

Hotel Guest's Liability for Non-Payment of Hotel Services in Comparative Law

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Abstract—The subject of the paper is comparative analysis of the hotel guest's contractual liability for breaching the obligation for non-payment of hotel services in the hotel-keeper's contract. The paper is methodologically conceived of six chapters (1. introduction, 2. comparative law sources of the hotel-keeper's contract, 3. the guest's obligation for payment of hotel services, 4. hotel guest's liability for non-payment, 5. the hotel-keeper's rights due to non-payment and 6. conclusion), which analyzes the guest's liability for non-payment of hotel services through the international law, European law, euro-continental national laws (France, Germany, Italy, Croatia) and Anglo-American national laws (UK, USA). The paper's results are the synthesis of answers to the set hypothesis and comparative review of hotel guest's contractual liability for non-payment of hotel services provided. In conclusion, it is necessary to adopt an international convention on the hotel-keeper's contract, which would unify the institute of the hotel guest's contractual liability for non-payment of hotel services at the international level.

Keywords—comparative law, hotel guest's contractual liability, non-payment, hotel-keeper's contract.

I. INTRODUCTION

HOTEL guest is a natural person whose contractual role in the hotel-keeper's contract has developed in the last 50 years. He is no more only a number and he is also not only a subject with only rights in the hotel; he is an equal contracting party with rights and obligations in the hotel-keeper's contract. The main obligation of the guest is certainly the obligation of payment of hotel services provided by the hotel-keeper. If the guest breaches this obligation, he is contractually liable for hotel-keeper's damage. The paper analyzes the guest's contractual liability for non-payment of hotel services in the hotel-keeper's contract through comparative law review.

This paper is methodologically structured of four main parts that analyzes, from general (comparative law source of the hotel-keeper's contract and guest's obligation of payment) to special hypothesis (guest's contractual liability for non-payment and hotel-keeper's rights in such case), the hotel-guest's contractual liability for non-payment of hotel services through legislative, theoretical and practical solutions of four great legal forums: 1. international law, 2. European Union law, 3. euro-continental national laws (France, Germany, Italy, Croatia) and 4. Anglo - American national laws (UK, USA).

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The second chapter analyzes comparative sources of law of the direct hotel-keeper's contract (the contract stipulated among the hotel-keeper and the guest). In a field of international law there was only an attempt to adopt an international convention regarding the hotel-keeper's contract (UNIDROIT draft convention). European Union has not a legislation regarding the hotel-keeper's contract. National laws of euro-continental legal circle recognize this contract mostly as a relation in customary practice. In the national laws of the Anglo-American legal circle the hotel-keeper's contract is a part of statutory law and customary practice, where the common law precedents determine its postulates.

The third chapter analyzes the hotel guest's obligation for payment of hotel services provided. It is a main obligation of the hotel guest in the direct hotel-keeper's contract. In this chapter a review of the comparative legislation and legal theory regarding the analysis of this obligation of the hotel guest and its repercussion on the hotel-keeper is analyzed. If the guest does not pay the hotel services provided, he is contractually liable for any hotel-keeper's damage.

The fourth chapter deals with a paper's subject *in proprio*. It analyzes the guest's contractual liability for non-payment of hotel services provided. At the international law level an interesting picture of the failed UNIDROIT Draft Convention is given. In the European Union the part of the Principles of European Contract Law can be indirectly adopted on the guest's liability for damage. The national laws of both legal circles recognize its guest's liability as a liability for proprietary damage (payment of the price, interest rate or penalty), but in the last 20 years there is a strong influence that guest is also liable, due to non-payment of hotel services, for hotel-keeper's non-proprietary damage (reputation, anxiety, discomfort, dissatisfaction, frustration).

The fifth chapter contains a comparative analysis of the hotel-keeper's rights in case that the guest does not fulfill the obligation of payment of hotel services provided. There are three main rights that hotel-keeper has in such occasion: 1) right of retention, 2) right of lien and 3) right of public sale.

In parallel with comparative review of hotel guest's contractual liability for non-payment, author tries to explain the differences between two legal circles about few important questions: 1. Can the hotel-keeper suffer non-proprietary damage due to non-payment? 2. May the guest previously exclude or limit his liability for non-payment? 3. In which circumstances will the guest not be liable for non-payment?

