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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

ALTERNATIVE PRELIMINARY DRAFT
OF THE SWISS DELEGATION

founded on the discussions and outcome of the
first two sessions of the Committee of experts
and submitted as a basis for consideration at
the third session

Rome, April 1978

Article 1

1. For the purposes of this Convention, a "hotelkeeper's contract" means any contract by which the hotelkeeper undertakes on a professional basis to provide one or more guests with temporary accommodation and appropriate ancillary services in an establishment under his supervision for a price including board and lodging.
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

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

Article 3

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

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 purposes 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 is concluded for a determined period, the guest may only continue to occupy the accommodation on the basis of a new contract; if, however, at the end of the agreed period, the guest continues to occupy the accommodation with the knowledge of, and without any opposition from, the hotelkeeper or if neither has given the notice provided for, the contract shall be deemed to have been renewed for an indeterminate period.

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

5. The guest shall vacate the accommodation occupied by him on the day of the termination of the contract at such reasonable time as is provided in the contract or in the regulations of the hotel. If no such time is specified, he may occupy the accommodation up to 2 p.m.

Article 5

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

2. If the guest cannot obtain from the hotelkeeper performance of his obligations or if he can obtain it only in circumstances which considerably reduce their enjoyment, he may terminate the contract or require a proportional reduction in the charge for 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 make arrangements for him equivalent to those provided for in the original contract and take upon himself any additional expenditure entailed by the substitution.

4. In the absence of agreement to the contrary, the rules laid down in paragraphs 2 and 3 of this article shall apply by analogy to any hotelkeeper's contract concluded by a travel organiser in his own name.

Article 6

1. A guest who, for the whole or any part of the period agreed, fails to occupy the accommodation requested and placed at his disposal in accordance with the contract, shall nevertheless pay the charge for the board and lodging unless he proves that such failure was due to an unforeseeable and unavoidable event.

2. The hotelkeeper shall deduct from that charge 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, the compensation payable to the hotelkeeper under this article shall not exceed:

- (a) 75 per cent of the agreed charge for the board and lodging for the first two days and
- (b) 40 per cent of the agreed charge for the board and lodging for the five following days, no compensation being payable for any further period.

4. In the event of prior cancellation of the reservation, no compensation shall be payable to the hotelkeeper when he is informed of the cancellation at the latest :

- (a) by midday on the day before the day on which the accommodation was to be occupied for a stay not exceeding two days;
- (b) two days before the date on which the accommodation was to be occupied for a stay of three to seven days;
- (c) three days before the date on which the accommodation was to be occupied for a stay exceeding seven days.

5. In the event of the stay being prematurely interrupted, the periods of notice laid down in paragraph 4 of this article shall be determined according to the date on which the guest relinquishes the accommodation and in proportion to the period of the contract which has yet to run.

Article 7

1. In the absence of agreement to the contrary, the rules laid down in Article 6 shall also apply to any hotelkeeper's contract concluded by a travel organiser in his own name for from one to ten guests.

2. When a hotelkeeper's contract is concluded by a travel organiser in his own name for a group of eleven guests or more, and subject to any agreement to the contrary, the compensation payable within the meaning of Article 6, paragraph 2 may not exceed :

- (a) percent of the agreed charge for the board and lodging for the first days and
- (b) percent of the agreed charge for the board and lodging for the following days and
- (c) percent of the agreed charge for the board and lodging for further days no compensation being payable for any further period.

3. In the circumstances described in paragraph 2 of this article, and subject to any agreement to the contrary, the minimum time-limits within which prior cancellation may be made without compensation being payable are:

- (a) fourteen days before the date on which the accommodation was to be occupied for a stay not exceeding seven days when the cancellation concerns more than 50 percent of the group, and ten days before that date when the cancellation concerns a lower number of guests;
- (b) twenty-one days before the date on which the accommodation was to be occupied for a stay of seven to fourteen days when the cancellation concerns more than 50 percent of the group, and fourteen days before that date when the cancellation concerns a lower number of guests;
- (c) thirty days before the date on which the accommodation was to be occupied for a stay exceeding fourteen days when the cancellation concerns more than 50 percent of the group, and twenty-one days before that date when the cancellation concerns a lower number of guests.

