

HRVATSKA AKADEMIJA ZNANOSTI I UMJETNOSTI



NOVI PRAVNI REŽIM ZA MARINE THE NEW LEGAL REGIME FOR MARINAS

Završna konferencija znanstvenog projekta

Razvoj suvremenog pravnog i osigurateljnog režima za hrvatske
marine: unapređenje konkurentnosti, sigurnosti, sigurnosne
zaštite i zaštite morskog okoliša

Final research project conference

Developing a Modern Legal and Insurance Regime for Croatian
Marinas - Enhancing Competitiveness, Safety, Security and
Marine Environmental Standards



Hrvatska akademija znanosti i umjetnosti, Zagreb, 22.-23. studenoga 2018.
Croatian Academy of Sciences and Arts, Zagreb, 22-23 November 2018

Organizatori / Organisers

Znanstveno vijeće za državnu upravu, pravosuđe i vladavinu prava i
Jadranski zavod Hrvatske akademije znanosti i umjetnosti
Scientific Council for Government Administration, Judicature and
the Rule of Law and the Adriatic Institute of the Croatian Academy of
Sciences and Arts



Suorganizator / Co-organiser

Ministarstvo mora, prometa i infrastrukture Republike Hrvatske
Ministry of the Sea, Transport and Infrastructure of the Republic of Croatia



Predsjedavatelj / Conference Chair

Akademik Jakša Barbić
Predsjednik Znanstvenog vijeća i potpredsjednik
Hrvatske akademije znanosti i umjetnosti
Chairman of the Scientific Council and Vice President of the
Croatian Academy of Sciences and Arts

Konferencijom se obilježava završetak projekta DELICROMAR
(HRZZ UIP-2013-11-3061) koji financira Hrvatska zaklada za znanost
u razdoblju od 1. ožujka 2016. do 28. veljače 2019.

The conference marks the completion of the DELICROMAR
(HRZZ UIP-2013-11-3061) research project financed by the Croatian
Science Foundation in the period 1 March 2016 to 28 February 2019



Konferenciju su sufinancirali
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Poštovani sudionici,

Jadranski zavod Hrvatske akademije znanosti i umjetnosti završava znanstveni projekt Razvoj suvremenog pravnog i osigurateljnog režima za hrvatske marine: unapređenje konkurentnosti, sigurnosti, sigurnosne zaštite i zaštite morskog okoliša (DELICROMAR) koji financira Hrvatska zaklada za znanost u razdoblju od 1. ožujka 2016. do 28. veljače 2019. Tim povodom organizirali smo konferenciju na kojoj će se raspraviti rezultati projekta i razmotriti druga pitanja pravnog režima za marine. Ovim je projektom istražen i ispitan pravni okvir za osnivanje, upravljanje i djelatnost luka nautičkog turizma u Hrvatskoj. Istraživanje je obuhvatilo i poredbenopravnu analizu svih izvora prava u Hrvatskoj i drugim pomorskim zemljama i uobičajenih uvjeta poslovanja marina u Europi. Predložena su rješenja za unapređenje pravnog okvira za marine uključujući modele ugovora i općih uvjeta osiguranja. Sve je to učinjeno u cilju konsolidacije relevantnih propisa i razjašnjenja dvojbenih pravnih pitanja te ujednačenja sudske i poslovne prakse. Uz predstavljanje rezultata spomenutog projekta iznijet će se prijedlozi modela standardiziranih uvjeta ugovora o vezu i ugovora o osiguranju odgovornosti marina te prijedlozi za izmjenu Pomorskog zakonika i Zakona o pomorskom dobru i morskim lukama. Za to je bitna razmjena stajališta i iskustava teoretičara i praktičara koji se bave tom materijom.

Želimo Vam dobrodošlicu na konferenciju **Novi pravni režim za marine** koja će se održati u četvrtak i petak, 22. i 23. studenoga 2018. u velikoj dvorani Akademijine palače u Zagrebu, Zrinski trg 11, s početkom svakog dana u 10 sati.

Radovi s konferencije objavit će se u 47. knjizi nakladničkog niza *Modernizacija prava*, Znanstvenog vijeća za državnu upravu, pravosuđe i vladavinu prava.

Bilo bi nam drago da sudjelovanjem na konferenciji pridonese te temeljitoj raspravi o ovoj važnoj društvenoj temi i tako pomognete da se o njoj zauzmu znanstveno utemeljena stajališta.

