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INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW

Observations

of the International Hotel Association on the preliminary

draft Convention on the hotelkeeper's contract

Rome, April 1978

The International Hotel Association is following with interest the work of UNIDROIT aimed at the unification of private law among different countries regarding relations between hotelkeepers and their guests.

After careful examination of the draft Convention on the hotelkeepers' contract, the IHA wishes to put forward certain comments.

A. General Observations

1) First of all the IHA would like to stress that it is very difficult to unify different legislations based on varying economic and social conditions. For example, Scandinavian countries have a special legal system concerning liability and it will be practically impossible for them to introduce a unified law different from their own legislation; this is mainly why these countries refused to sign the Convention of the Council of Europe on the liability of hotelkeepers concerning the property of their guests.

It would not be logical either for governments to modify their legislation regarding hotelkeepers' liability pursuant to the Convention without changing their laws in other areas of liability.

2) The IHA considers that it is almost impossible to apply the same text both to contracts concluded between a hotelkeeper and an individual guest and to contracts signed with an agency or a tour operator. It is impossible to impose the same cancellation notice on a single person or even on a family and an organized group of 100 persons. The damage suffered by the hotelier is so different in the two cases that is unthinkable to give him only a few hours both to relet a room or the whole hotel (Art. 7(4) of the Convention).

To this effect, the IHA wishes to draw the attention of UNIDROIT to the International Hotel Convention (enclosed) signed jointly by the IHA and the Universal Federation of Travel Agencies Associations (UFTAA) governing contracts concluded between hoteliers and agencies or tour operators. For example, cancellation notice for a group is 21 days before the date of arrival for a cancellation of over 50 % and the hotelkeeper is entitled to a compensation of 2/3 of the amount of the cancelled order. These provisions which were expressly accepted by travel agencies, differ considerably therefore from those suggested by UNIDROIT.

The IHA believes that it would be unfair not to apply the same rules to individual guests who reserve their rooms through a travel agency and to guests who come on their own. The IHA wishes that a distinction be made between:

- individual clients (direct or sent by an agency), and
- groups (over 10 people - Art. 37 of the IHA/UFTAA Convention) sent by travel agencies, to whom this Convention or at least most provisions would not apply.

It seems difficult to mix in one document contractual obligations between the hotelkeeper and his guest and non-contractual obligations. The intervention of a travel agency acting either as intermediary, or tour operator would bring serious difficulties in this respect.

3) The IHA believes that the present text is not satisfactory in so far as it fails to take into account either the problems of small hoteliers with low turnover and limited facilities, or those of developing countries, who essentially receive tourists, are not sufficiently protected against no-show and therefore cannot accept such provisions. It is also inconceivable that the hotelkeeper should have an unlimited liability in certain cases while no insurance accepts to cover these same risks without a maximum ceiling.

B. Specific comments

The International Hotel Association makes the following observations regarding the revised articles of the draft Convention (revision of March and December 1977) and those which have not been examined as yet.

Article 1

This contract should apply to competing forms of accommodation and to private people renting rooms; therefore the word "professional" should be deleted in the first paragraph. All accommodation suppliers should be placed on an equal footing and all guests should benefit from an identical protection whatever the establishment they are accommodated in.

Article 3

It seems necessary to adapt the English version to the French text by deleting the additional words "need not be evidenced by writing and".

Article 4

The wording of this article as revised seems to be satisfactory.

Article 5

Paragraph 2 of this article is superfluous and might lead both to confusion and ambiguity in the interpretation. Consequently it could be deleted.

Article 6

In the first paragraph the wording "accommodation and ancillary services requested" should be replaced by "contracted" in English and "contractés" in French.

Article 7

In paragraph 3, in order to protect seasonal hotels, the indication "in the absence of agreement to the contrary" should be kept, but the words "compensation shall not exceed" should be replaced by "should be fixed at".

This article might be worded as follows:

"In the absence of agreement to the contrary and if he cannot quantify the damage he has suffered, compensation payable to the hotelkeeper under this article shall be fixed at :

a) 100 per cent of the price of the accommodation and the ancillary services provided for in the contract in respect of the first two days, and

b) 60 per cent of the price of the accommodation and the ancillary services provided for in the contract in respect of the following five days, no compensation being payable in respect of any subsequent days.

If this Convention were to apply to group contracts concluded by travel agencies, the terms of the IHA/UFTAA Convention should apply, i.e. a compensation of 2/3 of the amount of the order.

It is obvious that the cancellation time-limits mentioned in paragraph 4 cannot apply to groups of 50 to 100 people. It would be completely unfair not to pay any compensation to the hotelkeeper who has booked all his rooms for one night to a group who cancelled its order in the morning of the day of arrival.