II. HOTEL-KEEPER'S CONTRACT: COMPARATIVE LAW SOURCES

The contractual liability of the hotel-guest for non-payment of hotel services provided is derived from the hotel guest's obligation for payment of hotel services within the relationship between the guest and the hotel-keeper. Such a relationship is manifesting through a contract among this two contracting parties - the direct hotel-keeper's contract (in simple version: the hotel contract). The chapter analyzes the comparative sources of law of the hotel-keeper's contract in four legal forums through legislative and theoretical framework. There are many differences in understanding this contract but also a great number of different sources in regulating this contract.

A. International Law

In the field of international law there is no unified legal source that would regulate the hotel-keeper's contract and edit any guest's liability for damage due to breach of direct hotel-keeper's contract. The reasons for this are different solutions of individual countries regarding the contract, difference in basic understanding of a hotel-keeper's contract and its arrangement in the two legal systems (circles); Anglo-American, where the institute is covered by numerous precedents and special laws, and European Continental, where the hotel-keeper's contract is 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 (International Institute for the Unification of Private Law) in 1977 at the meeting in Rome, and in 1979 the first text of the draft convention on the hotel-keeper's contract was created [1]. The draft was discussed until 1986, when the idea of making the convention on the hotel-keeper's contract ceased to exist due to the impossibility of formulating clauses that would satisfy all the countries in the same way [2].

Draft Convention on the hotel-keeper's contract regulated all relevant issues regulated by the direct hotel-keeper's contract: 1) the field of contract application (articles 1 and 2), 2) the term of the contract (article 3), 3) the duration of the contract (article h.), 4) the hotel-keeper's liability (article 5 and articles 11-15) and 5) the liability of the guest (article 6) and his obligation of payment the services (articles 9 and 10).

B. European Union Law

In the European Union 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 hotel-keeper's contract and guest's contractual liability for non-payment left to the law of individual member states. There is no source of law at the European Union level that would explicitly regulate the direct hotel-keeper's contract on the European Union level. However, one source indirectly regulates some aspects of the contractor's liability for damage due to breach of contract (which includes the liability for non-payment of hotel services) - Principles of European Contract Law (PECL) from 1995, called "*Lando's Principles*", which

regulates the "right to damage" in any contract of any contracting party [3].

C. Euro-Continental National Laws

In the French law all relevant contracts are part of the French Civil Code (*Code civil*) from 1804. Although some aspects of the hotel-keeper's contract are regulated within the Code (the provision on hotel deposit contract, articles 1952-1954), the main provisions about the hotel-keeper's contract (*le contrat d'hôtellerie*) can not be found in the Code. The provisions of the hotel-keeper's contract in French law are found fragmentary in the rare legislative acts (*Loi de 01.09.1948*), business practices and other rare legal sources of the law [4].

In the German law the direct hotel-keeper's contract (*der Hotelvertrag*), is only indirectly grounded in the provisions of the German Civil Code (*BGB*) from 1896. The German legislation, namely, does not recognize this contract at all. But in the German theory [5], the hotel-keeper's contract is referred to as a mixed contract (*Gemischter Vertrag*) based on customary practice [6], structured by seven different contracts [7] of private law, although there are different interpretations [8]: 1) lease (rent) contract (*Mietvertrag*, BGB § 535), 2) service contract (*Dienstvertrag*, BGB § 611), 3) pension contract (*Pensionvertrag*), 4) contract on sale (*Kaufvertrag*, BGB § 433), 5) work contract (*Werkvertrag*, BGB § 631), 6) contract for delivery (*Werklieferungsvertrag*) and 7) deposit contract (*Verwahrungsvertrag*, BGB § 688).

In the Italian law the direct hotel-keeper's contract (*il contratto d'albergo*) is not mentioned in the main code of contracts, *Codice civile*, from 1942, except of the provision on hotel deposit contract (articles 1783-1786). The hotel-keeper's contract is a part of Italian customary practice and rare acts (*Legge no. 35 del 1977*). General understanding of the Italian legal theory is that the hotel-keeper's contract is not a usual type of contract (*il contratto tipo*), but a contract *sui generis* that represents set of business practices among subjects [9].

