

NEW CROATIAN CUSTOMARY PRACTICE IN THE HOSPITALITY INDUSTRY (2023) THROUGH DIGITAL TRANSITION CHANGES

OLIVER RADOLOVIĆ

University of Pula, Faculty of Economics and Tourism, Pula, Croatia
oradol@unipu.hr

The new Croatian Customary practice in the hospitality industry (2023) were adopted by the Croatian Chamber of Economy and published in the Official Gazette of the Republic of Croatia (No. 74/2023) on July 06, 2023. There are no major changes regarding the old Customary practice (1995): 1. application of the customs is unchanged, 2. there are still arranged the same contracts and 3. structure of the customs content is almost identical. However, the important changes are the new "digital" provisions (modifications and amendments of old customs) related to 28 years of technological progress, digital improvement and better organization of providing hospitality services, manifested in the following groups of usances: 1. communication between the contracting parties, 2. use of digital resources and information equipment in the hotel, 3. mutual providing of the information and data and 4. insurance of payment of the used hotel services. The same changes represent the directions for improvement of other tourism and hospitality legislation in Croatia, as well as the ideas for the necessary "digital-transition" changes in the laws and hospitality practices of other countries and European and international business practices from the domain (European ECTAA-HOTREC Code of conduct and international IH&RA-UFTAA Code of practice).

Keywords:

customary practice, hospitality industry, customs, tourism law, Croatian law, ECTAA-HOTREC code of conduct, IH&RA-UFTAA code of practice

1 Introduction

In the Croatian law, many important contracts in hospitality and tourism (hotel-keeper's contracts and related contracts) are still governed by business customs, and not in their natural legislative "place" - in the Civil Obligations Act (hereinafter: ZOO 2005)¹ - although Croatian legal experts have been advocating the regulation of the same in that act for almost half a century.

In 1995, the Croatian Chamber of Economy (HGK) published the "old" Customary practice in the hospitality industry (hereinafter: PUU 1995)², which were unchanged for the entire 28 years, even though practices in the hospitality and tourism industry were changing rapidly and modernized (especially in the "digital" sphere) during that period. In addition, the new ZOO 2005 (Article 12) more clearly regulates the link³ between ZOO and business customs.⁴

Therefore, in 2023, the HGK decided to "comb" the existing customs and instead of the original idea of amending the old PUU 1995, and due to the established need for many changes in the text, it correctly decided to adopt the text of the "new"

¹ Zakon o obveznim odnosima, Narodne Novine, 35/05, 41/08, 125/11, 78/15, 29/18, 126/21, 114/22, 156/22, 155/23.

² Posebne uzance u ugostiteljstvu, Narodne Novine, 16/95, 108/96.

³ Zubović A., Primjena trgovačkih običaja, Zbornik Pravnog fakulteta Sveučilišta u Rijeci, Volumen 27, no. 1, Rijeka, Croatia, 2006, p. 307-343.

⁴ In the Croatian law, two of the three types of hotel-keeper's contracts (direct and agency) are regulated in the codification of business practices - PUU 2023, and the third type (allotment contract) is mostly regulated in the legislation - ZOO 2005, and, to a lesser extent, in practice arising from the application of the allotment contract - in PUU 2023. From this aspect, only the allotment contract is a "named" contract, while the direct and agency contract are legislatively "unnamed" contracts. From another aspect, according to the nature of the contract to which they belong, the direct hotel-keeper's contract is of a civil (civil law) nature and other types of hotel-keeper's contracts (agency and allotment) are of a commercial (commercial) nature. In Article 12 of the ZOO 2005, the Croatian legislator regulated the application (legal force) of civil and commercial customs to contractual relations: 1) civil (non-commercial) customs and covenants (direct hotel-keeper's contract) are applied only when they are expressly contracted or prescribed by law (article 12. paragraph 4 of the ZOO 2005), and 2) trade customs and usages (agency and part of the allotment contract) are applied if no other mutual practice has been contracted or developed between the parties, unless they are expressly or tacitly excluded (article 12. paragraphs 1 and 2 of ZOO 2005). Therefore, in Croatian law, the sources of law to a particular (civil or commercial) type of hotel-keeper's contract are applied in the following hierarchical order:

1) on the (civil) direct hotel-keeper's contract (article 12. paragraph 4 of the ZOO 2005) - primarily the contract between the contracting parties, secondarily, if their application is expressly agreed upon, customs (7-52) from PUU 2023, and then general rules of the ZOO 2005,

2) on the (commercial) agency hotel-keeper's contract (article 12. paragraph 1 and 2 of the ZOO 2005) - primarily a contract between the contracting parties, secondarily a mutual practice developed between the contracting parties, and only then, unless the contracting parties expressly or tacitly excluded, customs (53-84 and secondary 7-52) from PUU 2023.

3) on the (commercial) allotment hotel-keeper's contract (article 12. paragraph 1 and 2 of the ZOO 2005) - primarily the provisions of the ZOO that regulate the allotment contract, secondarily the contract between the parties, then developed mutual practice, and only then, unless the contractors explicitly or tacitly excluded them, customs (85-92) from PUU 2023.

