

UNIDROIT 1978
Study XII - Doc.36
(Original: English)

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

OBSERVATIONS
OF THE IRISH GOVERNMENT
on Article 22 of the preliminary draft Convention

Rome, April 1978

Article 22

The Irish delegation wishes to raise, for consideration, the question of the relationship between, on the one hand, Article 22 of the preliminary draft Convention and, on the other, Article 57 of the EEC Convention of 27 September, 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters together with Article 24 of the preliminary draft Convention on the accession of the new member states to the 1968 Convention. The texts of these articles are appended.

The delegation assumes that the preliminary draft Convention on the Hotelkeepers Contract will constitute a convention "in relation to particular matters" which governs jurisdiction, recognition and enforcement of judgments within the meaning of Article 57 of the 1968 Convention and that, accordingly, Article 57 will have effect so as to exclude the application of the rules of jurisdiction provided for in the 1968 Convention in favour of the rules provided for in the draft Convention on the Hotelkeeper's Contract.

It also seems clear that Article 24(2)(a) of the draft accession Convention (which provides for recognition and enforcement of judgments given in the exercise of jurisdiction provided for in a convention on a particular matter) will operate so that a judgment given in an EEC State in exercise of jurisdiction provided for in the proposed Convention on the Hotelkeeper's Contract will, under the EEC Conventions, be afforded recognition and enforcement in another EEC State which is not a party to that convention.

However, the relationship between Article 24(2)(b) of the draft Accession Convention and the draft Convention on the Hotelkeeper's Contract is not so clear. That Article applies where the convention on a particular matter contains conditions for the recognition or enforcement of judgments. In that event, those conditions are to apply and, in addition, the procedure of the 1968 Convention may be applied. From a practical point of view it is a matter of some importance to be clear as to whether Article 22(3) and (4) of the draft Convention is to be regarded as containing conditions for recognition or enforcement for the purpose of the 1968 Convention. Upon the answer might well depend the need to establish special procedures for the recognition and enforcement of judgments under the Hotelkeeper's Convention.

The foregoing raises the question as to whether, if the provisions of Article 22(3) and (4) are to be regarded as conditions, these conditions are exhaustive. Should not Article 22 also allow enforcement to be refused on the grounds of fraud or public policy?

A separate point arises on Article 22(1). The word "or" in the 4th line (English text) would seem to indicate that the consent jurisdiction provided for is an alternative to the heads of jurisdiction set out at (a) and (b). In other words, the plaintiff may ignore an agreement as to jurisdiction and choose a court in the State where the hotel is situated or where the defendant has his habitual residence. The Irish delegation suggests that consideration might be given to making

the consent jurisdiction an exclusive one, particularly in the case of agreements entered into after the dispute has arisen.

The Explanatory Report does not clarify the foregoing issues. On the other hand it raises other issues which will be raised at the forthcoming meeting of the Committee of Governmental Experts.

Extract from the Judgments Convention of 27 September 1968

Article 57

This Convention shall not affect any conventions to which the Contracting States are or will be parties and which, in relation to particular matters, govern jurisdiction and the recognition and enforcement of judgments.

Extract from proposed Accession Convention

Article 24

With a view to its uniform interpretation, Article 57 of the Convention of 27 September 1968 shall be applied in the following manner:

- (1) The Convention of 27 September 1968 shall not prevent a court of a Contracting State which is a party to a convention on a particular matter from assuming jurisdiction in accordance with that convention, even where the defendant is domiciled in another Contracting State which is not a party to that convention. The Court shall, in any event, apply Article 20 of the Convention of 27 September 1968.
- (2) (a) A judgment given in a Contracting State in the exercise of jurisdiction provided for in a convention on a particular matter shall be recognised and enforced in the other Contracting States in accordance with the Convention of 27 September 1968.
- (b) Where a convention on a particular matter to which both the State of origin and the State addressed are parties lays down conditions for the recognition or enforcement of judgments, those conditions shall apply. In any event, the provisions of the Convention of 27 September 1968 which concern the procedures for recognition and enforcement of judgments may be applied.