In the Croatian Law the direct hotel-keeper's contract, due to the fact that legislator do not give him a designated legislative space [10], is regulated by the *Special procedures for the catering industry* from 1995 (customs 8-61). In the same source the definition of the contract is not given; it is only determined when the same is concluded and what is the subject of the contract. Croatian theory [11] defines a direct hotel-keeper's contract as a contract that obligates hotel-keeper to provide accommodation and accessory services takes care of his person and property and the guest agrees to pay the price.

D. Anglo-American National Laws

UK law distinguishes two types of the direct hotel-keeper's contract [12]: 1) where the hotel-keeper is "*occupier of premises*", based on: 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) where the hotel-keeper is the "*hotel proprietor*", based on the *Hotel Proprietors Act (HPA)* from 1956 and the precedents of common law.

Legal theory of the USA law interprets the hotel-keeper's

contract (*inn-keeper's contract*) as a series of relationships between hotel-keeper and guest (*client*), in the system of special legislation of the each state (*statutory law*) and the precedents of common law [13].

III. THE OBLIGATION FOR PAYMENT OF HOTEL SERVICES

The obligation for payment of hotel services provided by the hotel-keeper is the main obligation of the hotel guest in the hotel-keeper's contract. Some authors [9, 14, 15] think that is the only obligation of the guest in the hotel-keeper's contract towards the hotel-keeper. In every case, it is most important contractual obligation of the hotel guest in the direct hotel-keeper's contract. This obligation determines the lucrative nature of the contract; without them hotel industry would be a social services or some similar relationship. The chapter analyzes the guest's obligation for payment of hotel services provided through legislation and theoretical background of comparative law solutions in four legal forums.

A. International Law

Regarding the hotel guest's contractual obligation for payment of hotel services provided at the international law level, UNIDROIT draft convention on the hotel-keeper's contract (1979) regulated such provision in article 9. In this article was founded that [2]: a) hotel-keeper can ask in advance certain amount of money as a guarantee of the financial solvency of the guest (article 9.1.) and b) hotel-keeper must previously notify the guest that he does not take checks as a payment method (article 9.2.). Despite that this Draft Convention was failed this article was not a part of the discussed controversy. Moreover, it was a good attempt appreciated by all representative experts.

B. European Union Law

There are no provisions of the European Union's primary and secondary legislation about the hotel guest's obligation of payment of hotel services. In a situation where the guest is from one European Union's member state and the hotel-keeper from other, the national law of one member state would apply on the contract (according to the principle of subsidiarity from the article 5 of the EC Treaty).

C. Euro-Continental National Laws

In the French law the payment of hotel services provided by hotel-keepers (*paiement des différentes prestations fournies*) is reduced to two essential parts [4]: 1) payment of the main obligation shall be executed at once, usually the last day of the accommodation and 2) 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 the German Law, the guest is obliged for pay of hotel services provided in the exact specific time (*zum vereinbarten Zeitpunkt*), otherwise he has to pay penalty interest [16]. Unless otherwise agreed, the guest will pay the price of service immediately after providing the services (BGB § 271). The hotel 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. Specificity of the German law [16] is that only the guest, as a contractual partner, may pay the price of services (*verpflichtet is nur der Vertragspartner selbst*). Discounts on services can be used only by children and hotel members (*Kinder und Angehörige*).

In the Italian law the hotel guest's obligation for payment of provided hotel services (*il pagamento dell prezzo*) is the basic duty of the guest in the hotel-keeper's contract [17]. 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 [18] 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.

In the Croatian law, the guest is obliged to pay the price of hotel 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. of the Special Customary Practice in Catering Industry). This general rule of the guest's obligation to pay the hotel services, in the Croatian legal theory [11] includes three levels of defining services prices: 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 (extras) to the hotel-keeper for (customs 31-37): 1) entering the hotel with a special program, music or events, 2) residence tax and insurance premium, 3) usage of mini-bar drinks, 4) usage of telephone, fax, printer, 5) viewing special television programs or setting up the TV in the room and 6) usage of additional (extra) bed in a double room. Guest is entitled to discounts on prices of hotel services: 1) for children aged two to seven years, 2) for certain categories of guests (celebrities, priests, students; until 1991 the hotelkeepers had lower prices ("discounts") for "domestic guests" [19], which was abolished due to discriminatory and non-market base.) and 3) for usage of only one bed in a double room.