Customary practice in the hospitality industry (hereinafter: PUU 2023)⁵ and put the old PUU 1995 out of force.

The new PUU 2023 were adopted by the Croatian Chamber of Economy and published in the Official Gazette of the Republic of Croatia (Narodne Novine), No. 74/2023 on July 06, 2023.

In the "new" PUU 2023 there are no major conceptual changes regarding the "old" PUU 1995: 1. application⁶ of the customs is *defacto* unchanged, 2. there are still arranged the same six contracts⁷ and practically in a very similar manner and 3. the structure of the content of the customs is almost exactly identical.

However, even they are not the subject of this work, it is also worth noting some more important substantive changes adopted by the new PUU 2023: a) harmonization of the text of the PUU 2023 with the text of the ZOO 2005 (especially in the domain of non-property damage and the application of the customs), b) the introduction into the subject of hotel-keeper's contracts of the so-called *all-inclusive* services, c) changes and additions to customs related to 28 years of technological (digital) progress in practice and outdated descriptions in the text, d) reduction of the number of customs from 152 to 141 and others.

In addition to the mentioned "major" changes, the "minor" changes and novelties in the text of the PUU 2023, which are the result of digital development in practice, went almost unnoticed. With those seemingly "minor technical" changes, but very important in the context of the digital legal transition, a dozen new solutions have entered into the Croatian customary law that will greatly clarify and facilitate the procedures of the parties in practice. Such new "digital" provisions related to 28 years of technological progress in the context of digital improvement and better organization of providing hospitality services can be classified in the following four groups of customs:

⁵ Posebne uzance u ugostiteljstvu, Narodne Novine, 74/2023.

⁶ Gorenc V., Šmid, V. (1999), Poslovno pravo u turizmu i ugostiteljstvu, Zagreb, Školska knjiga, Croatia, p. 10.

⁷ Those contracts are: 1. Direct hotel-keeper's contract on hotel services, 2. Agency hotel-keeper's contract, 3. Allotment hotel-keeper's contract, 4. Contract for accommodation in tourist apartments, 5. Contract on camping services, 6. The food and beverage services contract.

1. the communication between the contracting parties,
2. the use of digital resources and information equipment in the hotel,
3. the mutual providing of the information and data and
4. the insurance of payment of the used hotel services.

The paper's aim is to give an overview and analysis of the new PUU 2023 customs which show "digital" progress compared to the text of "old" customs through the systematization of the same into the mentioned four groups.

The paper is structured through four chapters. In the first chapter (introduction) is given a brief overview of the topic and are presented the research objectives and the content of the paper. The second chapter (New Croatian Customary practice in the hospitality industry (2023)) deals with the new PUU 2023 and their application, its customs and their structure. The third chapter (New "digital" provisions (customs) in the Croatian Customary practice in the hospitality industry (2023)) show the review and analysis of four groups of new "digital" customs from PUU 2023. The last fourth chapter (conclusion) summarizes paper's solutions and provides a final overview of all work results.

2 New Croatian Customary practice in the hospitality industry (2023)

PUU 2023 represent a new codification of business practices in the application of contracts in the hospitality industry in the Republic of Croatia. With their adoption, PUU 1995 ceased to be valid (article 141. of the PUU 2023)⁸.

It should be pointed out that with the adoption of the (new and better) PUU 2023, the Croatian legislation did not solve the problem of a "better" or "correct" regulation of hotel-keeper's and related contracts in Croatian law.⁹ However, until the legislator introduces into ZOO 2005 the contracts regulated in PUU 2023, it is

⁸ Usance 141. PUU 2023, Narodne novine, 74/2023: "With the entry into force of these Regulations, Regulations No. I.-55-35/3-1995 published in the Official Gazette of the Republic of Croatia "Narodne novine" No. 16/1995 cease to be valid."

⁹ In fact, it is a paradox that in Croatia, a country that primarily lives from the hospitality and tourism sector, the most important contracts from the entire field of hospitality and tourism (direct and agency hotel-keeper's contracts) are not regulated in the Croatian legislation.

good that there is a place (at least in customary law) that regulates the content¹⁰ of these contracts.¹¹

In the cross-section of the analysis of PUU 2023, it is necessary, for this chapter, to mention the most important things in terms of application (1), contracts (customs) to which usances refer (2) and their structure (3).

First, regarding the application, in the old PUU 1995 there were mentioned that these are codified business customs and that they are applied to relations from contracts on hospitality industry and that these customs are applied to relations from other contracts if the parties have contracted them or if it follows from the circumstances that wanted their application (usance 1. of the PUU 1995). With the new PUU 2023, the application of customs¹² is slightly changed, but essentially remained the same. In addition to the excellent link with article 12 of the ZOO 2005 (it was necessarily to precise that connection)¹³, the following categories are included in the scope of application: 1. practice from hospitality and tourism regulations, 2. contracts on hospitality services in the economy, 3. other contracts on hospitality services.

Second, the contracts on which the customs from the PUU 2023 are referring are exact the same from the old PUU 1995 with a few technical changes in the names¹⁴ of the contracts (usance 2. of the PUU 2023)¹⁵: 1. Hotel-keeper's contracts 2. Contracts for accommodation in tourist apartments, 3. Contracts on camping services and 4. The food and beverage services contracts.

