conclusions as fully aligned with those of the top EU Court. To begin with, the Constitutional Court brushes aside claims based on the right to property. STR restrictions, it reasons, merely serve to define the contours of that right rather than restrict any of its constitutionally guaranteed core components. It also notes that such restrictions are, in any case, inherent to the exercise of urban planning powers, which the Constitutional Court emphasises are functionally oriented to the protection of the right to housing—and which EU law, it notes cursorily (but not in truth consistently with *Cali Apartments*), does not in any way undermine. A further noteworthy aspect of the decision is its broader spatial framing of the social risks attached to STR proliferation. One of the complaints against the Catalan statute was the fact that it impinges on the competences of local authorities, by preventing them from regulating STRs more liberally if they so wish. The Constitutional Court answers by positing that the problem posed by STRs is spatially multi-dimensional, as it involves both purely local knowledge and circumstances, but also

relations that go beyond particular towns. The main example is population displacement triggered by rising property prices, which makes it appropriate for STRs to be subject to multiple levels of regulation. Against the CJEU, therefore, and as suggested earlier by the SCJC, the social risks of STR proliferation are not the sole concern of specific municipalities, nor should mobility be seen as exclusive to tourists.

In sum, while the arguments of the STR lobby have found some success before the CJEU (in framing STR regulations as primarily economic), the EU's top court has also, like Spanish judges, proven receptive to countervailing concerns. How exactly those concerns are understood and addressed has varied, however. While the CJEU has created space for restrictions on STRs as an exception to market principles to address discrete social risks faced by individual cities and subject to technocratic review, Spanish courts have gone further through an alternative framing that, as previously developed by activists and local authorities, places an emphasis on the maintenance of community life by residents, foregrounds the social dimension of the problem over its economic one and even presents it as transcending individual localities.

Nevertheless, on the different issue of whether platforms can be legally targeted or made to some extent responsible for addressing the social risks attached to STRs, the position taken by courts has been markedly more sympathetic to claimants (Kramer 2024). On this front, Airbnb has also proven very active in litigating, but with greater success. Indeed, as interpreted by the CJEU, EU law stands decidedly in the way of regulatory efforts, with Spanish courts appearing unable to take a more deferential position. As stated earlier, already in 2014 the Catalan government had fined Airbnb and Homeaway for posting properties without the required registration. These fines were challenged judicially on the basis of the EU eCommerce Directive (2000/31/EC), which posits that providers of "information society services" are (for the most part) subject only to the jurisdiction of the place of establishment (Ireland, in Airbnb's case). The key question was therefore whether STR platforms qualify as mere "information society services" or may instead be treated as actual providers of accommodation. If the former, the eCommerce Directive would apply and thus Airbnb and Homeaway would be shielded by EU law from local STR regulations.⁶

When the cases reach the Superior Court of Justice of Catalonia, it reasons that platforms' role is not reducible to neutrally and passively processing STR transactions, as would befit a mere provider of IT services. Rather, its control over the organisation of the information provided, the management of the bookings and the processing of the payments make its role so "active" as to be the true "centre of the [STR] business" (STSJC 751/2018, STSJC 931/2019). Airbnb and Homeaway cannot thus be "exempt" of responsibility in relation to STRs, under local powers and regulations. However, as these decisions were being appealed to the Spanish Supreme Court, the CJEU rendered its landmark *Airbnb Ireland* judgment (Case C-390/18). At stake were attempts by French authorities to enforce real estate agent regulations against Airbnb. The CJEU found these

⁶ The eCommerce Directive does allow exceptions (like the Services Directive), but their regime is considerably more restrictive: (1) they must be grounded per Art 3(4)(a) on a set of limited reasons comprising only public policy, public health, public security, and the protection of consumers (and therefore no consideration related to housing or urban planning), and (2) their adoption per Art 3(4)(b) must follow a specific procedure involving notifications to both the platform's host State and the EU Commission.