Article 8

- 1. The guest shall use the accommodation and any other premises and facilities placed at his disposal with all the necessary care and shall show due consideration to the other guests and to the hotel 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 immediately the contract concluded with the guest; if the guest in question is not himself a party to the contract, the hotelkeeper may nevertheless require that he leave the hotel subject to / hours notice being given/.
- 3. The guest shall compensate the hotelkeeper for any damage caused by his behaviour on his part involving fault.
- 4. The rules laid down in this article shall apply by analogy to any hotelkeeper's contract concluded by a travel organiser in his own name; furthermore, and subject to any agreement to the contrary, the travel organiser shall be jointly and severally liable towards the hotelkeeper for any damage suffered by him as a result of behaviour involving fault on the part of guests on whose behalf the organiser has concluded the contract.

Article 9

1. The guest, or where appropriate the travel organiser who has concluded the contract in his own name, shall pay the charge for the board and lodging in accordance with the terms of the contract or the regulations of the hotel.
2. In the absence of such provision, the charge for the board and lodging shall be payable at the end of each week if the stay exceeds seven days, and at the end of the stay if it is shorter.
3. If the hotelkeeper receives a sum of money in advance, it shall be considered to be an advance payment toward the agreed charge for the board and lodging. In the absence of agreement to the contrary, the hotelkeeper shall return it to the extent that it exceeds the amount due to him under the terms of this Convention.
4. If the agreed charge for the board and lodging or for the advance payment is not paid within the time-limit stipulated by the contract, by the regulations of the hotel or by paragraph 2 of this article, the hotelkeeper shall be entitled to terminate the contract after giving the debtor a time-limit of / / within which to perform his obligations.
5. When a hotelkeeper's contract has been concluded by a travel organiser in his own name and the hotelkeeper cannot obtain or can only partially obtain from him the payment of the charge for the board and lodging, he shall be entitled to recover from each guest on whose behalf the contract has been concluded compensation amounting to 50 percent as a maximum of the charge for the board and lodging corresponding to his individual share.

Article 10

1. By way of a guarantee for the charge for the board and lodging due to him, the hotelkeeper is entitled to detain property brought to the hotel by the person in his debt; such right of detention may not however be exercised as a guarantee for the compensation payable to the hotelkeeper by the guest by virtue of Article 9, paragraph 5 of this Convention.
2. The hotelkeeper may, after sending prior notice to the debtor, proceed to the sale of the property detained by him, in accordance with the law of the place where the hotel is situated, up to the amount necessary to satisfy his claim.
3. The law of the place where the hotel is situated shall determine those effects which third party rights may have on the hotelkeeper's right of detention.

4. The hotelkeeper may not exercise the right of detention referred to in paragraph 1 of this article/ when the debtor provides a sufficient guarantee for the sum claimed or deposits an equivalent sum in the hands of a third party.

Article 11

The hotelkeeper shall be liable for loss or damage resulting from the death of, or any personal injuries to, the guest caused by an event occurring at the hotel /, /or/ on its premises /or any other place under the supervision of the hotelkeeper/ during or within a reasonable period before or after the time when the guest occupies the accommodation, unless that event was due to circumstances which a diligent hotelkeeper could not have avoided and the consequences of which he was unable to prevent.

Article 12

1. Notwithstanding Article 11, when food or drink is provided, the hotelkeeper shall be liable for loss or damage resulting from the death of, or any personal injuries to, the guest caused by its consumption.

2. The hotelkeeper shall be relieved of liability if he establishes
(a) that at the time it was served the food or drink in question was fit for /human/ consumption and provided the safety which a guest was reasonably entitled to expect /having regard to its description and presentation/;

- (b) that the loss or damage was due wholly to force majeure or to an act or omission of a third party or of the victim.

3. Compensation may be reduced to the extent that an unforeseeable event or omission of a third party who is not liable or of the victim has contributed to bringing about the loss or damage or to increasing it.

4. When the loss or damage is due in part to the wilful act or omission of a third party, the hotelkeeper shall nevertheless compensate the victim in full, without prejudice to any recourse action he may bring against that third party./

Article 13

1. The hotelkeeper shall be liable for any damage to, or destruction or loss of, property brought to the premises of the hotel, or of which he takes charge outside the premises of the hotel, during and for a reasonable period before and after the time when the guest occupies the accommodation.

