

CONTRACTUAL LIABILITY OF THE GUEST FOR DAMAGE  
IN DIRECT HOTEL-KEEPER'S CONTRACT

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ABSTRACT

*The article analyzes recent tendencies in the Croatian and comparative laws according to which the contractual liability of the guest for proprietary and non-proprietary hotel-keeper's damage is acknowledged. Through analysis of the same institute in Croatian and comparative law it is demonstrated that contractual liability of the guest, in addition to specific duties from various legal systems, determines the breach of the two main obligations of the guest: payment the price of the services and behavior in the hotel premises in accordance with the same purpose. Contractual liability of the guest for proprietary and non-proprietary damage reinforces the contractual hotel-keeper's position and reputation, as well as the protection of his property. Guest will be liable for hotel-keeper's proprietary damage, which includes all the regular damages and lost hotel-keeper's profit. The most common causes of contractual liabilities of the guest for non-proprietary hotelkeeper's damage are: 1) injury of the hotelkeeper's reputation and 2) various types of hotelkeeper's anxiety, dissatisfaction or discomfort.*

**Keywords:** *contractual liability, proprietary and non-proprietary damage, direct hotel-keeper's contract, guest's liability, comparative law.*

1. INTRODUCTION

Adoption of the principles of guest's contractual liability for damage in direct hotel-keeper's contract, in Croatian and comparative law, has long been burdened with a twofold problem. The first problem, especially for hotel-keepers (*hoteliers*), represents perception that guest in the direct hotel-keeper's contract has only rights and, except for the payment of the price, no liability (**Sherry, 1993, 769-773**). The second problem regarding the different nature was the fact that in the Croatian and comparative law, the guest was not liable for non-proprietary damage of the hotel-keeper; it was understood that the legal system should not recognize such liability at all, let alone the fact that non-proprietary damage for breach of the contract would be compensated to the hotel-keepers (**Moret, 1973, 663-702**).

The first problem, the understanding that the guest in direct hotel-keeper's contract has also obligations and liabilities, is resolved only in a partial manner. In the Croatian theory there is no deeper analysis of the guest's contractual liability for damage of the hotel-keeper; there is only a systematic review of the customs that forms special type of the guest's obligations, out of which a conclusion is deducted that Croatian law recognizes two contractual obligations of the guest for whose breach the guest is liable for hotel-keeper's damage (**Gorenc & Šmid, 1999, 25**): 1) the

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obligation to use the premises for accommodation and accessory services in accordance with house rules, customs and business practices (such as "good guest") and 2) the obligation to pay the price for the hotel services provided. In the Croatian Special procedures for the catering industry (*Posebne uzance u ugostiteljstvu*) from 1995, which regulates the direct hotel-keeper's contract, certain guest's obligations are mentioned.

Comparative law distinguishes two ways of accepting postulates that the guest also has the obligation in direct hotel-keeper's contract. Legal theory of one countries (Italy, UK) recognizes only the guest's rights in this contract, out of which the guest's obligations from the hotel-keeper's rights against the guest in direct hotel-keeper's contract of hotel services, are deduced, although there are exceptions (**Castoldi, 2003, 148**). Theories of other states (France, Germany, USA) explicitly recognize the existence of the guest's contractual obligations, although there are opposing points of view (**Jefferies, 1995, 177-182**).

The theory of comparative law sets aside similar contractual obligations of the guest in direct hotel-keeper's contract as well as the Croatian theory (behavior, payment), adding some special obligations: 1) the obligations of respecting the fixed length of stay upon booking (France), 2) the obligations of prohibiting conduct of any activities in the hotel room (Italy) and 3) the obligations to leaving the hotel building in the event of infectious disease (SAD). There is no doubt that the guest has obligations in the hotel and that for them he is liable to the hotel-keeper.

The second problem, guest's contractual liability for non-proprietary damage of the hotel-keeper, has been resolved positively. In the past few years, the institute of contractual liability for non-proprietary damage in the Croatian and comparative law is introduced. In the Croatian law this institute appeared with the adoption of Obligations Relations Act (*Zakon o obveznim odnosima* - further ZOO) in 2005 (in force since 01.01.2006.); with the provision of Article 346 Paragraph 1 of the new ZOO, in the Croatian legislation the institute of contractual liability for non-proprietary damage is introduced (**Radolović, 2005, 111-114; Klarić, 2006, 381-385**). Although the direct hotel-keeper's contract is regulated by the Special procedures for the catering industry, the ZOO's provisions of the contractual liability for non-proprietary damage apply also to the obligations of the guest.

In comparative laws nowadays, the twofold way to accept the institute of contractual liability for non-proprietary damage is defined. Some countries, despite the fact that institute is not regulated in their legislation, started to interpret extensively the civil codes' unchanged norms, accepting the institute through the jurisprudence and theory (**Bona & Monateri, 2004, 1-807**); the courts of justice broadly adjudge the compensation of the damages recognizing the non-proprietary nature of the damage (France, Italy and Austria). Other states explicitly regulate the contractual liability for non-proprietary damage by special laws and precedents (Germany, UK, USA). Applying this solutions, Croatian and comparative law achieved great progress in respecting the rights of persons and dignity (**Larenz, 1976, 342-346**) of contracting subjects (natural and legal persons).

Two questions related to the type of damage that the hotel-keeper may sustain are imposed. What kind of proprietary damage can a hotel-keeper sustain, and can he suffer a non-proprietary damage at all?

The hotel-keeper, as well as every lender in the obligation's relation, may suffer proprietary damage in the form of ordinary damages (e.g. guest brakes a mirror in the hotel) or lost profits (e.g. guest steals the cheque on holder from the reception desk). Hotel-keeper may also suffer a non-proprietary damage, whether he is a natural or legal person (**Klarić, 1995, 393-416**), in almost all elaborated legal systems (Croatian and comparative). The most common non-proprietary damage that the hotel-keeper may sustain due to breach of contract by the guest, can be classified into two groups: 1) breach of the hotel-keeper's reputation (e.g. arrival of a drunken guest in the dirty clothes at the gala dinner at the 5-star hotel) and 2) various types of hotel-keeper's anxieties, dissatisfaction or discomfort (e.g. the guests celebrating in a hotel room all night disturbing the hotel's peace).

