

THE HOTEL CONTRACT

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Abstract

According to the legal provisions, the accommodation space constitutes the tourists' temporary residence and therefore this space is inviolable, excepting the life-threatening situations, the tourists' integrity and their goods, as well as the material base of the tourist accommodations. The control within the accommodation space occupied by the tourist is allowed only under the conditions provided by law. The training of the personnel working at the tourist accommodation related to knowing and applying of these sets of rules is realised by the holders and the managers of the respective hotel.

1. The hotel contract

The accommodation of a tourist determines the appearance, between the two parties, of a series of rights and obligations. These are not the results of some direct negotiations, but they undergo almost totally some legal provisions and acts applicable to relationships between the client and the hotel manager related to the hotel service provision.

It may also be considered that certain elements connected to the quantity, the structure and the quality of the hotel service, its tariff/price list, the beginning and the ending of the hotel service makes the topic of some negotiations. Besides, they are also the single elements recorded in writing between the parties in the case reservations and confirmations made by correspondence.

There are no such regulations and uniyary provisions in this field, although there were some attempts to standardize through widespread usage. The International Hotel Association, (Association Internationale de l'Hotellerie – A.I.H.), founded in 1946, with the headquarters in Paris, is the professional organisation that made numerous efforts to standardize them.

Although there are countries which have a very developed hotel industry the specific regulations and the rules between clients and hotel managers are not gathered/grouped in a single document, they may constitute the text of a virtual contract, which is currently called „the hotel contract”.

In the following they are presented the main clauses of „the hotel

contract”, as they were outlined in practice and as they are found in the specific regulations of our country as well as in the legislation of some European countries with a developed tourism, mainly in France..

2. The freedom to receive

The routine consecrated the hotel managers’ freedom to receive or to decline a client who solicits a reservation. He will make use of this right under its responsibility to insure the security of the other guests, of public order and peace, of morality, as well as the integrity of the goods brought into the hotel by the other guests, of the equipment, the devices and their functionality.

Regarding the managers’ freedom to receive, there are comments whether the manager should invoke this right to refuse a customer if he does not accept the price that includes besides the accommodation, other services, which are not solicited by him. Those who call in question this routine consider it a conditional sale. Its supporters highlight the complex and complementary character of the hotel services and the fact that it is unacceptable to leave the client the decision to dissociate them, moreover when the provider presents unequivocally and in public and beforehand the buying decision, its conditions of sale.

The opposite of receiving is the freedom to interrupt the contract(the dismissal). This freedom of receiving cannot be invoked unless the period agreed upon the accommodation is respected, within certain boundaries and when the customer is denied the accommodation or when he does not respects the contractual clauses. Some regulations limitate this right when a client suffers from a disease and cannot be transported.

The hotel manager is free to accept or refuse pets who accompany the tourists. If they are accepted, the hotel manager may ask for an additional price.

3. The parties’ obligations respecting the use and provision of accommodation

The hotel manager must insure the equipments and the devices, their correct functionality and the free access to them, the basic and supplementary services according to the price required and category of the hotel. He has to respect the rules that protect the residence, the room occupied by the client being considered a temporary domicile. He has to be sure that that the clients know and respect the rules of the hotel, the correct way of functioning of all hotel devices. He has to organise the reception and transmission of the clients’ messages and correspondence, and after their leaving, to convey their messages to the address they indicated or to return them to the sender.

The customer has to leave the room as he received it and with the same inventory and he is responsible for the missing things and the damages that occurred. He has respect the rules of the hotel, to deposit the key at the reception desk everytime he leaves the hotel, not to disturb through his actions and attitude the other guests, to be responsible for the people who accompany him in the hotel.

4. The duration of the contract

When the duration is not stated while making the reservations or when registration is made at the reception desk, the duration is undetermined. For a reservation, that indicates an approximate time for leaving, the first day of this interval is to be considered..

The contract may be extended daily or may cease, announcing the reception desk till noon the latest, or till the hour indicated at the reception.