D. Anglo-American National Laws

In the UK law the guest's obligation to pay the price for use of services provided at the hotel is a fundamental contractual guest's duty [14]. The same duty involves the obligation to pay the price for services provided "on time and in full" [12] and it is an obligation which derives from all aspects of the hotel-keeper's contract, no matter if the hotel-keeper is an occupier of premises or a hotel proprietor.

In the USA law, the hotel guest's general obligation is to pay on time for the service provided, food and drinks used during the stay in the hotel as a contracting party of the direct hotel-keeper's contract [20]. The obligation for payment is

primary guest's personal obligation, but anyone could pay the hotel bill [15]. The hotel-keeper has also a discretionary right to demand payment of the hotel services in advance or even before he receives the guest [15].

IV. HOTEL GUEST'S LIABILITY FOR NON-PAYMENT

The hotel guest is contractually liable for non-payment of hotel services provided by the hotel-keeper. For a long period, under the influence of the French law and legal theory, based on a concept of the provision of articles 1146-1155 of the French Civil Code, it was understood that contracting party (in this case the hotel-keeper) can suffer only a proprietary damage by breaching the contract. In addition, old European lawyers have interpreted that the legal person can not suffer the non-proprietary damage at all. In the last 50 years, under the strong influence of the German legal theory, such dogmas were abolished. Firstly, breach of theory that the legal person can not suffer the non-proprietary damage was founded in German law in early 1960's [21]. From the German law arrives also a first work of the contractual liability for non-proprietary damage [22]. Nowadays, the modern laws have introduced directly (by special legislation) or indirectly (by jurisprudence and judicial precedents) both understandings. The chapter analyzes the hotel guest's contractual liability for hotel-keeper's proprietary (payment, interest rate, penal) and non-proprietary damage (reputation breach, anxiety) for non-payment of hotel services.

A. International Law

In the UNIDROIT draft convention on the hotel-keeper's contract existed few provisions on guest's contractual liability in the hotel-keeper's contract in general [1, 2]. Such contractual liability of the guest (consumer) has been regulated in article 6 of the draft convention. Guest's liability for breaching the hotel-keeper's contract was limited to the amount that represents 50% of the cost of the contract for period of 7 days. This liability can not be limited or reduced previously using the contract. According to article 5.2 of the draft convention, the hotel-keeper must do everything in order for the damage to be as small as possible. The draft convention did not explain what damage is referred to in article 6, but most probably the creators of the draft in the 1979 had in mind only the proprietary damage.

B. European Union Law

At the European Union law level, there is no direct provision on a hotel guest's contractual liability. However, Principles of European Contract Law (that had only the power of being drafts to national legislations and recommendations to member states), contain few general contractual rules, which can be adopted on the guest's liability for hotel-keeper's damage due to non-payment of hotel services. In the article 9:501 entitled "Right to damages", the principles do not leave any doubts; creditors (in this case the hotel-keepers) are given compensation for proprietary and non-proprietary damage [3]. Under this article, 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 soft-law so, indirectly, determines that the guest is also liable for hotel-keeper's non-proprietary damage.

C. Euro-Continental National Laws

In the French law there is mostly the understanding that the hotel guest's contractual liability for breaching the obligation to pay certain hotel services provided to him in the hotel facility represents the 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 [23]. Regarding the penalty sanction, the observation is that the imprisonment is overreacted measure predicted by the French legislator and must be abolished (there is a similar rule in UK law!). The understanding that the guest, due to non-payment, is liable only for proprietary damage, according to the old French doctrine, is changing in French law also. Namely, opposite of the French legal theory, the French Supreme Court (*Cassation Civil*) has in last 10 years start to recognize the contractual liability for non-proprietary damage (for breaching of reputation, fraud, intention) [24, 25, 26]. Curiosity is that such a *salto mortale* of the French law was predicted by the non-French authors [27, 28]. Due to this reason is expectable that the new French theory accept the understating that hotel guest is, due to non-payment, also liable for hotel-keeper's non-proprietary damage (*dommage immatérielle*).