S poštovanjem,

Organizatori

Dear Participants,

The Adriatic Institute of the Croatian Academy of Sciences and Arts is finalising the research project Developing a Modern Legal and Insurance Regime for Croatian Marinas - Enhancing Competitiveness, Safety, Security and Marine Environmental Standards (DELICROMAR), financed by the Croatian Science Foundation in the period from 1 March 2016 until 28 February 2019. We are organising this conference to discuss the project results and look into other relevant legal issues related to marinas. This project has dealt with the legal framework for the establishment, management and operation of marinas in Croatia. The research has encompassed a comparative analysis of all legal sources in Croatia and other maritime countries and of the standard general terms of business of marina operators in Europe. Certain solutions have been proposed for the improvement of the relevant legal framework, including models for berthing contracts and the standard terms of marina operator liability insurance. All this has been done with the aim of consolidating the relevant legislation, clarifying open legal issues and contributing to a uniform judicial and business practice. The proposed models of standard berthing contracts and marina operator liability insurance terms will be presented, as well as the proposals for the revision of the Maritime Code and the Maritime Domain and Seaports Act. An exchange of views and experiences amongst the academics and practitioners dealing with the legal topics in question is therefore essential.

We wish you a warm welcome to ***The New Legal Regime for Marinas*** conference taking place in the Palace of the Croatian Academy of Sciences and Arts in Zagreb on 22 and 23 November 2018, beginning each day at 10 AM.

The conference papers will be published in no. 47 of the *Modernisation of Law* book series of the Scientific Council for Government Administration, Judicature and the Rule of Law.

We will be glad to see you contribute to the discussion on this important social topic and to help in taking positions on scientific grounds.

Respectfully,

The organisers

PROGRAM

1. dan (22.11.2018.)

Otvaranje konferencije (10:00 h)

Akademik Zvonko Kusić, predsjednik Hrvatske akademije znanosti i umjetnosti
Kap. Siniša Orlić, pomoćnik ministra, Ministarstvo mora, prometa i infrastrukture

Gosp. Ivo Bašić, glavni tajnik Ministarstva turizma

Gosp. Sean Lisjak, predsjednik Udruženja hrvatskih marina pri Hrvatskoj
gospodarskoj komori

Izlaganja

Prezentacija rezultata projekta DELICROMAR

Doc. dr. sc. Adriana V. Padovan, voditeljica projekta, Jadranski zavod Hrvatske
akademije znanosti i umjetnosti

Perspektive održivog razvoja nautičkog turizma na Jadranu (pozvano predavanje)

Zrinka Marušić, mag.math., univ.spec.oec., dr. sc. Siniša Horak, Institut za
turizam

Zakonodavne reforme od utjecaja na djelatnost luka nautičkog turizma u Italiji (pozvano predavanje)

Dr. Roberto Perocchio, predsjednik, ASSOMARINAS (Italija)

Utjecaj prava Europske unije na sustav koncesija za luke nautičkog turizma u Italiji (pozvano predavanje)

Prof. dr. sc. Stefano Zunarelli, Alma Mater Studiorum, Sveučilište u Bologni /
partner i osnivač, Studio Zunarelli (Italija)

Postupak dodjele koncesije za luku nautičkog turizma u hrvatskom pravu

Doc. dr. sc. Iva Tuhtan Grgić, Pravni fakultet Sveučilišta u Rijeci

Pitanja i odgovori

Pauza

Financiranje projekata razvoja luka nautičkog turizma – neka razmatranja (pozvano predavanje)

Dr. Ivan Vella, odvjetnik, partner, Odvjetničko društvo Vella Advocates; Član Uprave, Credence Corporate & Advisory Services (Malta)

Ovrha i osiguranje tražbina koncesionara marine po hrvatskom pravu - prijedlozi de lege ferenda (pozvano predavanje)

Izv. prof. dr. sc. Gordan Stanković, odvjetnik, partner, Odvjetničko društvo Vukić, Jelušić, Šulina, Stanković, Jurcan & Jabuka, Rijeka

Ovrha i osiguranje tražbina marine po španjolskom pravu (pozvano predavanje)

Prof. dr. sc. Maria Victoria Petit Lavall, direktorica, Institut za transportno pravo, Sveučilište Jaume I, Castellón de la Plana (Španjolska)

Pitanja i odgovori

Ručak (15:00 h)

2. dan (23.11.2018.)