¹⁰ Otherwise, PUU 2023 should not regulate the same contents of the contracts (these contracts would have to be regulated by the ZOO 2005), but only the application of these contracts in the practice of hospitality and tourism.

¹¹ Gorenc, V., Mandarić, A., Pokorić, D. & Šmid, V., *Posebne uzance u ugostiteljstvu s komentarom*, RRIF Plus, Zagreb, Croatia, 1996; authors mentioned similar almost 30 years ago with the connection of PUU 1995 to the ZOO 1978 (ex Civil Obligations Act from 1978).

¹² Usance 1. PUU 2023, Narodne novine, 74/2023: "(1) These Customary Practice in the Hospitality Industry (hereinafter referred to as: Regulations) establish business customs and basic guidelines for the performance of work related to the provision of hospitality services, i.e. those services regulated by regulations on hospitality and tourism regulations. (2) These Terms apply to relations from contracts for hospitality services in the economy, unless otherwise stipulated by contract between the contracting parties or a different mutual practice has been developed or terms are explicitly or tacitly excluded. (3) These Terms apply to relationships from other contracts on hospitality services if the parties have agreed on them."

¹³ Slakoper, Z., Radolović O., *Izvori prava za ugovore o hotelskim uslugama*, Zbornik radova "In memoriam prof.dr.sc. Vjekoslav Šmid", Split, Croatia, 2012, p. 367.

¹⁴ Thus, for example, the name of the contract on camping services ("ugovor o uslugama kampiranja"), which in the old PUU 1995 was called contract on camping ("ugovor o kampiranju"), was changed; in fact, only the name of the section is aligned with the name of the contract in the text (which was an omission in the PUU 1995).

¹⁵ Usance 2. PUU 2023, Narodne novine, 74/2023: "Businesses for which business customs are established in these Terms are those that normally belong to the scope of these contracts: 1. hotel-keeper's contracts, 2. contracts for accommodation in tourist apartments, 3. contracts on camping services, 4. food and beverage services contracts."

Third, the structure of the PUU 2023 (regarding the PUU 1995) is also changed but not in the significant way. PUU 2023 are structured by the 141 usances divided into four main parts:

1. Part One: general provisions (articles 1-2),
2. Part Two: common provisions for hospitality services contracts (articles 3-5)
3. Part Three: hotel-keeper's contracts¹⁶ (articles 6-139)¹⁷ divided in 6 chapters:
 - 3.1. direct hotel-keeper's contract (articles 7-52)
 - 3.2. agency hotel-keeper's contract (articles 53-84)
 - 3.3. allotment hotel-keeper's contract (articles 85-92)¹⁸
 - 3.4. contracts for accommodation in tourist apartments (articles 93-106)
 - 3.5. contracts on camping services (articles 107-119)
 - 3.6. food and beverage services contracts (articles 120-139)
4. Part Four: final provisions (articles 140-141).

Within such a structure of PUU 2023, the "digital" applications mentioned in the text of the usances can be seen in all contracts to which business customs apply, and will be look at and analyze them in the next chapter through their classification in the four groups of customs regarding:

1. the communication between the contracting parties,
2. the use of digital resources and information equipment in the hotel,
3. the mutual providing of the information and data and
4. the insurance of payment of the used hotel services.

¹⁶ There are authors in Croatian legal theory who emphasized that there is one contract on hotel services (divided into three versions): Šmid, V., *Ugovor o hotelskim uslugama*, *Stručna revija Ugostiteljstvo i turizam*, Volumen 32, no. 12 (5/6), Zagreb, Croatia, 1984, p. 483-492.

¹⁷ In the redaction of the text, in the creation of the PUU 2023 structure, one mistake also crept in. Namely, in the third part entitled "Hotel-keeper's contracts", other related contracts (apartments, camping, food and beverage) are regulated in addition to hotel-keeper's (direct, agency, allotment) contracts. Although the provisions of the hotel-keeper's contracts apply additionally to them as well, they should have been divided into a separate section of the contract.

¹⁸ It should be noted that the same contract has often changed names both in the Croatian literature and in legislation, but that its most correct term is the "allotment hotel-keeper's contract" (that term is not mentioned nor in the ZOO 2005 nor in the PUU 2023). Gorenc, V., *Ugovor o angažiranju ugostiteljskih kapaciteta (ugovor o alotmanu)*, *Pravo i porezi*, Volumen 11, no. 8, Zagreb, Croatia, 2002, p. 3-9; Šmid, V., *Ugovor o alotmanu*, *Zbornik radova Pravnog fakulteta u Mostaru*, Volumen 11, Mostar, Bosnia and Herzegovina, 1998, p. 79-95.