On the departure day, the customer has to announce the reception that he leaves the room, clears it off, hands over the key and pays all the hotel services. If he does not leave the hotel when the stay is over, he wil be charged for one more night.

Generally, the hotel managers fix an hour (usually 18.00p.m.) when the customers have to check in at the hotel in order to receive the room reserved/booked and in case the client does not show up, the hotel manager may consider the reservation canceled.. Although, if the client arrives later at the location he may require another hour for checking in and the hotel manager may agree.

The customer is not allowed to demand the accommodation earlier than the time indicated to begin the stay. Depending on the availabilities he might be checked in earlier.

5. The obligativity of the reservation

The person who makes a reservation, verbally or in writing, as well as the hotel manager who confirms it, they are liable for respecting it.the written form, thus not compulsory, offers the aggrieved party the proof of the engagement between the parties.

If they not reach another agreement, the contract is considered concluded and the payment is done by the person who made the reservation, even if this is other than the client who benefits from the services..

The reservations may be done and confirmed for a certain accomodation, (a single, a double, an appartment etc.), adding special requirements connected to the location within the hotel (upstairs, sea view) or devices(air conditioning, fridgeetc) or even mentioning the room number.

Cancellation terms

The usual reservation cancellation terms, done by the client, without penalties, are the following. These are calculated in days, according to the day of arrival:

- in cities:3 days
- in resorts:
 - 30 days during peak season
 - 15days during season.

The cancellation terms is fixed so as to allow, under certain conditions of request, the occupation of the cancelled room by another customer. Therefore, in cities, where the tourist flow is permanent and big cadence demand, the stay is medium short, the cancellation terms are shorter, compared with those in the resort hotels, where the tourist flow is not permanent or seasonal.

In this context in may detect a shorter cancellation term during season than during peak season. But during season, with a weak demand and diminished degree of occupation, the risk that a hotel should refuse a customer, due to reservations that might block the entire capacity, some being cancelled afterwards, is minimal.

Prepayments

The coverage may consist in a partial or whole prepayment, in case the customer does not show up, assumed by the hotel manager the time when the reservation is done. The coverage has two forms and the hotel manager has the duty to inform the customer about the prepayment.:

- a prepayment destined to used on the account of ordered services or to cover the taxes in case othe customer does not show up, the difference bing given back to the customer. This prepayment is usually calculated as value of ordered services for a number of days reserved or even its entire value;
- a guarrantee (advance grant), a lump sum, that is given back at the end of the stay or it is held in case the client does not show up, when announced or cancelled under the provided deadline. The contract cancellation due to the hotel manager's fault carries away a compensation for the client, doubling the amount for the guarrantee..

Soliciting the prepayment, the type and the amount, depends on the hotel policy and the respective client.

The hotel routine consecrated the following way of calculating the value of guarrantee, as the result between the value per day of the hotel service and a minimum number of days , as follows:

- a. 15 days stay
 - high season
 - accommodation only: 2 nights
 - full board: 3 days
 - season
 - accommodation only: 3 nights
 - full board: 4 days
- b. over 15 days stay to 1 month
 - high season
 - accommodation only: 3 nights
 - full board: 4 days
 - season
 - accommodation only: 4 nights
 - full board: 5 days

Damages- interests

It is considered that the hotel manager suffers a loss when the client does not show up, cancels under the terms conveyed or communicated by the hotel, postpones or shortens the reserved stay, that justifies the withhold of the guarantee money by the hotel manager.

The real prejudice appears when the hotel manager refuses the accommodation of other customers considering a confirmed reservation or after the anticipated departure of a client when he cannot let immediately the available room

Even if usually a reservation does not carry away always the refusal of other customers (excepting the time when reservations cover the entire hotel capacity), the client who does not respect the reservation, is penalised automatically. This routine, although is not justified every time, is a real prejudice, offers a coverage entire hotel' for the entire hotel's activity, whose perish is often overlooked by the customer, creating within the relationship, customer- hotel manager a guidance without which the services would lack simplicity and accessibility.