attempts contrary to EU law, as a result of the jurisdictional limits set by the eCommerce Directive. In its reasoning, much importance is attached to the fact that it remains possible for STR transactions to take place without the platform's mediation (as owners can resort instead to real estate agents and other intermediaries), and also on Airbnb not setting prices or other key terms of the contracts between hosts and guests. It is on this basis that the CJEU concludes that Airbnb's business consists in simply facilitating transactions, rather than providing accommodation—so the very opposite of what the Catalan tribunal had previously found. Rental platforms are therefore placed largely beyond the regulatory reach of the local authorities where the housing issues arise, who as a result are left without an essential means of enforcing STR restrictions (Aguilera *et al.* 2025). Thus, when the appeals by Homeaway and Airbnb are subsequently resolved by the Supreme Court, it has little choice but to refer to the CJEU's case law, and rule the fines unlawful (STS 1818/2020; STS 6/2022).

Airbnb Ireland can be criticised for the striking narrowness of its framing: the function of Airbnb, the CJEU tells us, is to ensure that hosts and guests make fully informed decisions when entering into an STR. This is a high idealised understanding of the STR market that ignores the reality of the power exerted by Airbnb. This power concerns hosts, first of all, since they realistically depend on the platform to find guests and are subject to Airbnb's disciplinary power in their management of the property (that is, if they are to reap the extraordinary profitability associated with STRs in tourist destinations: Chapuis-Doppler and Delhomme 2020). But Airbnb's power goes also beyond hosts: it is a "market maker", enabling STRs to arise as a mass business in itself (Busch 2018) and thus causing huge parts of the residential housing stock in tourist destinations to shift to much more profitable assets (Gil 2024). It is not insignificant, in this regard, that scholars speak of this broad process of urban transformation as "Airbnbification" (e.g. Crespi Vallbona and Galeas Ortiz 2023) or that in common parlance (and indeed much of the academic literature) a STR is often referred to more simply as an "Airbnb". Thus, STR platforms also enter into highly asymmetrical relations with local communities, over whom they exert considerable power. Such relations are very real, and to take them into consideration would have suggested, against the CJEU's reductive "mere intermediary" framing, that Airbnb does hold a central position in STR relations—and so ought to be subject to local jurisdiction.

3.2. Edinburgh

The main representative of STR operators in Edinburgh has been the Association of Scotland's Self-Caterers (ASSC). It has proven a highly influential actor in the Scottish context, by engaging in public debate and sponsoring court challenges. The ASSC deploys discourses similar to Apartur's, through technocratic arguments that cast STR regulation as ineffective, arbitrary and economically harmful. Indeed, local authorities are often berated for imposing disproportionate restrictions on STRs without the support of any empirical evidence (ASSC 2020, 2024a), with such restrictions labelled a threat "to the Capital's thriving tourist economy" (ASSC 2018). The ASSC also compares STRs to residential housing in terms of their "local economic impacts", arguing that the former tend to exceed the latter (Biggar Economics 2024, 1). These arguments find echo in Parliamentary debates, where conservative representatives argue in favour of a more moderate and balanced approach that, in contrast to the more restrictive proposals, also

factors the STR sector's significant contribution to jobs and the economy (Scottish Parliament 2019, 43). Alongside technocratic economic arguments, however, the ASSC has also focused on the identity of STR providers, deepening in this respect Apartur's discursive line. STR providers are presented as vulnerable: their very "livelihoods" are at risk (ASSC 2018), and it is reported that "51 percent of hosts in Edinburgh said they used the income from hosting on Airbnb to make ends meet" (ASSC 2020). The ASSC then insists that these vulnerable lower-to-middle class families are being "convenient[ly] scapegoat[ed] for longstanding failures in housing policy" (ASSC 2020). It is also notable that STR providers are normally referred to as "self-caterers": while this term refers grammatically to the actual guest of a self-catering accommodation, here it is applied to the STR property owner or operator, probably to connect with imaginaries of self-made, independent and hard-working individuals. Equally noteworthy is its Chief Executive's reference to the ASSC's constituency as "Scottish indigenous businesses" (ASSC 2024a), thus disputing the definition of community and belonging put forward by grassroots activists.