In the German law, contractual liability of the guest for breaching the obligation to pay the price of hotel services, according to the German advanced "non-proprietary theory" [21, 22], includes few basic principles [16]: 1) the guest is liable for the hotel-keeper proprietary and non-proprietary damage, 2) the guest is obliged to pay penalty interest, 3) if the guest leaves the hotel, he is considerate liable for non-payment of the price [29] and 4) the guest has to pay reduced price (compensation of damage) of services even if, due to illness, death of a family member or storms (*Krankheit, Tod eines Angehörigen und Wetterverhältnissen*) he does not appear in the hotel-keeper's hotel. The German Supreme Court has already determined the compensation for contractual non-proprietary damage in the hotel-keeper's contract, but only for guest's damage and no *vice versa* [30, 31].

In the Italian law, the hotel guest's contractual liability for non payment of the price of hotel services provided is the liability for hotel-keeper's proprietary and non-proprietary damage. As well as French legal theory, the older Italian authors had long interpreted the contractual liability as a liability for exclusively proprietary damage, with very rare and brilliant opposite opinions [32]. But in the last 10 years Italian jurisprudence [33, 34, 35, 36] and modern legal theory [37, 38] contemporary recognized the three types of contractual non-proprietary damage (*danno non patrimoniale*): 1) moral damage (*danno morale*), 2) biologic

damage (*danno biologico*) and 3) existential damage (*danno esistenziale*). In the light of those new Italian contractual acknowledgments, the guest will be certainly liable for a large number of hotel-keeper's non-proprietary damage. Recent Italian works do not explain the examples of compensation of the hotel-keeper's proprietary and non-proprietary damage due to non-payment.

In the Croatian law the guest is also contractually liable for the hotel-keeper's damage caused by breaching of the obligation to pay the price of hotel services provided. If the guest fails to perform the obligation to pay on time, he must pay legal penalty interest [11]. The hotel-keeper can also break the hotel-keeper's contract if the guest did not pay the hotel services in the last 7 days (custom 58.2. of the Special customary practice for catering industry). The Croatian law has made recently one step forward despite other European national laws; the contractual liability for non-proprietary damage was introduced into main legislation (article 346.1. of the new Obligations Relations Act from 2005) with great approval of the legal theory [39, 40]. Therefore, the guest will be contractually liable for any hotel-keeper's damage for non-payment of hotel services. The Croatian jurisprudence made also a step forward recognizing 20 years ago one possibility for exclusion the guest's liability for non-payment of hotel services (the French, German and Italian laws do not recognize any circumstances for which the hotel guest will not be liable for the damage suffered by the hotel-keeper due to non-payment of hotel services provided). Namely, in one sentence of the Croatian Supreme Court [41], there was established that there is no liability of the guest which could not pay for hotel services because his deposited money was stolen from the safe by hotel-keeper's workers.

D. Anglo-American National Laws

In the UK law, contractual liability of the hotel guest for breaching the obligations to pay the price for use of hotel services provided at the hotel is a fundamental contractual guest's liability [12]. The same liability involves the breach of obligation to pay the price for services provided on time and in full. The UK law distinguished the guest's liability for proprietary and non-proprietary damage and do not recognize the possibility for previous exclusion and limitation of this guest's liability. In the UK law, the 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 [12]. 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. of the *Hotel Proprietors Act* (1956) 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. Rare common law precedents regarding this guest's liability in the United Kingdom also established important principles of the hotel guest's liability for non-payment of

hotel services. In one case (*R. vs. McDavitt*) from 1981 [42] of (1981), the British court has founded that for breaching the obligation for payment of hotel services, the guest would have to leave the building ("make off"), which in this particular case did not happen. House of Lords decided in one judgment (*R. vs. Allen*) from 1985 [43], that financial difficulties of the guest can not be a reasonable excuse for non-payment.