While the hotel-keeper will rarely sue the guest for suffered non-proprietary damage (bad advertising, loss of time, payment of attorneys, etc.), in the future these lawsuits in the Croatian and comparative law can be expected, which will have to result in a more cautious behavior of the guest in the hotel-keeper's (hotel) facilities.

## **2. CONTRACTUAL LIABILITY OF THE GUEST FOR DAMAGE IN THE DIRECT HOTEL-KEEPER'S CONTRACT IN THE CROATIAN LAW**

### **2.1. THE DIRECT HOTEL-KEEPER'S CONTRACT AND THE GUEST'S OBLIGATIONS TO THE HOTEL-KEEPER**

The direct hotel-keeper's contract, due to the fact that our legislators do not give him a designated legislative space, is regulated by the Special procedures for the catering industry from 1995 (Official Journal - further NN, 16/95, 108/96). In the same Customary Practice the definition of the contract is not given; it is only determined when the same is concluded (custom 8.) and what is the subject of the contract (custom 13.). Croatian legal theory (**Gorenc & Šmid, 1999, 12**) defines a direct hotel-keeper's contract as a contract that obligates hotel-keeper to provide temporary accommodation and its accessory services takes care of his person and property and the guest in return agrees to pay the price. The parties of the contract are hotel-keeper (hotelier) and guest (natural person who uses accommodation and accessory services on the basis of direct hotel-keeper's contract).

The subject of the paper's analysis is guest's contractual obligation and his contractual liability in the case of breaching the obligations under the direct hotel-keeper's contract. These guest's obligations, in line with the introduction of the institute of contractual liability for non-proprietary damages by the Article 346 Paragraph 1 of the new ZOO (**Radolović, 2005, 111-114; Klarić, 2006, 381-385**) are increased, so that the relationship of the guest to hotel-keeper is significantly enhanced; in case of breaching the contractual obligations, the guest will be liable for hotel-keeper's proprietary and non-proprietary damage, regardless the legal personality of the hotel-keepers (**Nass, 1962, 89; Gavella, 2000, 34**). The most common reasons for guest's contractual liability to the hotel-keeper for non-proprietary damage will be: 1) violation of the hotel-keeper's reputation (e.g. arrival to the 5-star hotel pool in dirty clothes) and 2) various types of hotel-keeper's anxieties, dissatisfaction or discomfort (e.g. guests celebrate at night in the room disturbing the peace of the hotel).

According to the Croatian legal theory solutions (**Gorenc, 1983; Šmid, 1984, 33-38; Gorenc, 1995, 23-42; Gorenc and Šmid, 1999, 25-27; Gorenc, 2002, 14-17**), the guest in direct hotel-keeper's contract has two major obligations to hotel-keeper, whose violation represents the contractual liability for proprietary and non-proprietary damage: 1) obligation to use the premises for accommodation and accessory services in accordance with house rules, customs and business practices (such as "good guest") and 2) obligation to pay the price for the hotel services provided.

### **2.2. THE LIABILITY OF THE GUEST FOR BREACHING THE OBLIGATION TO USE THE PREMISES (ROOMS) FOR ACCOMMODATION AND ACCESSORY SERVICES SUCH A „GOOD GUEST“**

The guest is liable for the hotel-keeper's proprietary (e.g. damage to the hotel equipment) and non-proprietary damage (e.g. insulting the other guests in the TV room) in case of breaking the "good guest" rule or not using the rooms for accommodation and common premises in accordance with house rules, business practice and Special procedures for the catering industry. The same liability means that the guest (**Gorenc & Šmid, 1999, 25**): 1) can not disturb the silence, peace and order of other hotel guests, 2) must use the room and keep the hotel-keeper's property (devices,

equipment, inventory) giving the attention of "good host" and in accordance with the purpose and 3) must comply with the hotel's house rules.

Guest is not allowed to disturb the silence, peace and order of the other guests (*VSRH Rev. 616/2004* - unregistered guest can not be liable for breaching the hotel-keeper's reputation): a) if the guest in the hotel's room and common premises uses the devices (radio, tv) in a way that it disturbs other guests, the hotel-keeper may deny him the use of them (custom 44.2.3.) and b) if the guest's behavior interferes with the other guests, the hotel-keeper may claim the compensation for the damage (e.g. proprietary damage: earlier departure of guests from the hotel, non-proprietary damage: breaching the hotel-keeper's reputation) and breaking the contract (custom 59.).

Guest is required to use the accommodation area with the care of "good host" and according to its purpose (custom 29.): a) the guest may use a room for his accommodation and for the person denoted in the contract, and not others, b) the guest may not prepare food and drink in the hotel room and c) the guest may not use hotel rooms for commercial purposes (commercial space).

The guest is obliged to keep hotel-keeper's property with the same („good guest“) care that includes: a) transmission of rooms to the hotel-keeper in prior existing situation (custom 30.2.), b) liability on the principle of presumed guilt (his and his persons) for damage to hotel-keeper's property (custom 30.3.), c) the prohibition of use of electrical appliances (e.g. heater, fan) in the room, if they are not allowed according to the house rules (custom 44.1.), d) the prohibition of bringing the animals to the hotel (if not contracted or allowed by house rules and then only in specific areas, for example, in space for cats); guest is strictly (objectively) liable for any damage that is done by the animal to the hotel-keeper or other guests (custom 45.) and e) ban on bringing incendiary, explosive and heavy aromed material (custom 46.) to the hotel facility.

The guest is obliged to abide by the house rules of the hotel (otherwise, the hotel-keeper can demand breaking the contract and claiming damages), including (custom 59): a) registration to a particular person engaged to receive guests, b) leaving the keys at the reception, c) taking meals at specific times and d) not taking out the hotel-keeper's things from guest's room or common facilities (towels, soap, sheets).