The IHA/UFTAA Convention establishes the following time-limits :

. Individual clients - seasonal hotels

- high season	: 30 days before expected arrival
- low season	: 14

. Groups

- cancellation over 50 %	: 21
- less than 50 %	: 14

. Allotments

- individual	: 30
- groups	:
* 100% cancellation	: 60
* exceeding 50 %	: 45
* from 11 to 50 %	: 30
* less than 10 %	: 7

Article 11

It is essential to introduce the words "in the absence of agreement to the contrary" in the first sentence instead of the second one, thus allowing the hotelkeeper, provided he expressly mentioned it in the contract, to consider the advance payment made by the guest as a measure of damages.

Article 13

The text currently in brackets concerning the hotelkeeper's liability for damage to a guest "during a reasonable period preceding or following the time when the guest has the accommodation at his disposal" should be entirely deleted. These periods should be covered by a separate contract and not by the hotelkeepers' contract.

It is not reasonable either to request the hotelkeeper to prove that he was not at fault.

In paragraph 2, there is no reason to impose a greater liability on the hotelkeeper than on other restaurateurs.

Article 14

In order to clarify paragraph b), it could be reworded as follows:

"The hotelkeeper shall be relieved of his liability when damage results wholly or in part from the wrongful act of a third party. In conformity with article 20 c), third parties should be the hotelkeeper's servants when not in the exercise of their duties".

Furthermore, the hotelkeeper should never be liable when damage results from the wrongful act of a third party, even if the hotelier subsequently has the right of recourse against such third party. Only the third party should be liable as the hotelkeeper should not be involved in the guest third party relationship.

Article 15

The hotelkeeper's liability should be limited for any damage to, or destruction or loss of property brought to the hotel by the guest to 100 times the daily price of the accommodation, exclusive of taxes, service charges and additional services.

Article 15 Bis and 16

The same comments as for article 13 apply here regarding the period during which the hotelkeeper is liable.

The cancellation of the words "if having regard to the standing and amenities of the hotel, it is of excessive value", which allowed hotels to refuse to receive some property of excessive value for which they could not ensure safe custody seems to be a retrograde step.

Furthermore, the formula "unlimited" concerning the liability of the hotelkeeper in cases where property has been deposited with him or where he has refused to receive property is not at all satisfactory. Indeed, as no insurance is unlimited in this field, and the guarantee exclusively depends on the quality of the safes installed by the hotelkeeper, the liability could be calculated, as for rooms, on a contract basis, but on a higher one, e.g. 500 or even 1000 times.

Article 18

As the guest should always report the damage to the hotelkeeper as soon as is reasonably possible it would be appropriate to delete the words "failing which he must base his action on the provisions of article 15 bis".

Article 19

In paragraph 4, the wording "or deposits an equivalent sum in the hands of a third party" should be "in the hands of a third party mutually chosen by the parties".

Article 20

Paragraph a) should be cancelled as it assimilates to a guest any person who enters a hotel with the intention of requesting accommodation. The hotelkeeper cannot be liable under the hotelkeepers' contract for a person with whom he has not even concluded an agreement. Indeed, it is difficult to prove the "intention" of a prospective client, and this clause may lead to abuse.

It would be necessary to insert vehicles again in paragraph b) as they cannot be considered as "property brought to the hotel" in view particularly of the difficulty or even the impossibility for the hotelkeeper to protect them.

Moreover, the part of the provision in brackets in paragraph c) should remain because a servant who is not in the exercise of his duties cannot be but a third party.

In the English text, it would be advisable to replace "agents and servants" by "employees".

Article 21

This article must remain under its present form.

Article 22

The whole paragraph 5 should be deleted.

Article 23

In the second paragraph, the period of limitation for actions arising out of hotelkeepers' contract should be 6 months (e.g. as in France).

The claim suspending the period of limitation mentioned in paragraph 4 should be specified.

As the English and French versions of paragraph 5 have a slightly different meaning:

> "that law shall also govern the fresh accrual of rights of action" and "l'interruption de la prescription est également régie par cette loi",

the French text seems to be more satisfactory and the English version should be modified.

Article 24

This article, which is totally unacceptable to hotelkeepers, should be deleted.

Article 25

Paragraph 1 b) might be worded as follows:

"it will set the amount of the limit of liability referred to in paragraph 2 of article 15 at a different sum from that indicated under the said paragraph.

Paragraphs 1 c), d) and e) should be incorporated in the body of the Convention.