Izlaganja (10:00 h)

Pravno uređenje pružanja usluga u nautičkom turizmu u hrvatskim lukama de lege lata i prijedlozi de lege ferenda

Dr. sc. Božena Bulum, Jadranski zavod Hrvatske akademije znanosti i umjetnosti

Pravni izazovi razvoja nautičkog turizma u Crnoj Gori (pozvano predavanje)

Prof. dr. Branislav Radulović, Pravni fakultet Univerziteta "Mediteran" (Podgorica), član Senata, Državna revizorska institucija, Crna Gora

Standardni modeli ugovora o vezu za hrvatske marine kao korak naprijed

Dr. sc. Vesna Skorupan Wolff, doc. dr. sc. Adriana V. Padovan, Jadranski zavod Hrvatske akademije znanosti i umjetnosti

Ugovor o vezu u luci nautičkog turizma po nizozemskom pravu (pozvano predavanje)

Vivian Van der Kuil, odvjetnica, partner, AKD Benelux Lawyers, Rotterdam (Nizozemska)

Pitanja i odgovori

Pauza

***Osiguranje odgovornosti luka nautičkog turizma u hrvatskoj sudskoj praksi
(pozvano predavanje)***

Gđa. Maja Bosnić Tabain, direktorica Službe za obradu šteta iz osiguranja plovila, avijacije, transporta i kredita, Croatia osiguranje d.d. Zagreb

Usporedba hrvatskog i engleskog prava i prakse osiguranja odgovornosti marine

Doc. dr. sc. Marija Pijaca, Pomorski odjel, Sveučilište u Zadru

Izvanugovorna odgovornost luke nautičkog turizma u okviru hrvatskog zakonodavstva

Prof. dr. sc. Dorotea Ćorić, Pravni fakultet Sveučilišta u Rijeci

Pravni aspekt sigurnosti plovidbe u hrvatskim marinama

Prof. dr. sc. Ranka Petrinović, doc. dr. sc. Nikola Mandić, Pomorski fakultet Sveučilišta u Splitu

Razvoj sigurnosnih standarda u marinama

Doc. dr. sc. Josip Pavliček, Visoka policijska škola, Ministarstvo unutarnjih poslova Republike Hrvatske

Pitanja i odgovori

Ručak (14:00 h)

PROGRAMME

Day 1 (22/11/2018)

Opening of the Conference (10:00 AM)

Professor Zvonko Kusić, MD, PhD, President of the Croatian Academy of Sciences and Arts

Capt Siniša Orlić, Assistant Minister, Ministry of the Sea, Transport and Infrastructure of the Republic of Croatia

Mr Ivo Bašić, Secretary General, Ministry of Tourism

Mr Sean Lisjak, President of the Association of Croatian Marinas, Croatian Chamber of Economy

Presentations

Presentation of the DELICROMAR Project Results

Assistant Professor Adriana V. Padovan, PhD, Principal Researcher, Adriatic Institute of the Croatian Academy of Sciences and Arts (Croatia)

An Overview of the Sustainable Development of Nautical Tourism in the Adriatic (invited lecture)

Zrinka Marušić, MSc; Siniša Horak, PhD, Institute for Tourism (Croatia)

Legislative Reforms Affecting the Marina Industry in Italy (invited lecture)

Dr Roberto Perocchio, President, ASSOMARINAS (Italy)

The Impact of EU Law on the System of Concessions for Nautical Ports in Italy (invited lecture)

Professor Stefano Zunarelli, PhD, Alma Mater Studiorum, University of Bologna; Advocate, Founding Partner, Studio Zunarelli, Bologna (Italy)

The Concession Awarding Procedure for Nautical Tourism Ports under Croatian Law

Assistant Professor Iva Tuhtan Grgić, PhD, Faculty of Law, University of Rijeka (Croatia)

Questions and Answers

Coffee Break

Financing Marina Projects – Some Considerations (invited lecture)

Dr Ivan Vella, Founding Partner, Vella Advocates; Managing Director, Credence Corporate & Advisory Services (Malta)

Security and Enforcement of Marina Operators' Claims under Croatian Law and de Lege Ferenda Proposals (invited lecture)

Professor Gordan Stanković, PhD, Law Firm Vukić, Jelušić, Šulina, Stanković, Jurcan & Jabuka, Rijeka (Croatia)

Security and Enforcement of Marina Operators' Claims: An Overview of Spanish Law (invited lecture)

Professor Maria Victoria Petit Lavall, PhD, Director, Institute for Transport Law, University Jaume I, Castellón de la Plana (Spain)

Questions and Answers

Lunch (3:00 PM)

Day 2 (23/11/2018)