### **2.3. THE GUEST'S LIABILITY FOR BREACHING THE OBLIGATION TO PAY THE PRICE OF HOTEL SERVICES**

Guest is primarily liable for the hotel-keeper's damage caused by breaching of the obligation to pay the price of hotel services. The guest is obliged to pay the price of services immediately after the service was done or after every 7 days of using the services, while the hotel bill is to be paid at the termination of the contract, and exceptionally it can be demanded from the guest to pay for the overnight stay in advance, especially if the guest has only a hand luggage or not even that (custom 40.). If the guest does not pay the price for the services or compensation for unused services (e.g. the guest decides not to use contracted half-pension), a hotel-keeper has the right to keep movable property (right of retention) that was brought by the guest to the hotel facility, until the complete collection of claims by public auction (custom 41-42, article 742. ZOO); a hotel-keeper can not keep the guest's personal things (identity card, passport, photos, letters) or things that do not have particular property value (shoes, shirts, magazines). If the guest fails to perform the obligation to pay on time, he must pay legally penalty interest (*VSRH Rev 1932/1991* - there is no liability of the guest that could not pay for hotel services because his deposited money was stolen by hotel-keeper's workers).

The general rule of the guest's obligation to pay the services, in the Croatian legal theory (Gorenc & Šmid, 1999, 26), includes three levels of defining services prices (custom 31.): 1) the guest pays

the price explicitly agreed with the hotel-keeper, 2) if the contract does not exist, the guest pays the price according to the price list of the hotel, taking into account discounts and allowances, and 3) the price of services includes accessory services of using TV (for watching regular programs and in the TV room), pool, beach and children's playgrounds, regardless if the guest uses them.

The guest is obliged to pay special fees to the hotel-keeper (extras): 1) for entering the hotel with a special program (e.g. marriage), music (e.g. concert) or events (e.g. graduation party) (custom 31.4.), 2) residence tax and insurance premium (custom 32.), 3) for usage of mini-bar drinks (custom 33.), 4) for usage of telephone, fax, printer (custom 34.), 5) for viewing special television programs or setting up the TV in the room (custom 35.) and 6) for usage of additional (extra) bed in a double room (custom 37.3.).

Guest is entitled to discounts on prices of hotel services: 1) for children aged two to seven years (custom 36.1.2.), 2) for certain categories of guests (e.g. celebrities, priests, students; until 1991 the hotelkeepers had lower prices ("discounts") for "domestic guests" (**Tadej, 1973, 175**), which is abolished due to discriminatory and non-market base.) (custom 36.3.), and 3) for usage of only one bed in a double room (custom 37.1.).

### **3. CONTRACTUAL LIABILITY OF THE GUEST FOR DAMAGE IN THE DIRECT HOTEL-KEEPER'S CONTRACT IN COMPARATIVE LAW**

#### **3.1. FRANCE**

First works (**Toulouse, 1899, 8-9; Rul, 1906, 1-163**) that have regulated direct hotel-keeper's contract (*le contrat d'hotellerie*) are found in the French law. In these early works dating from the late 19th and early 20th century (**Charpentier, 1913, 233**) the guest's (*client*) obligations are not to be found at all; the same provisions can also not be found in the French Civil Code (*Code civil*). The provisions on the liability of the hotel guest in French law are found fragmentary in the rare legislative acts, business practices and other rare legal sources of the French law.

French legal theory emphasizes three main guest's obligations in the hotel-keeper's contract, for whose breaching is the guest liable for hotel-keeper's proprietary and non-proprietary damage (**Moret, 1973, 701 -702**): 1) the obligation of payment for various rendered services by the hotel-keeper (*paiement des différentes prestations fournies*), 2) the obligation to use the hotel facilities in a "good host" manner ("*en bon père de famille*") and 3) obligation to respect the fixed length of stay when booking (*respect de la durée du séjour fixée lors de la réservation*).

Contractual liability of the hotel guest for breaching the obligation to pay certain hotel services provided to him in the hotel facility represents, in the French law, the guest's contractual liability for hotel-keeper's proprietary damage, and also an offence according to the French Penal Code (*Code pénal*), for which the fine penalty and imprisonment is predicted (**Guyot, 2004, 156**).

Payment of services provided by hotel-keepers is reduced to two essential parts: a) payment of the main obligation shall be executed at once, usually the last day of the accommodation and b) payment of other accessory services (swimming pool, bar, telephone) shall be executed immediately after the use of these services or together with the principal payments on the day of departure, if the hotel-keeper agrees with such payment method.

In order to settle for non-payment of services, hotel-keeper has a right of retention, pledge and selling things (*droit de rétention et droit de faire vendre*), brought to the hotel by the guest (*les effets du client*). Special guest's obligation is to report on time the damage to his or hotel-keeper's property, made inside of the hotel building (e.g. fall of the improper chandeliers in the hotel room destroyed

guest's mobile phone). Otherwise, the hotel-keeper will be not liable for guest's damage, and the guest will be liable for hotel-keeper's damage (**Magnin, Thaller & Percerou, 1937, 239-240**).

The guest's obligation to use hotel rooms as a "good host" includes: 1) use of the hotel room and care of the hotel-keeper's property with the attention of "good host"; French theory is still having second thoughts about the adequate expression of a "good guest" represented by the phrase "*en bon père de famille*" (**Fee & Nativel, 2008, 110-111**), because of possible discriminatory (ethnic, racial, national, sexual) implication of this notion, 2) use of various contracted services (e.g. *internet cafe*), that hotel-keeper offers (e.g. if the pension service was not used, the guest will still have to pay the penalty for not using that service); such understandings became more evident in the verdict of the French Supreme Court (**Cass Civ, III, from 09.10.2001.**), whereby the guest is liable for hotel-keeper's damages due to the fact that furniture of some people was stolen by hotel-keeper's computer, in the way that the guest stole the hotel personnel's password, entered into the computer store (*virtual cybermarket*), sold the furniture and damaged people, 3) use of the hotel accommodation in the specified time, with liability for the damage caused by shorter stay in a hotel without hotel-keeper's guilt (e.g. because he is bored in the hotel), 4) abiding by the hotel's house rules and not interfering with other guests (*respecter le repos des autres clients*), 5) not bringing the pets without the consent of the hotel-keeper, 6) returning of the used room in good condition and submitting the keys at the reception, and 7) hotel room can be used only by the guest and people who have been reported by the guest.

