

Study XII - Doc. 17
UNIDROIT 1977
(Original: Spanish)

U n i d r o i t

INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW.

COMMITTEE OF GOVERNMENTAL EXPERTS
FOR THE EXAMINATION OF THE PRELIMINARY DRAFT CONVENTION
ON THE HOTELKEEPER'S CONTRACT

O B S E R V A T I O N S
O F T H E S P A N I S H D E L E G A T I O N

on
the preliminary draft Convention

Rome, March 1977

What is the element which differentiates the one case from the other ? The size of the accommodation ? The duration of the contract ? The services offered with the lodgings ? The characteristics of the proprietor ? The form of the contract ? So far as can be deduced from the existing case-law, the difference between a hotelkeeper's contract and the renting out of lodgings for a fixed term centres on the registration of the services agreed upon and provided. In the case of renting out, the length of the sojourn is agreed on in advance and is accounted for at the end of the contract by a lump-sum, the price of the rent, inasmuch as it includes all the services contracted for.

In the case of the hotelkeeper's contract, the services provided are accounted for from day to day and are thus written up in the corresponding invoice.

In this simple framework it is possible to fit perfectly well the distinction between a hotelkeeper's contract and the renting of furnished lodgings for a fixed term, notwithstanding that the services provided are identical and for a limited period, except for the fact that this period may be interrupted at any time with the result that the services are, from that very moment, interrupted and accounted for in the invoice. (The compensation which the guest has to pay for a booking made in advance is another matter). In the case of renting out, however, the interruption of the enjoyment of the lease brings about no change in the contractual price.

For these reasons, it is proposed that the definition of a "hotelkeeper's contract" in Article 1 be amended by adding between the words "appropriate ancillary services" and "in an establishment under his supervision", the phrase "which are accounted for day by day".

2. It is considered that the drafting of paragraph 2 of Article 4 places an excessive risk on hotels. If failure to reply is equivalent to an express acceptance, the hotelkeeper is held responsible for something

which quite easily he could not know - the going astray of a letter, delay, the incomplete or mistaken addressing of the letter by the sender etc. - which, moreover, may very easily be feigned. We are thinking of the guest who relies on a letter which is never sent, so as to obtain accommodation in an important tourist centre in the high season? In this simple way the hotelkeeper incurs liability and is required to seek accommodation in a hotel of an equivalent or higher category and to pay the difference in price.

In our opinion the present drafting leaves the hotelkeeper without any defence. The Spanish delegation therefore proposes the following wording:

"The hotelkeeper shall be required to reply if the guest has expressly requested that he do so."

We believe that this drafting would remove in practice many problems. On the one hand, for the guest who makes a reservation, what is of interest to him is to know whether a reservation can be made or not; the present wording would oblige the hotelkeeper - against his own interests - always to reply to requests which he cannot satisfy. In the case of a "no" he must always reply but on the contrary in the case of a "yes" - which is of interest to him - he need not reply.

With the drafting suggested by us, it is the interests of the guest which lay down the guidelines for the conclusion of the contract. If the reservation is made, the interests of the guest coincide with those of the hotelkeeper who will reply in furtherance of his business. If the reply is in the negative, the guest's interest to address himself to another hotel will lead him either to request a reply or to allow a sufficient time to elapse before making enquiries of another establishment. In this way it is not possible for a contract to be concluded without the knowledge of one of the parties, as is permitted by the present wording.