Presentations (10:00 AM)

De Lege Lata Legal Regulation of the Provision of Nautical Tourism Services in Croatian Ports and de Lege Ferenda Proposals

Dr Božena Bulum, PhD, Adriatic Institute of the Croatian Academy of Sciences and Arts (Croatia)

The Legal Challenges Facing the Development of Nautical Tourism in Montenegro (invited lecture)

Professor Branislav Radulović, PhD, Law School of Mediteran University (Podgorica, Montenegro); Senator of the State Audit Institution of Montenegro

Standard Berthing Contract Models for Croatian Marinas as a Way Forward

Vesna Skorupan Wolff, PhD; Adriana V. Padovan, PhD, Adriatic Institute of the Croatian Academy of Sciences and Arts (Croatia)

Marina Operator Berthing Contracts under Dutch Law (invited lecture)

Vivian Van der Kuil, Advocate, Partner, AKD Benelux Lawyers, Rotterdam (The Netherlands)

Questions and Answers

Coffee Break

Marina Operator Liability Insurance in Croatian Judicial Practice (invited lecture)

Mrs Maja Bosnić Tabain, Director of Marine, Aviation, Transport and Loan Insurance Claims, Croatia Insurance Company, Zagreb (Croatia)

A Comparison of Croatian and English Law and Business Practice Relating to Marina Operator Liability Insurance

Assistant Professor Marija Pijaca, PhD, University of Zadar, Maritime Department (Croatia)

Marina Operators' Non-contractual Liability within the Croatian Legal Framework

Professor Dorotea Ćorić, PhD, Faculty of Law, University of Rijeka (Croatia)

Legal Aspects of Navigational Safety in Croatian Marinas

Professor Ranka Petrinović, PhD; Assistant Professor Nikola Mandić, PhD, Faculty of Maritime Studies, University of Split (Croatia)

The Development of Security Standards in Marinas

Assistant Professor Josip Pavliček, PhD, Police College, Ministry of the Interior (Croatia)

Questions and Answers

Closing of the Conference

Lunch (2:00 PM)

Doc. dr. sc. Adriana Vincenca Padovan, znanstveni suradnik, voditelj projekta, avpadovan@hazu.hr
Jadranski zavod Hrvatske akademije znanosti i umjetnosti

PREZENTACIJA REZULTATA PROJEKTA DELICROMAR

Uspostavni istraživački projekt (projekt namijenjen uspostavi istraživačkih karijera mladih znanstvenika) pod naslovom „Razvoj suvremenog pravnog i osigurateljnog režima za hrvatske marine – unapređenje konkurentnosti, sigurnosti, sigurnosne zaštite i zaštite morskog okoliša“ / „Developing a Modern Legal and Insurance Regime for Croatian Marinas – Enhancing Competitiveness, Safety, Security and Environmental Standards (DELICROMAR)“ (br. HRZZ-UIP-2013-11-3061) financira Hrvatska zaklada za znanost, a provodi se na Jadranskom zavodu Hrvatske akademije znanosti i umjetnosti u razdoblju od 1. ožujka 2016. do 28. veljače 2019. Suradnici istraživači na projektu znanstvenici su s Jadranskog zavoda, pravnih fakulteta u Rijeci i Zagrebu, Pomorskog fakulteta u Splitu, Pomorskog odjela Sveučilišta u Zadru te Visoke policijske škole u Zagrebu.

U okviru projekta ostvarene su mnoge znanstveno-stručne suradnje, uključujući Ministarstvo mora, prometa i infrastrukture, Ministarstvo turizma, društva za pomorsko pravo Hrvatske, Slovenije i Italije, Hrvatsko društvo za transportno pravo te istaknute specijalizirane odvjetnike iz Hrvatske, Italije, Malte i Nizozemske, Hrvatsku gospodarsku komoru (Udruženje hrvatskih marina), ACI d.d., Marinu Dalmacija, Marinu Punat i druge pojedinačne koncesionare marina u Hrvatskoj, Udruženje talijanskih marina – ASSOMARINAS, Hrvatski ured za osiguranje kao i pojedinačne osiguravajuće kuće iz Hrvatske i Slovenije te posrednike u osiguranju iz Hrvatske i Velike Britanije, Institut za transportno pravo Sveučilišta Jaime I (Castellón de la Plana), Javno preduzeće za upravljanje morskim dobrom Crne Gore i dr.