Guest is liable for damages due to breaching the obligations of respecting the fix length of stay upon booking (**Lutz & Schmidt, 1993, 83-98**). If the guest decides to extend the stay in the hotel-keeper's facilities outside the agreed time, French law recognizes two options: 1) it can be done without guest's liability only if the hotel-keeper allows the extension (e.g. if the hotel-keeper has not already booked a room, and the guest pays the price for additional day), 2) the guest is strictly contractually liable (*la responsabilité contractuelle*) for any damage, proprietary and non-proprietary, if the hotel-keeper proves that he had suffered it (*qu'il a subi un préjudice*) (e.g. if the guest remains two days longer in the hotel and pays for this extension, he still has to reimburse the proprietary damage to the hotel-keeper, due to the fact that hotel-keeper had to refuse other guests, and remained "empty" for five days, as well as non-proprietary damages for breaching his reputation for cancellation of the reservation to "fair guests").

### 3.2. GERMANY

In the German law direct hotel-keeper's contract (*der Hotelvertrag, der Beherbergungsvertrag*), is indirectly grounded in the provisions of the German Civil Code (*BGB*) from 1896; the German legislation, namely, does not recognize this contract at all. Provisions of the *BGB* and other sources of law, regarding the direct hotel-keeper's contract, are provisions of some other contracts.

In the German legal theory (**Canaris, 1970, 219-220**), the direct hotel-keeper's contract is referred to as a mixed contract (*Gemischter Vertrag*) (**Firentscher, 1997, 404-407**), based on business and customary practice, conceived by seven different contracts (**Gitter & Gernhuber, 1998, 176**) of private law, although there are different interpretations (**Born & Bastian, 2004, 44**) 1) the lease (rent) contract (*Mietvertrag*, paragraph 535. of the *BGB*), 2) the service contract (*Dienstvertrag*, paragraph 611. of the *BGB*), 3) the pension contract (*Pansionvertrag*), 4) the contract on sale (*Kaufvertrag*, paragraph 433. of the *BGB*), 5) the work (labor) contract (*Werkvertrag*, paragraph 631. of the *BGB*), 6) the contract for delivery (*Werklieferungsvertrag*) and 7) the deposit contract (*Verwahrungsvertrag*, paragraph 688. of the *BGB*).

Regarding such nature of a direct hotel-keeper's contract in the German theory, the guest's liability is essentially reduced to the fulfillment of the obligations of all contracts (by the contracting party which receives or uses certain services) from which the direct hotel-keeper's contract is made. In addition, German legal theory, however, distinguishes two most important obligations of the guest in direct hotel-keeper's contract, whose breach means the guest's liability for the hotel-keeper's proprietary and non-proprietary damage (**Dettmer & Hausmann, 2006, 165-166**): 1) the obligation to pay the price of services provided (*Zahlung*), 2) the obligation to use hotel premises with the special care and according to their current purpose (*Vertragsgemäßer Gebrauch*).

Liability of the guest for breaching the obligation to pay the price of hotel services includes few basic principles (**Dettmer & Hausmann, 2006, 165-166**): 1) the guest is obliged to pay for hotel services provided in the exact specific time (*zum vereinbarten Zeitpunkt*), otherwise he has to pay penalty interest; unless otherwise agreed, the guest will pay the price for service immediately after providing the services (§ 271. BGB); the guest will pay the agreed price to the hotel-keeper, and if such does not exist, the price stated in the hoteliers' price list (*Speisekarte*) while staying in the hotel, and if the guest leaves the hotel, he is liable for non-payment of the price (**Hänssler & Dahringer, 2007, 433-434**), 2) specificity of the German law is that only the guest, as a contractual partner, may pay the price of services (*verpflichtet is nur der Vertragspartner selbst*), 3) in the case of guest's non-payment for services, hotel-keeper has a lien on things brought to the hotel facility by the guest, as well as the right of public sale, if the guest does not pay the price after a certain time (*Pfandrecht des Beherbergungswirts an eingebrachten Sachen des Gastes*); in the verdict of the German judiciary from 1902 (ACP 93, 131, 1902.) it was established that the hotel-keeper does not have the right to retain the guest or a person that accompanied him; in the second sentence from 1928 (RG, 82, 1928.) it was established that the hotel-keeper can take securities that are not owned by the guest, if they are brought into the hotel facility by the guest (**Bitter, 2006, 225**), 4) the guest has to pay reduced price services if, due to illness, death of a family member or storms (*Krankheit, Tod eines Angehörigen und Wetterverhältnissen*) he does not appear in the hotel, and 5) discounts on service prices can only be used by children and members of the hotel-keeper (*Kinder und Angehörige*).

The guest is liable for breaching the use of hotel rooms in accordance with the attention and purpose, out of which it is concluded that (**Dettmer & Hausmann, 2006, 165-166**): 1) the guest can use the room for accommodation only (*Nutzung nur zu Wohnzwecken*), and not for commercial purposes, 2) the guest is required to keep the hotel-keeper's property in the room and facility, and carefully manage the inventory, equipment and devices (*sorgfältiger Umgang mit dem Mobiliar und Ausstattung*), and also act with a particular care (*Obhutpflicht*, § 242 BGB) regarding the hotel-keeper's things (**Hänssler & Dahringer, 2007, 433-434**), 3) guest's behavior must not interfere with the hotel-keeper's business (*keine Störung der Betriebsabläufe*), 4) the guest can not cancel reservation within 7 days prior to the contract beginning (e.g. the guest whose conference was canceled a day before the start, can not cancel the reservation without paying the full price), 4) guest's behavior should not disturb other hotel guests (*keine Störung anderer Gäste*) and 5) the guest has to respect the agreed time of the accommodation in the hotel and check out at the exact agreed time (*Abreise zur vereinbarten Zeit*).

Rare authors (**Mikolasek & others, 2004, 276**) distinguish another special guest's liability for the breach of obligations in direct hotel-keeper's contract - the liability of the guest for the breach of the obligation to keep hotel-keeper's property (*Schadenshaftung*) in the hotel facility, but is, nevertheless, more popular the opinion that these obligations belong to the genesis of the obligations to use the hotel rooms in a certain way (with special attention).

### 3.3. ITALY

Italy has a long tradition of theoretical knowledge (**D'Amelio, 1911, 992-1000; Giovene, 1940, 656-659**) of the direct hotel-keeper's contract (*il contratto d'albergo*). The first reason for this is that even in old *Codice civile* from 1865, the substance of the relationship between guest and hotel-keeper was governed, regarding things brought by the guest (**De Rugero, 1917, 144**), and the second reason was that in Italian cities (like Venice, Rome and Naples), modern tourism came to life very early. In these early works, legal theory devoted very little attention to the liability of the guest (*cliente, albergato, viaggiatore*) to the hotel-keeper (*l'albergatore*); only the hotel-keeper's contractual liability to guests was recognized; largely dominated opinion was that the guests, except for the payment of services prices, do not have any liabilities in the hotel facility.