3 New "digital" provisions (customs) in the Croatian Customary practice in the hospitality industry (2023)

3.1 New customs in the communication between the contracting parties

The first group of provisions of PUU 2023 with "digital" changes compared to the old PUU 1995, which is analyzed in this chapter, are provisions related to communication between contracting parties. In this context, four usances are distinguished by which they are regulated:

- 1) an offer for booking accommodation in a direct hotel-keeper's contract (article 8. of the PUU 2023 in the section "conclusion of contract")¹⁹,
- 2) request for reservation in the agency hotel-keeper's contract (article 54. of the PUU 2023 in the section "conclusion of the contract")²⁰.
- 3) cancellation of the agency hotel-keeper's contract (article 63. of the PUU 2023 entitled "cancellation")²¹,
- 4) rules regarding order in the camp in the contract on camping services (article 113. of the PUU 2023 in the section "order in the camp")²².

¹⁹ Usance 8. PUU 2023, Narodne novine, 74/2023: "(1) The offer for booking an accommodation or pension contains the type of hospitality service, the start and duration of the service, and the guest's geographic (place of residence) and virtual (e-mail) address. (2) Reservation of accommodation or pension can be requested with the use of permitted means of communication or specified by the hotel-keeper. (3) If the hotel-keeper requests it during the reservation, the reservation requested orally or by telephone must be confirmed in writing using the means of communication permitted or specified by the hotel-keeper."

²⁰ Usance 54. PUU 2023, Narodne novine, 74/2023: "(1) The agency sends a reservation request to the hotel-keeper. (2) Every unwritten request for a reservation must be confirmed in writing without delay using the means of communication permitted or specified by the hotel-keeper. (3) If the agency requests in the reservation request that the hotel-keeper offer him a price, the hotel-keeper's contract is considered concluded when the hotel-keeper receives the acceptance of the offer from the agency. (4) The offer contains essential components from usance no. 3. The agency shall notify the hotel-keeper without delay of the acceptance or rejection of the offer."

²¹ Usance 63. PUU 2023, Narodne novine, 74/2023: "(1) Contracted services are cancelled in writing, indicating the date of cancellation. (2) Every unwritten cancellation is confirmed by the agency in writing. (3) In order for the cancellation referred to in paragraph 2 of this agreement to be valid from the day of the verbal notification, the hotel-keeper must receive written confirmation of cancellation no later than the following day by any permitted or prescribed communication method by the hotel-keeper. (4) If, in the meantime, the hotel-keeper confirms the receipt of the verbal or telephone cancellation in any written form, the agency is released from the obligation to confirm his verbal or telephone cancellation in writing."

²² Usance 113. PUU 2023, Narodne novine, 74/2023: "(1) Rules of conduct and house rules in the camp will be published by the camp-keeper in the usual way (at the reception and on the internet website). (2) By concluding a camping contract, the guest confirms that he is familiar with these rules of conduct and house rules and that he has accepted them."

The novelty in the offer for booking accommodation in the direct contract is that it must now contain a "virtual (e-mail) address" (article 8.1. PUU 2023). The same novelty is understandable when it is known that the largest number of booking offers to come mostly through e-mails. In addition, PUU 2023 states that a reservation can be requested using all "allowed or specified means of communication by the hotel-keeper" (article 8.2. PUU 2023).

If the hotel-keeper requests it during the reservation period (the process of booking of the direct hotel-keeper's contract via any means of communication), the reservation requested verbally or by telephone must be confirmed "in writing using the means of communication permitted or specified by the hotel-keeper" (article 8.3. PUU 2023).

Similar to the offer for the reservation²³ of a direct hotel-keeper's contract are the text news from the request for booking accommodation in the agency hotel-keeper's contract. Here, also, every request for a reservation must be confirmed "in writing with the use of permitted means of communication or specified by the hotel-keeper" (article 54.1. PUU 2023).

Both in the previous PUU 1995 and in Croatian literature²⁴, a lot of attention was paid to the cancellation (unconditional and conditional)²⁵ of the agency hotel-keeper's contract. When cancelling an agency hotel-keeper's contract, the huge novelty in the PUU 2023 is the facilitation of the activity for the travel agency in the procedure of contract cancellation: if the hotel-keeper "in any written form" (and by any means of communication) confirms receipt of the verbal or telephone cancellation of the agency hotel-keeper's contract, the travel agency is "released from the obligation to confirm its verbal or telephone cancellation in writing" (article 63.4. PUU 2023).

The biggest positive innovation in this group of "digital" usances is the introduction of the obligation of camp-keepers to publish the rules of conduct and house rules in the camp "both at the reception and on the internet website" (article 113.1. PUU 2023). Since by signing of a camping contract, the guest confirms that he is familiar

²³ Gorenc, V., *Izravni ugovor o hotelskim uslugama*, *Pravo i porezi*, no. 6/2002, Zagreb, Croatia, 2002, p. 14-17.

²⁴ Gorenc, Šmid, *op.cit.*, p. 133-135; Gorenc, V., *Agencijski ugovor o hotelskim uslugama (prvi dio)*, *Acta Turistica*, Volumen 7, no. 2, Zagreb, Croatia, 1995, p. 182-215; Gorenc, V., *Agencijski ugovor o hotelskim uslugama (drugi dio)*, *Acta Turistica*, Volumen 8, no. 1, Zagreb, Croatia, 1996, p. 58-87.