On the other hand the hotel manager who does not reserves the confirmed room or the quality of services offered is below the expectations, it causes a prejudice to the client. The prejudice is not recognised when the dissatisfaction of the customer is subjective, respectively, although the service does not correspond from the point of view of quality and quantity, it respects the conditions presented and when confirmed or assumed according to the hotel's category..

The prejudice caused to the client questions not only its coverage but as an emergency the problem of an immediate solution. Prejudiciul cauzat clientului pune nu numai problema acoperirii lui, dar, ca primă urgență, și

problema rezolvării imediate a lui. The guilty hotel manager's obligation has to look for a similar or a superior category hotel accommodation, supporting the price differences for maximum 5 days, but no more than the initial length of the reservation and that to insure the transport to the hotel offered in exchange.

The right to pawn on the tourist's luggages

This right is reputed by the majority of legislations, as a guarantee for the hotel manager's debts created when the services were not paid, enveloping all the goods the tourist brought in the hotel, even if these belong to a third party who entrusted them to the client. The pawn is done through public sale under the conditions of evaluation, organisation and the term provided by national laws.

The Romanian civil code mentions among „the privileged debts over every goods”. Art. 1730 point 6” The debts an innkeeper has over the travellers' goods who found lodging in his inn”

The customers' duty towards the hotel managers and restaurants are prescribed in 6 months time, according the art. 1930: „the disposal[...] of the waiters and hosts, in order to nourish and lodge that procures,[...]are prescribed in 6 months time.

The hotel managers' responsibility/liability

The hotel managers' and restaurant owners' civil liability, in their activity is of two types:

- delictual sau cvasidelictual liability;
- contract liability.

The delictual liability results from art. No. 998 and the followings from the Romanian civil code. Therefore, art. No. 998 states that: „ every man's deed, that causes a prejudice to another person, coerces the first one, to repair it”, art. No.999” The man is responsible not only for the the prejudice he caused by his deed but also for the prejudice he caused by his negligence and his indiscretion”., and art. 1000 align.1 and 3, shows that” We are also responsible for the prejudice caused by the people's deed who we are responsible for or the goods which are in our care.[...] The masters and principals, for the prejudice caused by the servants and their alleged for the job they were entrusted.

The content of the two articles is similar to that of the articles 1832 and 1934 from the French civil code.

Briefly, for that the delictual and cvasidelictual liability of the provider to be carried away, three cumulative conditions must be fulfilled :

- there has to be a loss that determines a personal prejudice for that who requires its solution, producing evidence in this respect;
- the loss should result from the provider's fault: if it is on purpose, there is a felony, if not, there is a cvasidelict;

- there has to be a connection of causality between the deed and the prejudice. If the prejudice has as cause a third party's deed, an unforeseeable circumstance or force majeure, the responsibility of the provider is not involved.

The provider's contract liability may be evoked starting from the idea that between the customer and the provider there is a contract, resulting obligations for the provider, including the insurance of the client's security. In this case the starting point is not the deed that has to be punished but the damage that has to be mended and it is easier to prove than the deed.

The hotel manager's varied responsibilities are reflected in the following operations: declarations of registry for deceases or births occurred in the hotel, the registration in the Trade Register, the alteration of data in the register when it is necessary and the agreement over some field alterations, the cancellation from the register in case of ceasing to activate, the interdiction to change the destination of a hotel etc.

Different responsibilities of the restaurant owners may ask a prepayment that may be kept in case the customers cancel the festive dinner reservations, for groups, but not for the bar and drinks, the culinary and wine names must be exact and according to reality (the game dishes must contain game meat and the fish names must correspond to reality etc.); the quality of the products must avoid getting the customers sick (altered/rotten food or impurities).

The hotel manager's criminal liability may be evoked in the following situations:

- the theft of the tourist's objects
- breaking into/burglary (the hotel room is according to the law a domicile for the tourist, the discussion appears when the hotel staff attempt to enter abusively the room of the tourist or when the removal from the hotel of a tourist who did not pay the services or disturbs the other customers is carried on);
- pimping;
- not keeping the evidence of the tourists from the hotel;
- pool surveillance.

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