2. The liability referred to in the present article shall not exceed / times the total daily charge for the accommodation, as posted up or which is usually practised. If the accommodation is occupied by several persons, the calculation shall be made by taking account of the total charge for the accommodation and by considering all the occupants as a single guest.

Article 14

The liability referred to in Article 13 shall be unlimited where the damage, destruction or loss is caused by the negligence or by a wilful act or omission of the hotelkeeper or of any person for whom he is responsible.

Article 15

1. The hotelkeeper shall be bound to receive securities, money or other valuables for safe custody unless such property is dangerous or cumbersome or if its value is in excess of / times the limit of liability laid down in Article 13, paragraph 2.

2. The hotelkeeper shall be entitled to examine the property which is tendered to him for safe custody and to require that it shall be put in a fastened or sealed container; he may in addition require that the person tendering it shall make a declaration as to its value.

3. In cases where the property has been deposited with the hotelkeeper or where he has refused to receive property which he is bound to receive for safe custody, his liability shall be unlimited. In those cases where the guest has made a declaration of value, the hotelkeeper's liability shall be limited to the amount stated in the declaration.

Article 16

The hotelkeeper shall not be liable to the extent that damage, destruction or loss is due:

(a) to the negligence or to a wilful act or omission of the guest, or of any person accompanying him or in his employment, or any person visiting him;

(b) to force majeure;

(c) to the nature of the property.

Article 17

In the event of damage to, or destruction or loss of property for which the hotelkeeper is liable under the preceding articles, the guest shall lose his rights if he does not inform the hotelkeeper of the damage as soon as this is reasonably possible unless he proves that the damage has been caused intentionally or by the gross negligence of the hotelkeeper himself/.

Article 18

For the application of this Convention:

(a) with regard to the liability of the hotelkeeper, any person who is on the premises of the hotel as a visitor / otherwise than in the capacity of servant, agent or supplier of the hotelkeeper/ shall be treated as a guest, the limit of liability provided for in Article 13, paragraph 2 being calculated on the basis of the charge for average accommodation;

(b) the expression "property brought to the hotel" shall not include live animals;

(c) the hotelkeeper shall be responsible for the acts and omissions of his agents and servants and of all other persons of whose services he makes use for the performance of his obligations, who are acting within the scope of their employment, as if such acts or omissions were his own;

(d) when the hotelkeeper is liable jointly with a third party for loss or damage caused to a guest, he shall nevertheless compensate the victim in full, without prejudice to any recourse action which he may bring against that third party./

Article 19

When loss or damage governed by this Convention gives rise to a claim based on another ground of action, the hotelkeeper may nevertheless avail himself of the provisions of this Convention which exclude, limit or determine his liability.

Article 20

(Jurisdiction)

Article 21

(Time-bar for actions)

Article 22

1. Any stipulation which would directly or indirectly derogate from the provisions of this Convention shall be null and void in so far as it would be detrimental to the guest/. The nullity of such a stipulation shall not affect the other provisions of the contract unless it can be established that the contract would not have been concluded in the absence of the clauses held to be null and void/.

2. Any clause assigning to an arbitral tribunal a jurisdiction which is stipulated before the event causing the damage shall be null and void unless the contractual partner of the hotelkeeper is a professional travel organiser/.

Article 23

1. Any State may, at the time of signature, ratification or accession to this Convention, declare by notification addressed to ... that:
 - (a) (to be deleted)
 - (b) it will set the amount of the limit of liability referred to in paragraph 2 of Article 13 at a higher sum than / times the daily charge for the board and lodging;
 - (c) Articles 13 to 17 shall not apply to vehicles or any property left with a vehicle;
 - (d) the hotelkeeper shall not be liable for damage, destruction or loss of valuables which have not been deposited with him for safe custody, provided that the availability of such deposit facilities and the consequences of failure to use them have been clearly indicated in the regulations of the hotel and that the loss or damage has not been caused intentionally or by the gross negligence of the hotelkeeper himself./

2. The declarations referred to in paragraph 1 of this article may be withdrawn at any time by notification addressed to