In the USA law, if the guest breaches the obligation for payment of hotel services provided, he will be liable for any hotel-keeper's damage - proprietary and non-proprietary [13, 15, 20]. Judiciary practice and the precedents of the common law are established few most important principles regarding this hotel guest' contractual liability in the USA law. In one old case (*Morningstar vs. Lafayette Hotel*) from 1914 [44], the Court of Appeals 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. This principle was enforced with two similar precedents. In first case (*Sawyer vs. Congress Square Hotel*) from 1961 [45], the court in Maine founded that the hotel-keeper may refuse every service, regardless the fact that the guest has a long stay at the hotel. In second case (*People vs. Lerhinan*) from 1982 [46], the appeal court in New York decided that the hotel-keeper may refuse providing the hotel services and entering the guest room in case the guest did not pay the price of hotel services (he was two weeks in arrears of payment). The second important principle constructed by the courts' precedents was the principle that the hotel guest is contractually liable for any hotel-keeper's damage if he cancels the reservation too late, and the hotel-keeper does not rent the room to other guests. In one recent case (*Princess Hotels International vs. Delaware State Bar Association*) from 1998 [47], the Superior court of Delaware decided that the Bar Association, that made the reservation for 3 days and left the hotel after 2 days (due to shortening of its congress program), is liable for proprietary damage amounting to the price that hotel-keeper should have charged for this one day. In the second recent case (*Opryland Hotel vs. Millbrook Distribution Services, Inc.*) from 1999 [48], the understanding of the principle was reinforced; the Tennessee Court of Appeals founded that for the cancellation of booking for 200 congress guests only two days before the beginning of the accommodation, the organizer of the congress, that made the reservation (booking) at the hotel, is contractually liable for hotel-keeper's proprietary damage, amounting to the price that the hotel-keeper should have charged 200 guests. The third important principle deducted from the judiciary precedents is the principle of the subject of liability for non-payment. It is obviously clear that the guest as a contracting party is primary liable for non-payment. When the contracting parties are several guests (that dined together or came into the hotel together) they are "jointly" liable for non-payment of hotel services. This rule was established long ago in one judgment (*Forster vs. Taylor*) from 1811 [49]. The fourth principle regarding the guest's liability for non-payment, grounded in one judgment (*Freeman vs. Kiamesha Concord*) from 1974 [50], is that the guest is liable for non-payment requested by the hotel-keeper in advance (when hotel

services are not yet provided). In the USA law one of the basic contractual principles is the possibility of previous exclusion or limitation of the liability. However, author thinks that by the nature of law (the hotel-keeper's contract can not exist without the guest's obligation for payment the hotel services), this principle can not be applied on this guest's liability.

V. HOTEL-KEEPER'S RIGHTS DUE TO NON-PAYMENT

If the hotel guest does not pay the hotel services provided, the hotel-keeper has few rights to charge the guest. From all possible rights, three rights are most common rights in the comparative law analysis: 1) the right of retention of guest's property, 2) the right of lien and 3) the right of public sale of the guest's property. The chapter analyzes the hotel-keeper's rights of retention, lien and public sale, due to hotel guest's non-payment of hotel services through the legislative, theoretical and practical framework in comparative law.

A. International Law

The UNIDROIT draft convention on the hotel-keeper's contract regulated the hotel-keeper's rights due to non-payment of hotel services provided in article 10 of the failed text. The convention established that, in case of non-payment of the hotel service's price, the hotel-keeper has the rights of retention and lien to guest's property, as well as public sale of the property for settlement of his claims from the guest [1]. The draft tried to close the opposite standpoints of European and Anglo-American lawyers with such general clauses [2].

B. European Union Law

There are also no provisions regarding the hotel-keeper's rights due to non-payment of hotel services provided at the European Union law level. But, one article of the PECL is very interesting from that aspect. The general right of retention is a possibility deduced from the European contractual principle of a right to withhold the performance "until the other has tendered performance or has performed" established in article 9:201 of the PECL [3, 51]. European soft-law, in this indirect way, gives to the hotel-keeper the right of retention of the hotel guest's property and to withhold the hotel services till the guest does not pay the price.