²⁵ Gorenc, V., Mandarić, A., Pokorić, D. & Šmid, V., *op.cit.*, p. 82.

with and has accepted these rules of conduct and house rules, it was logical that apart from the (as a rule, unfathomable) rules of conduct and order in the camp published in "paper form" somewhere around the reception, guests (and future interested guests in camp accomodation) will be familiar with them in advance via the Internet.²⁶

As can be seen from the solution of the PUU 2023, all these "digital" innovations in a new usances related to the communication between the contractual parties (the hotel-keeper, the guest and the travel agency) were adopted for the purpose of making communication between them in the fastest and widest possible way. At the same time, these solutions (as well as the solutions from the following chapters) are not the "final" solutions, but only a good basis for monitoring further digital innovations in practice and will certainly be supplemented in the future in this direction.

3.2 New customs regarding the use of digital resources and information equipment in the hotel

The second group of new "digital" provisions from PUU 2023 are usances that regulate the use of digital resources and information (IT) equipment in the hotel. In this context, three customs stand out:

- 1) for the use of the devices by the guest in a direct hotel-keeper's contract (article 18. PUU 2023²⁷ in the section "rights and obligations of the parties"),
- 2) for the use of other communication devices in a direct hotel-keeper's contract (article 30. PUU 2023²⁸ in the same section).

²⁶ Although Croatian camp-keepers mainly developed the same practice as early at the end of the last century (in the late 1990's all of them opened their websites), it was good for such a provision to end up in the text of the PUU 2023.

²⁷ Usance 18. PUU 2023, Narodne novine, 74/2023: "On the basis of the hotel-keeper's contract, the guest acquires the right to: 1. use the rooms intended for accommodation and associated services, and if the pension, half-pension or all-inclusive is contracted, he is also entitled to appropriate meals; 2. the use of all devices, common rooms and the use of the hotel staff services in that facility and other related facilities and areas of the hotel-keeper intended for guests."

²⁸ Usance 30. PUU 2023, Narodne novine, 74/2023: "The hotel-keeper can separately charge the guest for the use of telephones and other technical communication devices according to the hotel-keeper's price list."

- 3) for the payment of the special TV programs in the direct hotel-keeper's contract (article 31. PUU 2023²⁹ in the same section).

The change in relation to the use of devices by guests in the hotel is manifested by the possibility of using all devices (of any type, and the norm primarily refers to the use of devices for Internet access) *infra hospitium*. On the basis of the direct hotel-keeper's contract, the guest acquires the right, among other things, to use all "devices" in that facility and other related facilities and areas of the hotel-keeper's intended for guests (article 18.2. PUU 2023).

Second novelty in this group of usances is that in a direct hotel-keeper's contract, the hotel-keeper "may" (but does not have to) "separately charge the use of the telephone and other technical communication devices" from the guest according to his price list (article 30. PUU 2023). With the term "and other technical communication devices" (laptops, fax machines, printers...), PUU 2023 left the possibility of a broad interpretation of the provision, leaving the hotel-keeper the discretionary right to determine which services for the use of digital devices and IT equipment will be charged to the guests.

The latest innovation, actually just a codified long-standing practice in hotels, is that the hotel-keeper cannot charge guests in a direct hotel-keeper's contract for the use of TV receivers in hotel rooms for "regular programs" (article 31.1. PUU 2023), while for viewing of "special programs" from the hotel's *Pay TV*, the hotel-keeper may (but does not have to) charge for the use according to the his price list (article 31.2. PUU 2023).³⁰

3.3 New customs in mutual providing of the information and data

From the point of view of the new clauses from PUU 2023 in which the contractual parties must provide each other with mutual information and data, two usances are distinguished:

²⁹ Usance 31. PUU 2023, Narodne novine, 74/2023: "(1) The hotel-keeper does not charge for the use of TV receivers in hotel rooms for regular programs. (2) For watching special programs from the hotel's Pay TV, the hotel-keeper may charge for usage according to the price list."

³⁰ Although the text of PUU 2023 does not specify which TV programs are "regular" and which are "special" in the context of those provisions, in practice those offered automatically on TV receivers in the rooms should be "regular" and all others "special".

- 1) for providing information to the guest in a direct hotel-keeper's contract (article 24. of PUU 2023³¹ in the section "rights and obligations of the parties"),
- 2) for the safekeeping of the guest's propriety (things) in the direct hotel-keeper's contract (article 47. of the PUU 2023³² in the section "responsibility of the hotel-keeper for the guest's belongings").

Although the provision from article 24. of the PUU 2023 is almost identical to the old provision from PUU 1995, according to which the hotel-keeper is obliged to give the guest all "notices" related to the stay, hospitality services, cultural and entertainment events in the place and excursions, and information from train schedules and similar, until now in practice meant that the hotel-keeper had the obligation to hand over such "notices" to the guest in "written form" (through prospectuses, posters, flyers, etc.), it has now acquired a new dimension because it no longer exists "paper" obligation of the host (hotel-keeper) because he can deliver the same "notices" to the guest in any way he wants (in practice, it will usually be via e-mail, internet, sms text messages, etc.).