The ASSC has also been very active in supporting strategic litigation against Edinburgh's STR regulations, and it is probably on this front that it has achieved greatest success. Litigating in the UK is very expensive—considerably more so than in Spain—and for this reason Living Rent has denounced the ASSC-supported claims as a form of lawfare by "deep pocketed" actors trying to subvert local democracy (Living Rent 2024). There are two notable cases in this context, resolved by the same judge (Lord Braid) at the Court of Session (Scotland's highest-ranked civil court),⁷ in response to the petitioners' challenges of the licensing regime and planning controls. In both cases claimants won, and symbolically these have been important victories for the STR lobby. The judgments do not replicate the ASSC identity-focused case for STR provision, yet they contain the most restrictive framing of the ones examined in this article. Indeed, the issue is viewed through a narrow proprietary lens, offering strong protection to owners against public intervention and ignoring almost entirely the social and communitarian dimensions of the problem.

The first decision, rendered on 8 June 2023, is the *Averbuch* case. Edinburgh City Council's licensing policy included a presumption against STRs in tenements, which was potentially far-reaching since a majority of the city's population live in flatted accommodation. The presumption is struck down as irrational and oppressive (based on common law principles of judicial review), as well as contrary to the Services Regulations 2009 (which transpose the EU Services Directive, and remain in force post-Brexit as assimilated law).⁸ Lord Braid offers a lengthy exposition of the reform process that led to the amendments in the Scottish licencing legislation, which the City Council policy sought to implement. Here the judge notes evidence about the extent of STR growth, and the driving concerns around their negative impact on "the city and its residents", including the loss of sustainable communities and the character of city areas, anti-social behaviour and the rise of property prices resulting in unaffordable housing

⁷ The Court of Session is divided into the Outer House (which hears cases in the first instance) and the Inner House (which hears appeals). The two cases analysed here were resolved by the former, as no appeal was presented.

⁸ The judge refrained from ruling on the third claim based on a violation of the right to property, considering it premature.

(paras 5-11). It is noticeable, however, that these concerns do not then feature in Lord Braid's reasoning. The emphasis lies instead on a somewhat rigid distinction between the functions of planning and licensing authorities: it is for the former to determine if a particular type of property is suitable for STR, whereas the latter should focus exclusively on ensuring that STRs "are safe for visitors, and to address issues raised by neighbours" (para. 27). This distinction proves fatal to the City Council's policy of restricting STRs in tenement accommodation, as it would lie outside the proper functional remit of its licensing powers. The decision comes therefore to focus solely on issues related to the safety of the tourist visitors and the potential nuisance suffered individually by the immediate neighbours (excessive littering, noisy parties, etc.). Entirely gone are structural or collective considerations related to housing, sustainable communities or urban identity—in contrast to the CJEU's reasoning in *Cali Apartments* and the Spanish decisions but comparably to *Airbnb Ireland*. As a snapshot of the STR debate, therefore, the *Averbuch* decision is strikingly reductive.