C. Euro-Continental National Laws

In the French law in order to settle for non-payment of services [4], hotel-keeper has the right of retention and selling things (*droit de rétention et droit de faire vendre*), brought to the hotel by the guest (*les effets du client*). This general contractual (*le contrat de dépôt*) principle was established in the French law by the article 2102. of the *Code Civil*.

In the German law, when the guest does not pay the price of hotel services after a certain time, the hotel-keeper has a lien [16, 29] on things brought to the hotel facility by the guest and the right of public sale (BGB § 688 - *Pfandrecht des Beherbergungswirts an eingebrachten Sachen des Gastes*). Two older decisions of the German judiciary established important principles regarding the hotel-keeper's rights due to non-payment [52]: 1) in the first verdict (ACP 93, 131, 1902)

of the German judiciary from 1902 [53] it was established that the hotel-keeper does not have the right to retain the guest or a person that accompanied him and 2) in the second sentence of the German courts of justice (RG, 82, 1928) from 1928 [54] 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.

In the Italian law, due to guest's non-payment of hotel 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 (and not of the guest), if the guest has not informed the hotel-keeper that the same are not his property [55].

In the Croatian law, 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 [11]. Those rights are mentioned within the legislative framework (article 742 of the *Obligations Relations Act*) and *Special customary practice in catering industry* (customs 41-42). According to mentioned customs, the hotel-keeper can not keep the guest's personal things (identity cards, passports, photos) or things that do not have particular property value (shoes, shirts, magazines).

D. Anglo-American National Laws

In the UK law, in the case of non-payment, the hotel-keeper, under article 2.2 of the *Hotel Proprietors Act*, reserves the right to retention and lien of the guest's property, till their public sale after a certain period [12]. Precedents of common law enlarged this particular rule with a few principles. In one old case (*Sunbolf vs. Alford*) from 1838 [56], the British court found that the hotel-keeper can not keep the guest for non-payment of the price. The second principle was established in one judgment (*Robins vs. Gray*) from 1895 [57], 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. Such precedent has been preceded by one case (*Mulliner vs. Florence*) from 1878 [58], where Court of Appeal found that the hotel-keeper can keep things of guest's wives, and followed by one decision (*Berman & Natans vs. Weibye*) from 1981 [59], in which the hotel-keeper kept the property of the guest's companion. In one case (*Marsh vs. Police Commissioner*) from 1944 [60], Court of Appeal has established the principle *within the hospitium*, according that 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 USA law, a general rule for guest's non-payment of hotel services is that hotel-keeper is entitled to a right of lien for the amount of his charges on all goods of his guest which are found in the hotel [15]. This capital principle was defined in one old New York's Court judgment (*Waters & Co. vs. Gerard*) from 1907 [61]. The lien is restricted to charges

between the hotel-keeper and the guest “in the strict sense” and is not created by the contract but by law (the principle is deduced from one Minnesota’s case (*Singer Mfg vs. Miller*) of 1893 [62]). The principle that the hotel-keeper’s lien extended to the property of third party unless the hotel-keeper knew or had notice that such property is not the guest’s property, was established in one judgment (*M&M Hotel vs. Nichols*) of the Ohio’s Court of Appeal in 1935 [63].

VI. CONCLUSION

Hotel guest’s obligation for payment of hotel services provided is his principal obligation in the direct hotel-keeper’s contract. It is recognized in all modern comparative laws. Moreover, some authors think that it is his only obligation in the contract relation with the hotel-keeper. The paper primary analyzed what happened if the hotel guest does not fulfill this obligation, through the comparative review of legislative solutions, theoretical background and judiciary practice of four most important legal forums. In the case of non-payment of hotel services, hotel guest is contractually liable for hotel-keeper’s damage (in France and UK is also guilty for crime) and hotel-keeper obtains certain rights on the guest’s property for the charge of such guest.

