



Security and enforcement of marina operators' claims under Croatian law - *de lege ferenda* proposals

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PRESENTATION PLAN

- Point out to drawbacks in the current law (the Maritime Code; the „MC”) relating to several aspects of securing and enforcing various claims by marina operators towards marina users
- Outline the legislative proposals to address those drawbacks in the recent legislative bill to amend the MC

PRESENT SITUATION

Various claims by marina operators towards marina users - no adequate security and enforceability

- Not secured by a **maritime lien**
- Uncertainties in relation to **right of retention** (possessory lien)
- Regime of **judicial sales** set out in the MC - not applicable to boats (but only to ships and yachts)
- Uncertainties in relation to **arrest**
- Limited powers in relation to dealing with **derelict vessels**

PRESENT SITUATION

MARITIME LIENS

Maritime liens pertain to (inter alia):

*„Claims for **port charges**, expenses pertaining to navigation in channels and other sea lanes, and pilotage costs” (Art. 241, para 1, sub-para. 4 MC)*

Croatian courts take the (erroneous) view that the term **„port charges”** includes only charges in the ports open to public transport but not charges in the special-purpose ports

LEGISLATIVE PROPOSAL

MARITIME LIENS

- Maritime liens shall pertain to (inter alia):

„Claims for port charges and dues charged in the ports open to public traffic and special-purpose ports, expenses pertaining to navigation in channels and other sea lanes (...)”

BUT: Scope of application - Only to vessels (ships, yachts, boats) of the **Croatian flag**

PRESENT SITUATION

RIGHT OF RETENTION

MC: Right of retention enjoyed by **shipbuilders** and **shiprepairers** holding the vessel in the **shipyard** or **shiprepairyard** (Article 437)

PROBLEMS:

- **Marinas ≠ shipyards ≠ shiprepairyards**
- Only some of marina services qualify as „**repairs**”. Berthing, and even maintenance works, do not qualify as such.

LEGISLATIVE PROPOSALS

RIGHT OF RETENTION

- Shiprepair and ship-conversion contract – applicable provisions expressly extended to apply to yachts as well as boats.
- Definition of shiprepair or ship-conversion contract expressly extended to **maintenance, servicing and the like.**
- Nautical berth contract – express **right of retention** to the berth provider (including the right to relocate the vessel) as security for **all the claims** arising in connection with the **berth contract** or with the **stay of the vessel on the berth following termination** of the berth contract.

PRESENT SITUATION

JUDICIAL SALES OF VESSELS

- Provisions of MC dealing with judicial sales of vessels apply to ships and yachts, **BUT not to boats.**
- BOATS thus left to be judicially sold according to the **general rules of judicial sales** (Forced Execution Act), containing somewhat **different procedure** and **different order of priority.**
- sometimes by the **courts of general jurisdiction** (Municipal Courts).
- **TRICKY**, because provisions of the MC on **ship mortgages** and **maritime liens** expressly **apply to boats.**

LEGISLATIVE PROPOSAL

JUDICIAL SALES OF VESSELS

- Provisions of MC dealing with judicial sales of vessels expressly extended to boats.

PRESENT SITUATION

ARREST OF VESSELS

- **Provisions of MC dealing with arrest of vessels** apply to ships and yachts, **BUT not to boats** (different rules + different jurisdiction).
- List of „**maritime claims**” does not contain claims arising in connection with **port/berth dues/charges**
- List of „**maritime claims**” does not contain claims arising in connection with **watching** and/or **maintenance** and/or **berthing** the vessels

LEGISLATIVE PROPOSAL

ARREST OF VESSELS

- Provisions of MC dealing with arrest of vessels **extended to apply to boats**.
- List of „**maritime claims**” extended to expressly include claims arising in connection with **port/berth dues/charges** (in line with 1999 Arrest Convention).
- List of „**maritime claims**” extended to expressly include claims arising in connection with **watching** and/or **maintenance** and/or **berthing** the vessels.

PRESENT SITUATION

DERELICT VESSELS

- Provisions of MC dealing with the right to dispose with derelict vessels (logically) apply to **vessels at sea**.
- Marinas sometimes face **problems** with derelict vessels **at dry berth**: **without a known owner, little can be done**

LEGISLATIVE PROPOSAL

DERELICT VESSELS

- Provisions of MC dealing with wreck removal **expressly extended to apply to wrecks on shore.**

LEGISLATIVE PROPOSALS

S U M M A R Y

- Will increase the **level of security** as to various claims by marina operators (**maritime lien / retention / arrest**)
- Will **facilitate enforcement** of those claims (**MC + Commercial Courts**)
- Will improve the **order of priority** enjoyed by those claims in case of judicial sale (**maritime lien / retention**)
- Will provide operators with **more efficient out-of-court tools** to deal with those claims (**retention / wreck removal**)



Thank you for your attention.