General understanding of the Italian legal theory today is that the direct hotel-keeper's contract is not a named type of contract (*il contratto tipo*), but a contract *sui generis* that represents set of business practices among tourist subjects. In almost all Italian legal literature, the direct hotel-keeper's contract is defined as a set of obligations of hotel-keeper to guest (**D'Ettore & Marasciulo, 2008, 47**), and very few sources of literature write about obligations of the guest; in those sources guest's obligations are reduced to the guest's obligation to pay the price for hotel services provided (**De Gennaro, 1947, 279-280**).

The development of the legal theory about the guest's obligations towards the hotel-keeper in a direct hotel-keeper's contract took place in the last twenty years. Under the influence of French and UK law, the Italian literature has expanded the range of duties and guest's liabilities. According to all previously mentioned facts, the contemporary Italian legal theory recognizes four major guest's obligations (**Castoldi, 2003, 148**) in the direct hotel-keeper's contract, whose breach represents guest's contractual liability to the hotel-keeper's proprietary and non-proprietary damage: 1) the obligation of payment for the provided hotel services (*il pagamento dell prezzo*), 2) the obligation of respecting the time of arrival and departure to/from the hotel (*il rispetto dei tempi di arrivo e di partenza*), 3) the obligation of keeping safe from damage hotel premises put to disposal (*il rispetto dei locali messi a disposizione*) and 4) the obligation of prohibiting conduct of any activity in the hotel room (*il divieto di svolgere una qualsiasi attività nella camera d'albergo*).

The guest's liability for breaching the payment obligations for the provided services is the basic liability of the guest in the hotel-keeper's contract. Price for services provided is paid according to the contract with the hotel-keeper (*prezzo patuito*); if there is no such contract, then in accordance with a hotel-keeper's price list (*prezzo previsto dai listini*). Italy's recent theory (**Ricci, Jannelli & Migliaccio, 2007, 30-31**) specifically separates the obligation to pay for accommodation (*per l'uso dell' alloggio*), which is executed immediately upon the termination of the contract, and the payment for accessory services (*per tutte le prestazioni accessorie godute*), which must be executed immediately after using them. Due to non-payment of services, hotel-keeper has a right of retention on the guest's things up to 6 months (article 2954. of *Codice civile*). The hotel-keeper's right of retention (*il privilegio*) applies also on brought things that are property of third parties, if the guest has not informed the hotel-keeper that the same are not his property (**Ghironi, 1917, 25**).

The guest's liability for breaching the obligations of respecting the time of arrival and departure to/from the hotel is important from the aspect of the guest's booking. Hotel-keeper, namely, accepts the guest's reservation in the time when the hotel room is free. Breaching the obligation of respecting the time represents the guest's liability for damage. According to Italian customs, time of arrival (*arrivo*), from when the room can be used, is 18 hours at the scheduled day, and the time of departure (*partenza*), from when the room should be freed, is between 12 and 14 hours on the last day of accommodation (**Castoldi, 2003, 148**).

The guest is liable for breaching the obligation to keep safe rooms placed at his disposal. Guest is obliged to keep safe with the attention of "good host" (*buon padrone, buon padre di famiglia*) and

according to its purpose (*secondo la destinazione*) hotel-keeper's property in the hotel room and common premises, put to disposal by the hotel-keeper. Regular usage of premises involves habitation (*abitazione*) and respect (*rispetto*) of the hotel-keeper's property (**Galli & Monti, 2006, 83**). Guest has no obligation to deposit valuables to the hotel-keeper for safekeeping (Italian Supreme Court, *Cass. Civ. 28812. from 05.12.2008.*).

Special guest's liability regards breaching the obligation of prohibition of conducting any activity in the hotel-keeper's hotel room. This is primarily related to dangerous activities such as burning matches for cooking, ironing and use of dangerous equipment (*accendere fornelli per cucinare, stirare ed usare attrezzi pericolosi*). Guest can not use the room for commercial purposes as business premises, nor rent the room to third person, and can not receive the person not reported in the contract into the hotel room (**Castoldi, 2003, 148**).

### 3.4. UNITED KINGDOM

The tradition of understanding the contractual relationship (*hotel-keeper's contract*) between the hotelier (*hotel keeper*) and guest (*customer*) is much longer in the United Kingdom law than in the laws of European continental system (**The Scottish Law Reporter, 1881, 573; Scotland Court of Session & others, 1881, 802**). Institute of guest's contractual liability for hotel-keeper's damages is fragmented, characteristically for the UK law, among many sources of law (**Boella & Pannett, 1999, 1-22**): from the precedents of *common law* to legislative solutions. It is thought by UK theorists (**Hutton, Baker & Bradley, 2001, 63-64**) that the reservation contract (*the contract of booking*) precedes the direct hotel-keeper's contract, except when the guest is present in the hotel-keeper's facility.

UK law specifically distinguishes two types of relationships between guests and hotel-keepers in direct hotel-keeper's contract (**Boella & Pannett, 1999, 65-167**): 1) the relationship between the guest and the hotel-keeper as "occupier" of hotel premises, based on special laws: a) *Occupier's Liability Act (OLA)* from 1957 (amended in 1984), b) *Fire Precautions Act (FPA)* from 1971, c) *Environmental Protection Act (EPA)* from 1990 and the precedents of common law and 2) the relationship between the guest and hotel-keeper as the hotel owner (*proprietor*), based on the Hotel Proprietors Act (HPA) from 1956 and the precedents of common law.

To the UK lawyer it is theoretically inconceivable that the guest has obligations in the direct hotel-keeper's contract, other than the payment. UK legal theory, analyzing the hotel-keeper's liability (**Barth, 2008, 261-264**), explains that the guest has only rights (except for the price payment), and deriving from such understanding, *argumentum a contrario*, the conclusion can be drawn that some hotel-keeper's rights are also in the essence the guest's obligations, and that the guest has different obligations to the hotel-keeper as occupier of premises than to the hotel-keeper as the hotel proprietor.