In the second decision, *Muirhead*, Lord Braid turns to the planning side of things. Pursuant to the 2019 reform of planning legislation (discussed earlier), the designation of the whole city of Edinburgh as an STR control area (from September 2022) entailed that the conversion of any residential property to STR accommodation would require planning permission. The Council took the view that this requirement also applied to conversions that had already happened before the legislative reform, and it was against this position that the challenge was brought. The issue is approached by the judge as an exercise in statutory construction, i.e. the proper interpretation of the applicable Scottish planning legislation. Did the legislator intend for that legislation to also apply retrospectively? Much insistence is laid on the question of "unfairness": the more unfair it is for legislation to apply retrospectively, the more explicitly such retrospective application should be provided for by the legislator (para. 27). Through this framing, the social dimension of STRs disappears again. Indeed, the judge focuses first and foremost on the literal language of the Scottish statute (rather than considering also the legislative purpose behind the reform), to find that it does not at any point expressly provide for retrospective application. "Unfairness" is then measured exclusively in terms of the impact that retrospective application would have on the proprietary and financial interests of STR operators, who "in each case would be entitled to conduct their affairs on the premise that such use would be allowed to continue indefinitely" (para. 31). Lord Braid then considers such impact to be so significant as to raise the serious possibility that it would amount to a violation of the right to property under the European Convention on Human Rights (para. 34). Finally, in response to the point raised by Edinburgh City Council that failing to apply the planning permission requirement to current STR operators would "emasculate" the legislation "of much of its usefulness", the judge again circumvents any substantive purposes related to housing or the preservation of resident communities and city identity, by presenting the purpose of the legislation as a purely formal one: it is merely to clarify the circumstances in which planning permission should be required (para. 33). Accordingly, *Muirhead*, like *Averbuch*, succeeds in reducing the conflict around STRs to those of the individual interests immediately involved: in the former decision those of STR operators, in the latter those of tourists and immediate neighbours. The residents' interests and the city's as a whole play no role.

3.3. *Comparative analysis*

On behalf of rentier interests, STR associations and conservative representatives show remarkable convergence in the two contexts of our analysis. This can be observed first in their litigation strategy to challenge the legality of STR restrictions, which has been largely effective. Even if the lawsuits themselves have not always been won by the claimants, they are nevertheless impactful in shaping (and preventing) subsequent regulatory activity by local authorities (ASSC 2024b), and more broadly undermining the “credibility and enforceability” of STR restrictions (Martínez Mata 2025). Second, there is commonality in the public discourses articulated, where they have advocated for a market-oriented, liberal regime for STRs, emphasising the latter’s contribution to economic growth and even claiming that they enhance tourism sustainability. There has also been a striking shared focus on the very identity of STR providers, as individuals and families characterised by their virtue (through their honest hard work in investing in a property and transforming it into a profitable asset), vulnerability (as their very livelihood depends on the unrestricted operation of their STRs) and community membership (in contrast to large hotel corporations). Through these discourses, STR associations have publicly challenged the definition of belonging put forward by activist groups, mobilising alternative imaginaries of who is a member of the “local community”.

When it comes to judges, however, the discourses that appear in the case law are markedly different. The Scottish Court of Session has taken a strict approach that, in a way, appears to be the most regressive. Instead of embracing the kind of economic or identity-focused arguments articulated by the STR lobby, it has stripped the issue almost entirely of the structural and collective dimensions that have led to the current restrictions, concentrating solely on the proprietary interests of individual STR operators and their relationship to government and immediate neighbours. Spanish courts, by contrast, have tended to frame the STR problem as essentially a social one that even transcends single municipalities, while invoking the preservation of city life and interests of local residents as overriding concerns. In so doing, they have also taken a subtly but significantly different position from the CJEU’s case law (despite formally adhering to it), which frames STRs first and foremost as an economic service participating in the EU internal market (and therefore protected as such), while accepting that certain restrictions can be justified if proportionate and targeted at discrete and locally contained social concerns. However, when it comes to regulating Airbnb and similar platforms (an issue that has not arisen in Edinburgh), the influence of the top EU court has been decisive, imposing a highly reductive understanding of these companies’ participation in STR relations, thus displacing prior attempts by Spanish courts at alternative (and more realistic) assessments.

These divergences can no doubt be explained in part as an expression of different legal and institutional cultures, as well as social attitudes to tourists and touristification. These comparisons should nevertheless be qualified by pointing to the more modest impact of the Scottish rulings. While the ASSC has unsurprisingly trumpeted the two decisions as “a victory for law and common sense” (ASSC 2023), their practical consequences remain limited when it comes to the Edinburgh Council’s ability to control and restrict STR provision. Indeed, the challenges were only directed at more peripheral design features