Predmet istraživanja bili su nacionalni, europski i međunarodni propisi, relevantni za luke nautičkog turizma, autonomno pravo i poslovna praksa marina i osiguratelja, pravna literatura i sudska praksa. Usporednopravna analiza je, uz Hrvatsku, obuhvatila Sloveniju, Crnu Goru, Italiju, Španjolsku, Maltu, Ujedinjeno Kraljevstvo, Nizozemsku i Sjedinjene Američke države. Središnje teme istraživanja su građanskopravna odgovornost marina i osiguranje te odgovornosti, ugovori o vezu, ovrha i osiguranje tražbina koncesionara marine, pravni status luka nautičkog turizma u kontekstu pravnog režima pomorskog dobra i koncesija, sigurnost i sigurnosna zaštita te zaštita morskog okoliša u lukama nautičkog turizma.

Na projektu je objavljeno 29 znanstvenih radova u uglednim domaćim i stranim publikacijama te su izdana 3 zbornika radova sa skupova (su)organiziranih u okviru projekta, a u pripremi je još 13 znanstvenih radova i zbornik ove završne konferencije projekta. Ne ubrajajući ovu konferenciju, održano je 34 izlaganja i predavanja na 17 znanstvenih i stručnih skupova u Hrvatskoj, Sloveniji, Italiji, Španjolskoj, Crnoj Gori i Srbiji. U okviru projekta (su)organizirane su dvije znanstveno-stručne konferencije i dva okrugla stola te ova završna konferencija. Provedena su terenska istraživanja u Hrvatskoj, Sloveniji, Crnoj Gori, Italiji, Španjolskoj, Velikoj Britaniji, SAD-u i na Malti.

Suradnici na projektu sudjelovali su u stručnim povjerenstvima Ministarstva mora, prometa i infrastrukture za izradu prijedloga izmjena i dopuna Pomorskog zakonika i novog Zakona o pomorskom dobru i morskim lukama te su doprinijeli vrijednim prijedlozima *de lege ferenda* koji su većinom prihvaćeni u okviru stručnih povjerenstava i krenuli su u zakonsku proceduru. Tako se, primjerice, u okviru izmjena i dopuna Pomorskog zakonika predlažu nove odredbe o ugovoru o vezu, čime će taj ugovor postati novi nominatni ugovor hrvatskog prava. Nadalje, predlaže se tražbina luka nautičkog turizma s osnova naknade za vez i druge usluge zaštititi pomorskim privilegijem na jahti ili brodici u odnosu na koju je tražbina nastala. Proširuje se i krug pomorskih tražbina za koje je moguće ishoditi privremenu mjeru zaustavljanja jahte ili brodice, kako bi se osigurale tražbine za lučke naknade i troškove te tražbine s osnova usluga održavanja brodica i jahti. U okviru odredbi o vađenju i uklanjanju podrtina te o uklanjanju podstandardnih brodova predlažu se izmjene koje će koncesionarima luka nautičkog turizma znatno olakšati postupanje s napuštenim plovnim objektima. Izmjenama i dopunama ugovora o gradnji broda, propisuje se odgovarajuća primjena tih odredbi Pomorskog zakonika na popravak broda, brodice i jahte, uključujući i radove i usluge potrebne za njihovo održavanje, servis i sl. Time se ujedno svim pružateljima navedenih usluga osigurava zakonsko pravo retencije do potpunog namirenja svih tražbina proizašlih iz pružanja tih usluga. U pogledu nacrtu novog Zakona o pomorskom dobru i morskim lukama, predlaže se usklađivanje sa Zakonom o koncesijama i Direktivom 2014/23/EU o dodjeli ugovora o koncesiji, nastoje iznaći adekvatna pravila o produženju rokova postojećih koncesija te o vrednovanju zakonitih ulaganja u lukama nautičkog turizma. Razmatraju se i moguća rješenja za trend ekspanzije nautičkih vezova u lukama otvorenim za javni promet te za primjereno uređenje pružanja usluga nautičkog turizma u lukama otvorenim za javni promet i lukama nautičkog turizma.

Assistant Professor Adriana V. Padovan, PhD, avpadovan@hazu.hr
**Research Associate, Principal Project Researcher, Adriatic Institute of the
Croatian Academy of Sciences and Arts (Croatia)**

PRESENTATION OF THE DELICROMAR PROJECT RESULTS

The research project entitled “Developing a Modern Legal and Insurance Regime for Croatian Marinas: Enhancing Competitiveness, Safety, Security and Environmental Standards (DELICROMAR)” (project no. HRZZ-UIP-2013-11-3061) is financed by the Croatian Science Foundation and has been hosted by the Adriatic Institute of the Croatian Academy of Sciences and Arts in the period from 1 March 2016 until 28 February 2019. The collaborators on the project are academics from the Adriatic Institute, the Faculties of Law in Zagreb and Rijeka, the Maritime Faculty in Split, the Maritime Department of the University of Zadar, and the Police College in Zagreb.