Given these facts, the UK law distinguishes two most important guest's obligations in direct hotel-keeper's contract, whose breach means guest's liability for (non)-proprietary hotel-keeper's damage (**Boella & Pannett, 1999, 166-167**): 1) obligation of guest's behavior in the hotel facility in accordance with good order and in a dignified way (*good order and decency*) and 2) the obligation to pay the price of the provided hotel services (*payment*).

Guest's liability for breaching the conduct in the hotel, according to good order and decency, means respecting house rules and not disturbing the hotel-keeper and other guests at the hotel. For this purpose, the hotel-keeper can break the contract with the guest and expel him from the facility, if the guest is aggressive, rude or has unsuitable behavior; in the case **Lamond vs. Richard (1897.)**, British Court of Appeal issued a precedent by which the hotel-keeper has the right to enter the guest's room at any time, if he suspects that the guest interferes with the hotel order and disturbs other guests; in the case of **Gill and Another vs. El Vino Co. Ltd. (1983.)**, the Court of Appeal

decided that guests (group of young colored people) did not violate the obligation of good and decent conduct, singing along with the bar's band, but the hotel-keeper was guilty for making them leave, violating in this way the *Race Relations Act* from 1976.

Liability of the guest for breaching the obligations to pay the price for use of services provided at the hotel is a fundamental contractual guest's liability. The same liability involves the obligation to pay the price for services provided on time and in full. Guest's departure without paying represents a breach of contract, but also a theft according to the meaning of Article 3 of the *Theft Act* from 1978; in the case of ***Ritz vs. McDavitt (1981)***, the court found that for breaching these obligations, the guest would have left the building, which in this particular case did not happen.

Due to suspicion of guest's purchasing power or moral, hotel-keeper has the right to charge the guest staying at the hotel in advance. This possibility stems from Article 1.3. HPA, according to which the hotel-keeper has an obligation to accept any guest who looks for accommodation and accordingly may discretely assess who is capable and willing to pay (*able and willing to pay*) the price of hotel services. In such situation hotel-keeper can accept a reasonable part of the price in advance or make the guest leave.

In case that the guest did not pay for services, hotel-keeper, under Article 2.2 of the HPA, reserves the right to retention and pledge of the guest's property (*lien*), till their public sale after a certain period; in the case ***Sunbolf vs. Alford (1838.)***, British court found that the hotel-keeper can not keep the guest for non-payment of the price; in the case of ***Robins vs. Gray (1895.)***, Court of Appeal found that the hotel-keeper can take a lien of any property that the guest brings into the hotel, regardless of whether it is owned by the guest; that precedent has been confirmed in the case of ***Berman & Natans vs. Weibye (1981.)***, in which the hotel-keeper kept the property of the guest's companion; in the case of ***Marsh vs. Police Commissioner (1944.)***, Court of Appeal has established the principle *within the hospitium*, according to which hotel-keeper can keep the guest's things even if guest did not enter them into the hotel room, but it is enough that they are in the facility or additional premises; in the case of ***Mulliner vs. Florence (1878.)***, Court of Appeal found that the hotel-keeper can keep things of guest's wives, although they are not under contract with the hotel-keeper.

### 3.5. UNITED STATES OF AMERICA

Legal theory (**Prasad, 1902, 145**) of the USA has been interpreting the direct hotel-keeper's contract (*hotel (inn)keeper's contract*) as a series of relationships between hotel-keeper (*innkeeper*) and guest (*client*), in the system of special legislation (*statutory law*) and the precedents of common law (**Jefferies, 1983, 3-5**) for a long time. Special *Americans with Disabilities Act (ADA)* from 1992 includes a provision by which the hotel-keeper must move the guest who spreads infectious disease away from the hotel; therefore there is a special guest's obligation, who knows that he is suffering from infectious diseases, to leave the hotel.

The guest's liability for (non)-proprietary damage, in the American legal theory (**Goodwin & Gaston, 1992, 256-259**), is determined with the obligations that the guest has towards the hotel-keeper: 1) the obligation to pay for the hotel services, food and beverage (*services, food and drink*) and 2) the obligation to behave in a respectful, reasonable and dignified manner for the duration of the contract (*courteous, reasonably and dignified manner at all times*).

Guest's general's obligation is to pay on time for the service provided, for food and drinks used during the direct hotel-keeper's contract (**Goodwin & Gaston, 1992, 256**). If the guest breaches this obligation, he will be liable for damage; in case ***Morningstar vs. Lafayette Hotel Co. (1914.)***, the court in New York has founded that, in the situation where the guest refused to pay to the hotel-keeper for food and the hotel-keeper decided to withhold food services, the hotel-keeper has the right

not to serve the guest who has not paid the price of individual services. Similar situations are also in the cases *Sawyer vs. Congress Square Hotel (1961.)* and *People vs. Lerhinan (1982.)*. Within this guest's obligation it is understood that the guest is liable for hotel-keeper's damage if he cancels the reservation too late, and the hotel-keeper does not rent the room to other guests; in the case of *Opryland Hotel vs. Millbrook Distribution Services, Inc. (1999.)*, the court in Tennessee found that for the cancellation of booking for 200 congress guests, the organizer of the congress that made the reservation at the hotel, is liable for hotel-keeper's damage, amounting to the price that the hotel-keeper should have charged 200 guests; in the case of *Princess Hotels International vs. Delaware State Bar Association (1998.)*, a court in Delaware decided that the Bar Association, that made the reservation for 3 days and left after 2 days, is liable for damage amounting to the price that hotel-keeper should have charged for this one day.

