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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

OF THE SWISS DELEGATION

on

the preliminary draft Convention

Rome, November 1977

CONVENTION ON THE HOTELKEEPER'S CONTRACT

Alternative preliminary draft concerning Articles 1 to 12 as reproduced in Doc. 14, now Articles 1 to 9 as contained in Annex III to Doc. 21, submitted by the Swiss delegation as a basis for discussion.

Article 1 (Definition and substantive field of application)

1. Under the hotelkeeper's contract within the meaning of this Convention/ the hotelkeeper undertakes on a professional and temporary/ basis to provide the guest with accommodation and appropriate services on premises under his supervision, for a price including board and lodging/ which the guest agrees to pay him/.

2. This Convention shall not apply to any contract by which accommodation is provided on a vehicle being operated as such in any mode of transport.

Article 2 (Territorial field of application)

This Convention shall apply to any hotelkeeper's contract to be performed on premises situated on the territory of a Contracting State.

Article 3 (Formation of the contract)

1. The contract shall be concluded as from the time when the hotelkeeper expressly agrees to provide the guest with the accommodation and services requested.

2. The validity of the contract shall not be subject to any requirements as to form.

Article 4 (Duration of the contract)

1. The contract may be concluded for a determined or an indeterminate period.

2. A contract concluded for an approximate period of time shall be deemed to be concluded for a determined period corresponding to the shortest period within the period approximately defined. For the purpose of this provision, an approximate reference to a week shall be equivalent to seven days and such/ a reference to a month to twenty-eight days.

3. If the contract which is concluded for a determined period does not make provision for tacit renewal, the guest may only continue to occupy the accommodation beyond the term fixed on the basis of a new contract.

4. If the contract is concluded for an indeterminate period, the hotelkeeper or the guest may terminate it each day by expressing his intention in this regard to the other party before midday, or such other reasonable time as may be provided by the contract or by the regulations of the hotel.

5. On the day of the termination of the contract, the guest may be required to vacate the accommodation at such reasonable time as may be provided by the contract or by the regulations of the hotel. If no such time is specified, he may occupy it up to 2 p.m.

Article 5 (Obligations of the hotelkeeper)

1. The hotelkeeper shall provide the guest with such accommodation and services as agreed between them and/or could legitimately be expected.

2. If the guest cannot obtain them or obtains them only in circumstances which considerably reduce their enjoyment, he may terminate the contract or require a proportional reduction in the price of the board and lodging.

3. The hotelkeeper shall compensate any damage actually suffered by the guest, unless he proves that performance of his obligations has been rendered impossible by an unforeseeable and unavoidable event; the guest may however only recover damages to the extent that the hotelkeeper does not obtain for him accommodation equivalent to that provided for in the original contract, taking upon himself additional expenditure entailed by the substitution.

Article 6 (Position of the guest as debtor)

1. If the guest fails to occupy the accommodation requested and placed at his disposal for the whole or any of the period agreed, he shall nevertheless pay the price of the board and lodging unless he proves that such failure was due to an unforeseeable and unavoidable event.

2. The hotelkeeper must deduct from the price of the board and lodging such profit as he has acquired by another use of the accommodation or that which he has failed to acquire on account of his own negligence.

3. However, and in the absence of express agreement to the contrary, the compensation payable to the hotelkeeper under this article shall not exceed :

- (a) 75 per cent of the price of the board and lodging provided for in the contract for the first two days and
- (b) 40 per cent of the price of the board and lodging provided for in the contract for the five following days, no compensation being payable for the following days.

4. In the absence of (express) agreement to the contrary, no compensation shall be payable if the hotelkeeper has been informed of the cancellation of the reservation :

(a) for a stay not exceeding two days, not later than midday on the day provided for the occupation of the accommodation;

(b) for a stay of from three to seven days, not later than two days before the date provided for the occupation;

(c) for a stay exceeding seven days, not later than three days before the date provided for the occupation.

5. When the guest relinquishes the accommodation before the termination date of the contract, the requirement of notice under paragraph 4 of this article shall be determined by reference to the date on which the guest relinquishes the accommodation.

Article 7 (Obligations of the guest)

1. The guest shall use the accommodation placed at his disposal with the necessary care and shall show due consideration to the other guests and to the staff; he shall also observe such reasonable regulations of the hotel as are duly brought to his notice.

2. If the guest is persistently in breach of his obligations, notwithstanding the protests of the hotelkeeper, the latter shall be entitled to terminate the contract immediately.

3. The guest shall compensate the hotelkeeper for any damage caused by behaviour on his part involving fault.

Article 8 (Payment of the price of the board and lodging)

1. The guest shall pay the price of the board and lodging provided by the contract or by the regulations of the hotel.

2. In the absence of such provision, the price of the board and lodging shall be payable at the end of each week if the stay exceeds one week, and at the end of the stay if it is shorter.

3. If the parties have agreed on the payment by the guest of a sum of money by way of deposit, this sum shall be deemed in the absence of agreement to the contrary to be an advance payment on the price of the board and lodging.

4. If the guest, after due notification, does not pay the price of the board and lodging within the time stipulated by the contract, by the regulations of the hotel or by paragraph 2 of this article, or if he does not pay the sum agreed upon by way of deposit, the hotelkeeper shall be entitled to terminate the contract immediately.

Article 9 (The hotelkeeper's right of retention)

- C.f. Article 19 of the preliminary draft contained in Doc. 14.