Academic and professional cooperation with a number of partners has been established as part of the project, including in particular: the Ministry of the Sea, Transport and Infrastructure; the Ministry of Tourism; the national associations of maritime law of Croatia, Slovenia and Italy; the Croatian Transport Law Association; certain distinguished specialised lawyers and law firms from Croatia, Italy, Malta and the Netherlands; the Croatian Chamber of Commerce (Association of Croatian Marinas); Adriatic Croatia International; Marina Dalmacija; Marina Punat; certain other marina operators in Croatia; the ASSOMARINAS association of Italian marinas; the Croatian Insurance Bureau and certain individual insurance companies from Croatia and Slovenia; insurance brokers from Croatia and the UK; the Institute for Transport Law of the University Jaume I (Castellón de la Plana); the Public Enterprise for the Coastal Zone Management of Montenegro.

The research has focused on the national, international and EU legislation relevant to nautical tourism ports, marina operator and insurer self-regulation and business practice, legal literature, and judicial practice. Comparative legal analysis has included Croatia, Slovenia, Montenegro, Italy, Spain, Malta, the UK, the Netherlands, and the USA. The central research topics were marina operator civil liability and the insurance of such liability, berthing contracts, the security and enforcement of marina operator claims, the legal status of nautical tourism ports in the context of the legal regime of the public maritime domain and concessions, and safety, security and environmental protection in nautical tourism ports.

The project results include 29 academic papers published in reputable domestic and foreign publications, 3 books of proceedings of conferences (co)-

ganised as part of the project, and another 13 academic articles and a book of proceedings of this conference, which are currently in preparation. Besides this conference, there have been 34 presentations and lectures held at 17 academic and professional events in Croatia, Italy, Slovenia, Spain, Montenegro and Serbia. Two international academic and professional conferences and two round tables have been (co)organised as part of the project, plus this final conference. Field research has been undertaken in Croatia, Slovenia, Montenegro, Italy, Spain, Malta, the UK, and the USA.

Project collaborators participated on the professional drafting committees of the Ministry of the Sea, Transport and Infrastructure in the revision of the Maritime Code and the Maritime Domain and Seaports Act. They contributed with valuable *de lege ferenda* proposals that were eventually adopted by the drafting committees and subjected to legislative procedure. For example, new provisions regulating berthing contracts have been proposed as part of the amendments to the Maritime Code, which means that this contract will become a new nominate contract in Croatian law. In addition, a proposal has been made to protect marina operator claims with regard to berthing fees and other services with a maritime lien on the vessel in respect of which the claim has arisen. The list of maritime claims for which arrest of a vessel is allowable has been extended to include port fees and dues, as well as the claims for services rendered for the maintenance and operation of vessels, including pleasure craft. The amendments to provisions on wreck removal and recovery, and on the removal of substandard vessels should considerably ease the position of marina operators when dealing with abandoned vessels. The amendments to the provisions on shipbuilding contracts allow for the *mutatis mutandis* application of the provisions of the Maritime Code to ship repair and maintenance work, including pleasure craft. This also ensures that all providers of such services are entitled to the right of retention over vessels for the purpose of securing claims. As far as the revision of the Maritime Domain and Seaports Act is concerned, proposals are aimed at harmonising the provisions of this act with the Concessions Act and Directive 2014/23/EU on the Award of Concession Contracts. Furthermore, the intention is to find adequate legislative solutions for the prolongation of existing concession contracts and the valorisation of legitimate investments in nautical tourism ports upon the expiry of concessions. Finally, due to the trend of expansion of nautical tourism services in seaports open to public traffic, and the fact that these services are actually offered in non-commercial ports designed for sport purposes, possible solutions are being discussed to adequately regulate the provision of nautical tourism services outside nautical tourism ports, paying due regard to the rules of free competition.

