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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
TUNISIAN NATIONAL OFFICE FOR TOURISM
on
the preliminary draft Convention

Rome, December 1977

This set of legal rules which seeks to unify and to harmonise international legislation on the subject of the hotelkeeper's contract deals both with the latter, its scope of application and the rules governing it.

An overall study of the legal rules being put forward leads us to formulate some observations of a legal nature as also one or two suggestions of a more technical nature.

As regards our observations of a legal nature, we note that the fact that this preliminary draft - in its 25 articles - is concerned with the specific problem of the hotelkeeper's contract has in no way lessened its relationship to the general subject of contractual obligations as defined in civil law. This is illustrated by the prominence which the draft gives to such concepts as "vis major" "civil liability", "the duty to provide for the guest's safety", "the right of detention".

Moreover, based as it is on the model of countries with a civil law tradition and given its similarity to Tunisian civil law, this preliminary draft is in no way incompatible with the latter. As a result there would seem to be no impediment to its being adopted by Tunisia. This does not however alter the fact that it should rather be adopted in the style of an international convention than as a model law, as the former method would facilitate its ratification by the National Assembly of Tunisia.

Our suggestion of a technical nature relate either to the ambiguity affecting some of the provisions of the preliminary draft, or to the imprecision inherent in others or else to the laxist view evident in some of the draft's terms.

For example, Article 4 (2) in which it is provided that "failure by the hotelkeeper to reply to a request shall be considered as acceptance" creates a considerable ambiguity, as failure to reply to a letter requesting a reservation could just as easily be interpreted as a rejection of such a request.

We would therefore propose a new text, to read as follows: Any written request for a reservation must be answered, either positively or negatively, and such an answer must be in writing. This would entail, in the event of a favourable reply, that the guest would have to send a written acceptance of the offer made him by the hotelkeeper.

As regards the question of damages tackled in Article 9 of the preliminary draft, it would have been better at the outset to have divided hotels into two categories, A and B, of which:

- A. Commercial hotels
- B. Residential hotels

A clarification of this kind would make it easier to fix the amounts of compensation due as also the amount of notice to be given, particularly as it is true that a commercial hotel, with its larger turnover of guests, can rent its rooms more easily than a residential hotel.

In the light of the distinction we propose drawing, the rate to be provided for contracts concluded for an indeterminate period of time, as set out in Article 9 (1), would accordingly read as follows:

(1) Commercial hotels: one time the price of accommodation for one night, expressed as a percentage.

(2) Residential hotels: three times the price of accommodation and breakfast for one night, expressed as a percentage.

As regards Article 9 (2), the notice to be given would be as follows:

- (1) Commercial hotels: one day
- (2) Residential hotels: three days

As regards paragraphs 1 and 2 of Article 10 relating to the compensation and notice to be laid down for contracts concluded for a fixed period of time, these would be apportioned as follows:

(1) Commercial hotels:

(a) Damages: one time the price of accommodation for one night, expressed as a percentage.

(b) Notice: one day.

(2) Residential hotels (depending on whether the contract has been concluded by a travel agency or by an individual without any guarantor. This is a particular which has been left out of the preliminary draft but of which account will have to be taken):

(a) Damages:

- Passing guest: Twice the price of accommodation and breakfast for one night, expressed as a percentage.
- Travel agency guest - the entire remainder of the stay (voucher)

(b) Notice:

- Passing guest: two days.
- Travel agency guest: the entire amount of the services ordered still has to be paid.

As regards the hotelkeeper's liability to his guest for any damage to, or the destruction or theft of the latter's property, as set out in Articles 15 and 16, this needs clarifying as follows:

- (1) Cash deposited in the hotel's till: reimbursement following an enquiry shall correspond to the value entered on the safe-custody receipt.
- (2) Valuable articles deposited in the hotel safe: reimbursement following an enquiry shall correspond to the actualised value of such articles as indicated on the safe-custody receipt.
- (3) Luggage in rooms: in the event of a disaster, reimbursement shall be at the rate of 300 Dinars for each piece of luggage up to the sum of 1500 Dinars per disaster.

The scope of application of the provisions we have just outlined embraces, over and above the interior of the hotel and its dependencies, cars parked in the hotel's car park and the interior of coaches during journeys or on tours organised throughout Tunisia.