The guest's liability for the breach of the obligation of "good" behavior is determined through a variety of specific duties which are *de facto* examples from USA jurisprudence. The first duty is the obligation that the guest behaves at the hotel in a way that does not interfere with the hotel-keeper or other hotel guests (*conduct which endangered the safety of others*), whose breaching involves failure to comply with house rules, bringing animals into the hotel, the spread of infectious diseases, the use of excessive force or verbal abuse of the other guests; in the case *Gore vs. Whitemore Hotel (1983.)*, a court in Montana decided that drunk guest who was threatening the other guests, is liable for each (non)-proprietary damage, for compromising the security of other guests, and that such behavior leads to losing the hotel room and the possibility for the hotel-keeper to break the contract and expel him from the hotel; the court in Kentucky, in the case *Raider vs. Dixie Inn (1923.)*, decided that a female guest violated the obligation of good behavior because she was a prostitute (nowadays it is almost certain that the courts would decide otherwise). Second guest's duty is to use reasonable care to the hotel facility in order for the fire not to break out (*not to burn down a hotel room*); in the case *Firemans's Fund vs. Knobbe (1977.)*, the court in Nevada said that the fact that the guests left cigarettes butts in the hotel room is not sufficient for their liability for fire, because it is not a serious negligence for which they would be liable; moreover, hotel-keeper had 18 keys of the room, so it is possible that the member of his staff left additional butt or lit a cigarette (**Goodwin, 1987, 343-344**). The third guest's duty is prohibition of theft of the hotel-keeper's property from the hotel (*not to steal from the inn*), which mainly refers to soaps, towels and pillows. The fourth guest's duty is (**Cournoyer and others, 2004, 249**) not to use a hotel room for commercial purposes (*such as office space*); in the case *Cramer vs. Tarr (1958.)*, a court in Maine has decided, that despite the fact that the guest was using the room for commercial purposes (for what he would have been liable if the hotel-keeper had proved the damage), a hotel-keeper is liable for the theft of his goods. Fifth guest's duty is to return the guest's room in the clean state, in the way he had received it; the rule is stated in the case *Nelson vs. Ritz Carlton (1933.)*, in which, in contrary, the hotel-keeper provided guests with dirty rooms. Guest's sixth duty is to hand over the keys to the rooms on time and leave the hotel after the termination of the contract (**Sherry, 1993, 147**); contract is terminated even if the guest does not do that, but then he must compensate the hotel-keeper's damage due to extended stay (*overstaying*).

### **3.6. European Union**

In the EU the regulation of direct hotel-keeper's contract, according to the principle of subsidiarity (Article 5 of the EC Treaty), is left to the legislations of the member states. In that sense is the European law on the guest's contractual liability for hotel-keeper's damage the law of individual member states. There is no source of law that would explicitly regulate the guest's liability for damage in direct hotel-keeper's contract on the European Union level. However, two sources indirectly regulate some aspects of the guest's liability for damage due to breach of direct hotel-keeper's contract: 1) Principles of European Contract Law (PECL) and 2) Principles of European law on Service Contracts (PEL SC).

In 1995, the European Commission had formed a working group (body) of prominent experts, under the guidance of Professor Ole Lando, which produced "*Principles of European Contract Law*". The interpretation of the need for these principles was the consolidation of fast development of the European law volume, regulating the growing number of special agreements (**Lando & Bale, 2003, 434-438**). Principles of European Contract Law (*Lando's Principles*), until the entry of the new European legal order into force, had only the power of being drafts to national legislations and recommendations to member states. What is especially important for the guest's contractual liability for damage is that the principles do not leave any doubts; creditors (hotel-keepers) are given compensation for proprietary and non-proprietary damage. In the article 9:501 of Lando's principles, under the title "Right to damages", it is stated that: "(1) *The aggrieved party is entitled to damages for loss caused by the other party's non-performance which is not excused of debtor's liability (under Article 8:108.). (2) The loss for which damage is recoverable includes: (a) non-pecuniary loss; and (b) future loss which is reasonably likely to occur*". European law, indirectly, determines that the guest is liable for hotel-keeper's non-proprietary damage.

Few years ago (2006/2007), Expert Group of the European Commission (**Barendrecht, 2007, 599-614**) created the Draft "Principles of European Law on Service Contracts", which in Article 4.113 regulates only the hotelier's liability (*Liability of the Hotel-Keeper*) for guest's damage (the provisions are mainly equivalent to the Paris Convention from 1962). However, in paragraph 7 of mentioned article, it is pointed out that the guest's obligation is to report any damage that happened to him during accommodation, usage of food, beverages and other hotel-keeper's services; otherwise is the guest itself responsible for that damage.

### **3.7. International law**

In the field of international law there is no unified legal source that would edit guest's liability for damage due to breach of direct hotel-keeper's contract. The reasons for this are different solutions of individual countries, difference in basic understanding of guest's contractual liability and arrangement of the guest's contractual liability for damage in the two legal systems: Anglo-American, where the institute is covered by numerous precedents and special laws, and European Continental, based mainly on the business practices and very few legal solutions of individual countries in that circle.

The problem of creating an international convention on the unification of decisions on direct hotel-keeper's contract began by UNIDROIT in 1977 at the meeting in Rome, and in 1979 the first text of the draft convention on the hotel-keeper's contract (**UNIDROIT, 1979**) was created. The draft was discussed until 1986, when the idea of making the International Convention on the direct hotel-keeper's contract ceased to exist due to the impossibility of formulating clauses that would satisfy all the countries in the same way.

Draft Convention on the hotel-keeper's contract regulated all relevant issues regulated by the direct hotel-keeper's contract: a) the field of contract application (Articles 1 and 2), b) the term of the contract (Article 3), c) the duration of the contract (article h.), d) the hotel-keeper's liability (Article 5 and Articles 11-15) and the most interesting e) the liability of the guest - the consumer (Article 6) and payment of the contract (Articles 9 and 10).

Liability of the guest (consumer) has been regulated in details in Article 6 of the draft Convention. Guest's liability was limited to the amount that represents 50% of the cost of the contract for period of 7 days. This guest's liability can not be limited or reduced previously using the contract. Hotel-keeper must do everything in order for the damage to be as small as possible (Article 5. paragraph 2.). Regarding the guest's obligation for contract payment, in the articles 9 and 10 of the draft Convention it was founded that (**Evans, 1988, 473-475**): a) hotel-keeper can ask in advance certain amount of money as a guarantee of the financial solvency of the guest, b) hotel-keeper must previously notify the guest that he does not take checks as a payment method, and c) in case of not

paying the service price, the hotel-keeper has the right of retention and lien to guest's property, as well as public sale of the property for settlement of his claims from the guest.