Secondly, the new provision (article 47.5. PUU 2023) which governs mutual obligations regarding the guest's belongings entrusted to the hotel-keeper, stipulates, among other things, that "things entrusted for safekeeping can be picked up by the guest or a person authorized by the guest (give him the key, code or confirmation)". The novelty of introducing a digital "code" as evidence for storing and retrieving things handed over for safekeeping is relevant to this paper. It is also interesting that a third person³³ can pick up an item from the safe or a special room if the guest authorized her to do so. Although one provision (article 47.1. PUU 2023) is identical to the provision from the old PUU 1995 according to which "the hotel-keeper has the right to inspect things that the guest gives for safekeeping", it should be kept in

³¹ Usance 24. PUU 2023, Narodne novine, 74/2023: "The hotel-keeper provides the guest at no extra charge with all information related to the stay, hospitality services, cultural and entertainment events in the place and excursions, as well as information and data from train schedules and the similar."

³² Usance 47. PUU 2023, Narodne novine, 74/2023: "(1) The hotel-keeper has the right to inspect the things that the guest gives for safekeeping. ... (5) Things handed over for safekeeping can be picked up by the guest or a person authorized by the guest (give them a key, code or receipt). (6) If the hotel-keeper has issued a receipt, the guest or a person authorized by the guest must return the receipt to the hotel-keeper."

³³ Usually it will be people from the guest's room, members of his family, people in his accompaniment, etc. In practice, it turned out to be inconvenient that only one person (the guest who closed the contract) can pick up these things and not the people who use the accommodation with him. An excellent solution was found in this direction.

mind that today, in the context of digital checks of the contents of things (with a scanner, radar, various detection devices, etc.) this provision gained a completely new dimension through the digital verification of things by the hotel-keepers.

3.4 New customs regarding the insurance of payment of the used hotel services

The last group of provisions from PUU 2023 that is analyzed in this paper are the customs by which is provided the insurance of the payment for the used hotel services (accommodation and accessory services). From this standpoint, two usances are relevant:

- 1) for the payment of services in a direct hotel-keeper's contract (article 35. of the PUU 2023³⁴ called "payment of services"),
- 2) for payment of services in the agency hotel-keeper's contract (article 60. of the PUU 2023³⁵ in the section "payment of services").

In the provisions of PUU 2023 which regulate the payment of services in a direct hotel-keeper's contract, the novelty is that for the use of services, the hotel-keeper has the new various rights to demand from the guest insurance of payment for those services. One of the new "digital" ways of such insurance is the "credit card pre-authorization" (article 35.6. PUU 2023). If the guest does not have "funds for pre-authorization" on the credit card as payment insurance, the hotel-keeper has the discretionary right to decide whether to provide accommodation³⁶ or cancel the reservation (article 35.7. PUU 2023).

³⁴ Usance 35. PUU 2023, Narodne novine, 74/2023: "(1) The bill for services can be charged immediately for the service provided or every seven days, if the services are provided over a longer period. (2) For services that he uses during his stay in the hospitality facility, and does not pay immediately, the guest signs an invoice indicating the room number immediately after the service has been provided. ... (6) In order to use the services, the hotel-keeper has the right to require the guest to pay for these services (advance payment/deposit, credit card pre-authorization, etc.). (7) If the guest does not have pre-authorization funds on his credit card as payment insurance, the hotel-keeper can decide whether to provide accommodation or cancel the reservation."

³⁵ Usance 60. PUU 2023, Narodne novine, 74/2023: "(1) If it is not agreed that the guest pays directly, the agency is obliged to issue a tourist voucher (voucher) to the guest and deliver it to the hotel-keeper with one copy, per guest, guide, by post, e-mail or in any other way permitted or prescribed by the hotel-keeper before he started providing the service. (2) After the calculation, the hotel-keeper sends to the agency, for the purpose of payment, an invoice with the original tourist voucher, certified by the guest or representative of the agency (guide, etc.), and keeps a certified copy of the voucher."

³⁶ Radolović, O., Hotel Guest's Liability for Non-Payment of Hotel Services in Comparative Law, WASET: Academic Science Research, Issue 66, June 2010, Paris, France, 2010, p. 430-438; hotel-keeper has the right to refuse accommodation to the guest only exceptionally and for two valid reasons (in comparative law): 1) if there is no available accommodation and 2) if the guest is in such a "condition" that he cannot pay for the services or disturb

The last "digital" novelty from PUU 2023 refers to the payment of services in the agency hotel-keeper's contract. If, namely, it is not agreed that the guest pays directly to the hotel-keeper, the travel agency is obliged to issue the guest a tourist voucher (*voucher*) with one copy, which can also be sent by "e-mail or in some other way permitted or prescribed by the hotel-keeper", deliver to the hotel-keeper before he starts providing the service (article 60.1. PUU 2023).