The guest’s contractual liability for breaching the obligation for payment of hotel services provided is a liability for any hotel-keeper’s damage. This includes, in all comparative laws, the compensation for hotel-keeper’s proprietary (e.g. for price for 7 day stay at the hotel) and, due to influence of the German legal theory of the second half of 20th century, non-proprietary damage (e.g. for hotel-keeper’s discomfort due to non-payment of old guest). However, the courts of justice worldwide must be prudent when decide the compensation of non-proprietary damage for non-payment of hotel services. They must in every particular occasion find the aspects of hotel-keeper’s non-proprietary damage (e.g. breach of hotel-keeper’s reputation by non-payment with the false excuse that hotel food was bad, hotel-keeper’s anxiety while due to non-payment he can not pay the current bill, etc.).

Hotel-keeper obtains few rights due to guest’s non-payment of hotel services provided. Three most important rights in the analyzed comparative laws are right of retention of the guest’s property (the most characteristic right of the European continental law), right of lien on any property brought by the guest at the hotel (the right with special approach in the Anglo-American law circle) and right of public sale after a certain period of time (only in the Italian law, there is a legally established period of 6 months, after which the hotel-keeper can make a public sale of the retained guest’s property). In order not to enter the situation where the charge of guest is uncertain, the hotel-keeper must ask the payment of hotel services in advance more often (such a hotel-keeper’s discretionary possibility is recognized in both legal circles but is rarely used because of hotel-keeper’s discomfort).

Guest’s contractual liability for non-payment of hotel service can not be previously excluded or limited (the

contractual principle derived from the Anglo-American law). In the countries of Euro-continental legal circle the liability is established in law, and in opposite the Anglo-American legal circle interpret the contractual liability as a matter of contract. However, the Anglo-American principle can not apply on such guest’s liability because of the nature of the hotel-keeper’s contract. A hotel-keeper’s contract can not exist without this guest’s contractual liability (it will be non-lucrative or social relation and not a commercial one).

On first sight, there is no circumstance for what the guest would have any exclusion or limitation of the contractual liability for non-payment of hotel services provided. In all comparative laws such a possibility does not exist; if the hotel guest does not pay for the hotel services provided in the hotel-keeper’s hotel, he will be unconditionally liable for any hotel-keeper’s damage. Unique step forward regarding the possibility of exclusion or limitation of such guest’s liability is made by the Croatian judiciary in one sentence from 1991, where was established that there is no liability of the guest which could not pay for hotel services because his deposited money was stolen from the safe by hotel-keeper’s workers.

Global capital problem of the hotel guest’s liability for non-payment of hotel services provided in the direct hotel-keeper’s contract is non-existence of any unified source of law regarding hotel-keeper’s contract at the international and European level. At the international law level there was an excellent attempt for unification of the hotel-keeper’s contract (with UNIDROIT draft convention on the hotel-keeper’s contract from 1979), but it failed for many reasons (most important of them was impossible formulation of the convention’s text due to disputes among European and Anglo-American representative lawyers). At the European law level, there were some initiatives but without any success. European Union is in excellent position to make the first step in unification or harmonization of law regarding the hotel-keeper’s contract. The direction that European law must follow is the Council of Europe’s European Convention on the liability of hotel-keepers concerning the property of their guests from 1962. This step, where the European continental national laws would adopt text together with the United Kingdom, would be crucial for adopting an international convention on the hotel-keeper’s contract.

In conclusion, there is a need of creation a unified international convention regarding the hotel-keeper’s contract. The initiative must come from the expert international bodies for unification of law (UNIDROIT, UNCITRAL or others). The first important input of the future convention is that it must take into consideration all differences between the Euro-continental and Anglo-American law, and reassume the most important problems regarding the hotel-keeper’s contract and especially the hotel guest liability for non-payment of hotel services. The results of the paper that deals with a guest’s contractual liability for hotel-keeper’s proprietary and non-proprietary damage due to non-payment of hotel services provided in the hotel, together with the strong opinion about non-possibility of the previous exclusion or limitation of such

guest's contractual liability and by the scientific review of rare circumstances under whose the guest can exclude or limit this liability, in addition to some similar principles of the two legal circles (e.g. liability for all property brought by the guest in the hotel no matter if they are a property of the guest or not), can be remarkable starting points in the direction of creating provisions of guest's liability for non-payment in the future international convention on the hotel-keeper's contract.

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