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**PERSPEKTIVE ODRŽIVOG RAZVOJA NAUČKOG TURIZMA NA
JADRANU**
(Pozvano predavanje)

Pojam „održivosti“ nautičkog turizma najčešće se percipira kroz njegov utjecaj na prirodni i kulturni okoliš, zadovoljstvo nautičara i cjelokupne turističke industrije te na društvenu zajednicu na određenom području. Pri tome valja uzeti u obzir da se nautički turizam odvija na prostoru na kojem se odvijaju i druge turističke i ne-turističke aktivnosti pa nije uvijek jednostavno razlučiti njegov utjecaj od utjecaja drugih aktivnosti na razne aspekte održivosti. U Hrvatskoj danas nije uspostavljeno sustavno i sveobuhvatno praćenje održivosti ni jednog od dva, po svojim obilježjima vrlo različita, oblika nautičkog turizma – brodskih krstarenja (međunarodnih i domaćih) te „jahtinga“. Stoga nema ni spoznaja u kojoj je mjeri ta vrsta turizma ili neka od njegovih sastavnica danas održiva, odnosno je li nautički turizam već danas dosegao ili premašio granice svoje održivosti. Izazov je to veći ako se u obzir uzme i činjenica da Hrvatska ne raspolaže procjenom ukupnog broja nautičara, s izuzetkom segmenta potražnje u čarteru, a ni podacima o ponudi, barem kada je riječ o ukupnom broju raspoloživih vezova na Jadranu. Pitanje održivosti nautičkog turizma stoga se, uslijed ubrzanog rasta potražnje, sve češće postavlja u raznim javnostima i na raznim razinama. U ovom se radu prvo detaljnije pokušava odrediti sam pojam „nautičkog turizma“, čija se jedinstvena definicija ne može pronaći ni u svjetskoj znanstvenoj literaturi. Zatim se, na temelju raspoloživih podataka i postojećih istraživanja, dijelom rasvjetljava pojam održivosti nautičkog turizma u Hrvatskoj te se pružaju i neke indicije o tome je li prag održivosti u određenim dimenzijama već dosegnut. Jedan od glavnih izvora podataka, barem kad je jahting turizam u pitanju, je longitudinalno istraživanje TOMAS Nautika Jahting koje se u Hrvatskoj provodi od 2001. godine. Istraživanje pruža uvid u elemente održivosti sa stajališta turista, ali i utjecaja na društvenu zajednicu, kad je riječ o procjeni prihoda jahting turizma. Zaključak ovog rada upućuje na potrebu unapređenja informacijske osnovice, neophodne za procjenu prihvatnog kapaciteta i informirano upravljanje u nautičkom turizmu što bi trebalo postati prioritet budućih razmišljanja o toj izrazito konkurentnoj vrsti turizma na Jadranu.

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AN OVERVIEW OF THE SUSTAINABLE DEVELOPMENT OF NAUTICAL TOURISM IN THE ADRIATIC

(Invited lecture)

The concept of the sustainability of nautical tourism is most often perceived through its impact on: (i) the natural and cultural environment; (ii) the satisfaction of yachtsmen and the entire tourism industry; (iii) the local community. There is currently no systematic or comprehensive monitoring of the sustainability of nautical tourism in Croatia regarding both cruise-ship tourism (international and domestic) and yachting. Consequently, we do not know if nautical tourism or any of its components are sustainable today and to what extent, or whether it has already reached the limits of its sustainability. The challenge is even greater since there is no information on the total number of yachtsmen in the Adriatic, with the exception of figures for charter demand. Furthermore, the total number of berths available in the Adriatic is not known either. Given the recent growth in demand in nautical tourism, the question of its sustainability has become increasingly important. This paper deals firstly with the concept of nautical tourism, given the lack of a widely accepted definition of what it is, before moving on to the key sustainability issues facing Croatia, based on the available data and existing research. The paper goes on to provide some indications on sustainability thresholds for selected dimensions. One of the main sources of information, at least when it comes to yachting tourism, is a longitudinal survey on the attitudes and consumption of yachtsmen in Croatia (TOMAS Nautica Yachting), which has been conducted in Croatia since 2001. The survey provides an insight into the elements of sustainability from the tourists' point of view but also tackles the impact on communities in terms of estimates of the total income from yachting tourism. The conclusion stresses the need to improve the information base in order to assess carrying capacity and enable the informed management of nautical tourism. This should become a priority for the future development of this highly competitive type of tourism in the Adriatic.