4 Conclusion

With the adoption of the new PUU 2023, Croatia changed the old PUU 1995 after 28 years. New Customary Practice in the hospitality industry are not the best solution for the Croatian tourism contract law, especially for the most important contracts (hotel-keeper's contracts and related ones). Even almost 30 years ago, authors stated that PUU 1995 are only needed temporary solution until the "hospitality contracts" will be settled in the ZOO.³⁷ But, on the other hand, it is also excellent that as long as the Croatian legislator does not introduce into Croatian ZOO 2005 the contracts regulated in PUU 2023, there is a place (at least in customary law) that regulates the content of these contracts. PUU should not regulate the same (these contracts would have to be regulated by the ZOO), but only the application of these contracts in the practice of hospitality and tourism.³⁸

In the "new" PUU 2023 there are no major conceptual changes regarding the "old" PUU 1995:

1. application of the customs is practically unchanged,
2. there are still arranged the same six contracts and practically in a very similar manner and
3. the structure of the content of the customs is almost exactly identical.

the other guests. Lack of funds on the guest's credit card that blocks the pre-authorization would fall under the (second) reasons related to the "guest's condition".

³⁷ Gorenc, V., *Nove hrvatske posebne uzance u ugostiteljstvu*, Acta turistica, Volumen 7, no. 1, Zagreb, Croatia, 1995, p. 23-24.

³⁸ *ibidem.*, p. 23-42.

However, there are some important substantive changes adopted by PUU 2023:

- a. harmonization of the text of the PUU 2023 with the text of the ZOO 2005 (especially in the domain of non-property damage and the application of the customs),
- b. the introduction into the subject of hotel-keeper's contracts of the so-called *all-inclusive* services,
- c. changes and additions to customs related to 28 years of technological (digital) progress in practice and outdated descriptions in the text,
- d. reduction of the number of customs from 152 to 141 and others.

In addition to the mentioned "major" changes, the "minor" changes and novelties in the text of the PUU 2023, which are the result of digital development in practice, went almost unnoticed. With those seemingly "minor technical" changes, but very important in the context of the digital legal transition - introduction of terms like e-mail address (1), digital code (2), internet website (3), means of communications (4), digital devices (5), etc. - a dozen new solutions have entered into the Croatian customary law that will greatly clarify and facilitate the procedures of the parties in practice. Such new "digital" provisions of the PUU 2023 can be classified in the following four groups of customs (and so were reviewed and analyzed in this paper):

1. the communication between the contracting parties,
2. the use of digital resources and information equipment in the hotel,
3. the mutual providing of the information and data and
4. the insurance of payment of the used hotel services.

It should be borne in mind that Croatia has been a member of the European Union since 2013, where two codifications of business practice of agency hotel-keeper's contracts³⁹ play a particularly important role for European countries: 1) European codification of business practice - the so-called ECTAA-HOTREC Code of

³⁹ Radolović, O., Hrvatske, europske i međunarodne uzance kroz ugovorne obveze turističke agencije prema ugostitelju, *Liber amicorum in honorem Vilim Gorenc*, Pravni fakultet Sveučilišta u Rijeci - Zavod za građansko pravo, Rijeka, Croatia, 2014, p. 261-287.

Conduct (1996)⁴⁰ and 2) International codification of business practice - the so-called IH&RA-UFTAA Code of Practice (1999)⁴¹.

The European ECTAA-HOTREC Code applies to every "internal" and international contract in which both the tourist (travel) agency and the hotel-keeper (hotelier) are based in the EU, unless there is a stronger law. The International IH&RA-UFTAA Code applies only when it comes to a contract with an international element⁴², unless there is a stronger law. It is also necessary to take into account the existence of "parallel" codifications (links) in the agency hotel-keeper's contract (although there are no major differences between the new PUU 2023 compared to the texts of those codes).⁴³ But it should be said that these codifications are also quite "old" (25 and 28 years) and that there is a room for the introduction of similar "digital" innovations in their texts also. Croatia's PUU 2023 could in that direction be a roadmap for changing and amending them.

Finally, all these "digital" innovations from the PUU 2023 are not the "final" solutions, but only a good basis for monitoring further digital news in hospitality practice and will certainly be supplemented in the future. The Croatian legislator should be pressured to include six "PUU contracts" (1. direct hotel-keeper's contract, 3.2. agency hotel-keeper's contract, 3.3. allotment hotel-keeper's contract, 4. contracts for accommodation in tourist apartments, 5. contracts on camping services and 6. food and beverage services contracts) in the text of the ZOO 2005 - and that PUU 2023 retain only the customs related to the application of these contracts in practice, as was resolved (in that precise way) with the allotment (hotel-

⁴⁰ ECTAA-HOTREC Code of Conduct (1996). ECTAA - The European Travel Agents' and Tour Operators' Associations. HOTREC - The trade association of hotels, restaurants and cafes in the European Union. ECTAA-HOTREC, Code of Conduct on hotel contracts and business relations between travel agents/organisers and hotels within the EU (1996), Bruxelles, Belgium.

⁴¹ IH&RA-UFTAA Code of Practice (1999). IH&RA - International Hotel and Restaurant Association (until 1996). IHA - International Hotel Association). UFTAA - Universal federation of Travel Agents Associations. The Code is the result of all previous hotel conventions and codes of the same associations. In the introduction of the Code, it was pointed out that the text of the Code replaces the Code from 1991, which replaced the C Hot (19)79 convention.