of the regime initially adopted by the city (mainly the presumption against licensing in tenement buildings and the applicability of the planning requirement to STRs already in operation), so none of the essential components of the new STR-restrictive Scottish regime have been affected by the rulings. Indeed, it remains the case that STRs in Edinburgh are now subject to a licensing requirement, even if authorities assessing licence applications will no longer take into consideration the type of area or building at stake (City of Edinburgh 2025). More importantly, new STRs must obtain planning permission, which, as explained earlier, will usually be denied in residential buildings (particularly tenements).⁹ Thus, for all the narrowness of the Court of Session's framing, the mechanisms for judicial review available in the Edinburgh context have only offered limited protection to rentier interests.¹⁰ By contrast, the potential reach of such mechanisms in Spain is considerably larger, given the channels for constitutional review that do not exist in Scotland and the continued integration of the Spanish judiciary within the EU's structure of judicial scrutiny. In this respect, it is noticeable that the judicial challenges brought in Spain examined here have all been directed against the legality of central aspects of the regime, such as the very possibility of an authorisation scheme and a neighbourhood-dependent cap, and the existence of valid local and regional competences to regulate on this issue, including by rendering platforms accountable. Going forward, it is also open to question how Barcelona's total ban will fare under this more rigorous system of judicial review. EU scholars are certainly sceptical of its chances of surviving a potential proceeding before the EU's top court (de Witte 2025), but the possibility of it doing any better before Spanish courts is also in doubt.

4. General conclusion

In spite of pending litigation, there is little denying that in a short period of time, a mere decade or decade and a half, the social perception and regulatory framework of STRs has completely shifted in the two cities. Remarkably, while Barcelona and Edinburgh have different legal and institutional frameworks and cultures, histories of tourism and forms of socio-political engagement, our analysis has brought to the fore the substantial commonalities in how this process of socio-cultural, legal and political change has unfolded. Public perceptions have shifted largely thanks to the work carried out by grassroots activists, whose framing of STRs as socially corrosive has shaped political debates and ultimately been embraced by public authorities—in Barcelona to the point of recently adopting the 2014 demand to “abolish all tourist flats” as city policy. In parallel, STR associations in the two contexts have resisted emerging regulations through strikingly similar public discourses that emphasise the economic benefits of the sector while advancing alternative visions of vulnerability and belonging—with the opposition between the two forms of social mobilisation matching in the Catalan and Scottish parliaments onto a right-left divide. Moreover, rentier interests in the two

⁹ Moreover, it is not the case that STRs already operating before the designation of the control area are exempt: planning permission must still be sought if converting to STR constitutes a “substantial change of use” – something that, as discussed earlier, must be assessed case by case.

¹⁰ Brexit has also resulted in the jurisdictional limits of the e-Commerce Directive disappearing, so potential efforts at enlisting platforms in monitoring legal compliance by STR operators would not face that particular legal obstacle (which in the Spanish case, as explained, has proven decisive).

settings have also shown in common a savvy engagement with the courts of justice, even if with varying success and resulting in strikingly different judicial approaches to the problem of STRs. By contrast, the engagement of residents and activists with the judicial system has been practically non-existent. Even if they have tended to frame their demands through vocabularies of rights (such as the “right to housing” or a vague “right to the city”), it has been for public authorities to mobilise such arguments defensively before courts (to support the legality of STR restrictions), attaining some success in that respect. While this may illustrate the functional operation of local democracy, it also suggests that regular citizens and grassroots activists remain, in the context of our study, comparatively distant from judicial institutions—whose role has proven to be, in the conflict of STRs, mainly that of a formidable shield for rentier interests and an obstacle to the implementation of restrictive policies. That is not to say, however, that courts have not shown receptivity to the visions of STRs first articulated by activists—even coming close, in Spain, to recognising some notion of a “right to the city”. In any case, it is certainly the case that, as overtourism and housing remain grave social concerns, the conflict around STRs will not cease to develop and, accordingly, we will continue to see social mobilisation, new regulations and courts called upon to intervene—all of which will no doubt contribute to further evolutions in the public discourses around this now controversial practice.

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