#### 4. CONCLUSION

Former conception of contract law that the guest does not bear contractual liability for the hotel-keeper's damage has long been obsolete. Recent trends in the Croatian and comparative law recognizes the liability of the guest for damage in a direct hotel services' contract; moreover, the guest's liability will include proprietary and non-proprietary character of the hotel-keeper's damage. Contractual liability of the guest is defined by his contractual obligations towards the hotel-keeper. In the Croatian and comparative law, these often include paying hotel the services and good conduct in the hotel premises.

The most common reasons for guest's contractual liability for non-proprietary damage of the hotel-keeper are: 1) violation of the hotel-keeper's reputation (e.g., coming in 5-star hotel in the dirty clothes) and 2) various types of anxiety, frustration or discomfort of the hotel-keeper (e.g., drunken guests disturb the peace of the hotel). In tourism industry such solutions will strengthen the position and the reputation of hotel-keeper, as well as enforce the protection of his property.

In the Croatian law, the liability of the guest according to the hotel services contract is derived from the provisions of Croatian Special procedures for the catering industry and the ZOO. Until the entry into force of the new ZOO (01.01.2006.), the guest's liability was limited only to property damage; the guest today, according to the article 346. paragraph 1 of the ZOO, is liable to the hotel-keeper also for the non-proprietary damage for breaching the contract, regardless the legal nature of the hotel-keeper. Croatian legal theory emphasizes main liabilities of the guest: guest's behavior as a good guest and the obligation to pay the price of services provided.

Provisions on the liability of the guest in French law are found in fragments in the rare laws and business practices of the French law. In accordance with new interpretations of standards from Article 1149 of the *Code Civil*, the guest will be liable for proprietary and non-proprietary damage of the hotel-keeper. French legal theory emphasizes special obligation of the guest in relation to other laws - respect of a fixed length of stay upon booking (*respect de la durée du séjour fixée lors de la réservation*).

In German legal theory, the direct hotel-keeper's contract is referred to as a mixed contract (*Gemischter Vertrag*), based on business practice and composed of seven contracts of private law (the contracts of lease (rent), services, food and beverage, sales, labor, delivery and deposit). Therefore, the liability of the guest is drawn to fulfillment of the service recipient's liabilities in all contracts of which the direct hotel-keeper's contract is composed. In addition, German legal theory recognizes also classical guest's liabilities: paying the price for services provided (*Zahlung*), and use of hotel facilities according to their current purpose (*Vertragsgemäßer Gebrauch*).

Major understanding of the Italian legal theory is that the direct hotel-keeper's contract does not represent a specific type of a contracts (*il contratto tipo*), but rather a contract *sui generis*, which is a set of business practices among tourist subjects. However, in almost all Italian legal literature this contract is defined as a set of hotel-keeper's obligations to the guest, and very few literature sources define the obligations of the guest; according to them the guest's liabilities are paying the price for services provided to the hotel-keeper. Under the strong influence of other comparative laws, Italian theory expanded the range of the guest's contractual liabilities in the direct hotel-keeper's contract and added respecting the time of arrival and departure from the hotel and the prohibition of

performing any activity in the hotel room (*il divieto di svolgere una qualsiasi attività nella camera d'albergo*) to traditional guest's liabilities of paying and good conducting.

The UK law distinguishes two most important guest's liabilities in direct hotel-keeper's contract, the conduct in the hotel facilities (*good order and decency*) and payment of price for using the hotel services (*payment*), through the relationship between the guest and the hotel-keeper as provider (*occupier of premises*) of premises (OLA' 1957, FPA' 1971, EPA' 1990 and common law precedents) and as owner (*proprietor*) of the hotel (HPA' 1956 and common law precedents).

The USA law recognizes the contractual liability of the guest for hotel-keeper's damage in the direct hotel-keeper's contract through several precedents. In addition to traditional guest's liabilities (paying the price and behavior in the hotel), American legal theory recognizes also special liability of the guest for violation of the obligation of leaving the hotel in case of illness from infectious diseases, according to the special law, the Americans with Disabilities Act (ADA) dating from 1992.

The European Union recognizes the guest's contractual liability according to the principle of subsidiarity. The institute of the contractual liability for non-proprietary damage (Article 9:501) enters into the European law through the Lando principles (PECL), which determines the relationship of the guest to the hotel-keeper. Draft principles of European law on service contracts (PEL SC), Article 4.113. paragraph 7 emphasizes that the obligation of the guest is to report any damage that happened to him during accommodation, meals, beverages and other hotel-keeper's services, otherwise is the guest itself liable for that damage.

In international law, the draft of the UNIDROIT Convention on hotel-keeper's contract regulates the contractual liability of the guest (consumer) through a limitation of the liability to the amount of up to 50% of the contract amount for period of 7 days, and through three postulates: a) a hotel-keeper may require a certain amount of advance payment as a guarantee for the guest's ability to pay, b) hotel-keeper must notify the guest if he does not receive checks as payment method, and c) hotel-keeper has the right of retention and collateral, as well as public sale of the guest's property for settlement of accounts receivable.

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**UGOVORNA ODGOVORNOST GOSTA ZA ŠTETU U  
IZRAVNOM UGOVORU O HOTELSKIM USLUGAMA**

**Sažetak**

*Rad analizira novije tendencije hrvatskog i usporednog prava kojima se spoznaje ugovorna odgovornost gosta za imovinsku i neimovinsku štetu ugostitelja. Kroz analizu istog instituta u hrvatskom i usporednom pravu, vidljivo je da ugovornu odgovornost gosta, povrh posebnih obveza iz pojedinih pravnih sustava, determiniraju povrede dviju glavnih obveza gosta: plaćanja cijene usluga i ponašanja u hotelskom objektu u skladu s namjenom istog. Ugovorna odgovornost gosta za imovinsku i neimovinsku štetu ojačava ugovorni položaj i ugled ugostitelja, te zaštitu njegove imovine. Gost će odgovarati ugostitelju za imovinsku štetu, što uključuje svaku običnu štetu i izmaklu dobit ugostitelja. Najčešći razlozi ugovorne odgovornosti gosta za neimovinsku štetu ugostitelja jesu: 1) povreda ugleda ugostitelja i 2) razni tipovi nemira, nezadovoljstva ili nelagode ugostitelja.*

**Ključne riječi:** *ugovorna odgovornost, imovinska i neimovinska šteta, izravni ugovor o hotelskim uslugama, odgovornost gosta, usporedno pravo.*