⁴² On the forerunners of today's convention was also written about in Croatian legal literature. More about that: Šmid, V., *Hotelska konvencija AIH-FUAAV 1979*, *Privreda i pravo*, Volumen 17, no. 6, Zagreb, Croatia, 1980, p. 1-3; Šmid, V., *Kodeks poslovanja "IHA-FUAAV" 1991*, *Zbornik radova Pravnog Fakulteta u Splitu*, Volumen 31, no. 1-2, Split, Croatia, 1994, p. 49-61.

⁴³ Radolović, O., *Agencijski ugovor o hotelskim uslugama: ugovorna odgovornost ugostitelja u hrvatskoj, europskoj i međunarodnoj poslovnoj praksi*, *Pravni vjesnik, časopis za pravne i društveno-humanističke znanosti Pravnog fakulteta Sveučilišta u Osijeku*, Volumen 26, no. 2, Osijek, Croatia, 2010, p. 7-35.

keeper's) contract - which content is regulated in the ZOO 2005 and the application in practice is within the usances of the PUU 2023.

References

- ECTAA-HOTREC Code of Conduct (1996).
- Gorenc V., Šmid, V. (1999), *Poslovno pravo u turizmu i ugostiteljstvu*, Zagreb, Školska knjiga, Croatia.
- Gorenc, V., Agencijski ugovor o hotelskim uslugama (drugi dio), *Acta Turistica*, Volumen 8, no. 1, Zagreb, Croatia, 1996, p. 58-87.
- Gorenc, V., Agencijski ugovor o hotelskim uslugama (prvi dio), *Acta Turistica*, Volumen 7, no. 2, Zagreb, Croatia, 1995, p. 182-215.
- Gorenc, V., Izravnj ugovor o hotelskim uslugama, *Pravo i porezi*, no. 6/2002, Zagreb, Croatia, 2002, p. 14-17.
- Gorenc, V., Mandarić, A., Pokorić, D. & Šmid, V., *Posebne uzance u ugostiteljstvu s komentarom*, RRIF Plus, Zagreb, Croatia, 1996.
- Gorenc, V., Nove hrvatske posebne uzance u ugostiteljstvu, *Acta turistica*, Volumen 7, no. 1, Zagreb, Croatia, 1995, p. 23-42.
- Gorenc, V., Ugovor o angažiranju ugostiteljskih kapaciteta (ugovor o alotmanu), *Pravo i porezi*, Volumen 11, no. 8, , Zagreb, Croatia, 2002, p. 3-9.
- IH&RA-UFTAA Code of Practice (1999).
- Posebne uzance u ugostiteljstvu, *Narodne Novine*, 16/95, 108/96.
- Posebne uzance u ugostiteljstvu, *Narodne Novine*, 74/2023.
- Radolović, O., Agencijski ugovor o hotelskim uslugama: ugovorna odgovornost ugostitelja u hrvatskoj, europskoj i međunarodnoj poslovnoj praksi, *Pravni vjesnik*, časopis za pravne i društveno-humanističke znanosti Pravnog fakulteta Sveučilišta u Osijeku, Volumen 26, no. 2, Osijek, Croatia, 2010, p. 7-35.
- Radolović, O., Hotel Guest's Liability for Non-Payment of Hotel Services in Comparative Law, *WASET: Academic Science Research*, Issue 66, June 2010, Paris, France, 2010, p. 430-438.
- Radolović, O., Hrvatske, europske i međunarodne uzance kroz ugovorne obveze turističke agencije prema ugostitelju, *Liber amicorum in honorem Viliam Gorenc*, Pravni fakultet Sveučilišta u Rijeci - Zavod za građansko pravo, Rijeka, Croatia, 2014, p. 261-287.
- Slakoper, Z., Radolović O., Izvori prava za ugovore o hotelskim uslugama, *Zbornik radova "In memoriam prof.dr.sc. Vjekoslav Šmid"*, Split, Croatia, 2012, p. 367.
- Šmid, V., *Hotelska konvencija AIH-FUAAV 1979*, *Privreda i pravo*, Volumen 17, no. 6, Zagreb, Croatia, 1980, p. 1-3.
- Šmid, V., *Kodeks poslovanja "IHA-FUAAV" 1991*, *Zbornik radova Pravnog Fakulteta u Splitu*, Volumen. 31, no. 1-2, Split, Croatia, 1994, p. 49-61.
- Šmid, V., *Ugovor o alotmanu*, *Zbornik radova Pravnog fakulteta u Mostaru*, Volumen 11, Mostar, Bosnia and Herzegovina, 1998, p. 79-95.
- Šmid, V., *Ugovor o hotelskim uslugama*, *Stručna revija Ugostiteljstvo i turizam*, Volumen 32, no. 12 (5/6), Zagreb, Croatia, 1984, p. 483-492.
- Zakon o obveznim odnosima*, *Narodne Novine*, 35/05, 41/08, 125/11, 78/15, 29/18, 126/21, 114/22, 156/22, 155/23.
- Zubović A., *Primjena trgovačkih običaja*, *Zbornik Pravnog fakulteta Sveučilišta u Rijeci*, Volumen 27, no. 1, Rijeka, Croatia, 2006, p. 307-343.