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**ZAKONODAVNE REFORME OD UTJECAJA NA DJELATNOST LUKA
NAUTIČKOG TURIZMA U ITALIJI**
(Pozvano predavanje)

Do 1997. godine projekt izgradnje nove marine u Italiji zahtijevao je u prosjeku preko 20 godina i 45 različitih upravnopravnih odobrenja. Stoga je 1995. UCINA poduzela značajno ulaganje kako bi ishodila pravno mišljenje i savjet vodećih pravnih stručnjaka iz Rima, Genove i Venecije radi izrade novog zakonodavnog prijedloga o koncesioniranju luka nautičkog turizma koji bi se predložio talijanskoj vladi. Temeljna načela ovog prijedloga usvojilo je Ministarstvo transporta koje je donijelo propis DPR 509, 1997. godine. Ovaj zakonodavni pothvat rezultirao je procvatom ulaganja u projekte izgradnje novih marina sve do 2010. godine. Tada se u Italiji osjetio udar globalne financijske krize i teret talijanskog javnog duga postao je očit. Od 2011. godine, kada je talijanska vlada uvela porez na luksuz u odnosu na jahte, gotovo 40.000 brodica i jahti nestalo je iz talijanskih marina.

Još jedan problem pogodio je marine 2007. godine kada je donesena odluka Vlade o povećanju koncesijskih naknada za plaže i obalna područja. Ministarstvo financija modificiralo je izračun koncesijske naknade tobože primjenjujući istu formulu na sve koncesije. Pri tom nije uzelo u obzir činjenicu da su većinu talijanskih marina izgradili privatni investitori temeljem pisanog ugovora s državom, te je trebalo koncesijske naknade zadržati u ugovorenim okvirima do isteka koncesijskog razdoblja uvažavajući postojeći stupanj inflacije.

Gotovo 40 marina podnijelo je sudske tužbe kako bi izbjegle obvezu plaćanja koncesijske naknade koja je bila desetorostruko veća od ugovorene. Problem do danas još nije riješen unatoč mnogim uspješno dovršenim sudskim sporovima. Postupci su sada dospjeli do talijanskog Ustavnog suda radi kršenja ustavnih načela zaštite privatnih ulaganja.

Kako bi se reagiralo na ovu tešku krizu u nautičkom sektoru, sljedeće nove zakonodavne mjere donijele su se na zahtjev ASSOMARINAS-a i UCINA-a:

- a) ukidanje poreza na luksuz za jahte;
- b) mogućnost povremenog iznajmljivanja (maksimalno 42 dana godišnje) jahti namijenjenih za osobne svrhe uz jedinstvenu stopu poreza od 20%, kako bi se vlasnicima jahti financijska pozicija učinila održivom;

c) uspostavljanje nacionalnog elektronskog upisnika jahti, radi izbjegavanja višestrukog nadzora i ubrzanja svih administrativnih procedura;

d) uspostavljanje nove kategorije - tzv. "marina resort" pri čemu se marine smatraju „plutajućim turističkim rezortima na otvorenom“ te se posljedično smanjuje stopa PDV-a (s 22% na 10%) na usluge veza za turiste koji noće na plovilima.

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LEGISLATIVE REFORMS AFFECTING THE MARINA INDUSTRY IN ITALY *(Invited lecture)*

Until 1997, a new marina project needed on average more than 20 years and 45 different authorisations to be approved in Italy. In 1995, UCINA made a significant investment to engage well-known legal advisors from Rome, Genoa and Venice in order to come up with a new law proposal on marina project approval that could be forwarded to the Italian government. The basic principles of this proposal were adopted by the Ministry of Transport, which issued law DPR 509 in 1997. As a consequence of this legislative effort, marina investments flourished in Italy until 2010, when the effect of the global financial crisis and the burden of our sovereign debt started to be felt in our country. Since 2011, when a luxury tax on yachts was imposed by the Italian government, nearly 40,000 boats have disappeared from Italian marinas.

Another problem was caused for marinas in 2007 by the decision of the government to increase concession fees for beaches and coastal areas. The Ministry of Finance modified the calculation criteria, applying them to all existing concessions, without taking into account that most Italian marinas had been built by private investors according to a written agreement with the state, whereby the concession fee levels had to be kept until the end of the concession period, although they were to be adjusted for inflation.

Nearly 40 marinas had to appeal to the courts to avoid paying fees that were ten times higher than expected, and the problem has still not been legally solved in spite of a majority of court cases being successful. The appeal procedure for violation of the constitutional principle of protecting private investment has now reached the Italian Constitutional Court.

In order to react to this serious crisis affecting the yachting industry, the following new measures have been obtained by ASSOMARINAS and UCINA from the Italian government:

- a) elimination of the luxury tax on yachts;
- b) the possibility of renting (for a maximum of 42 days per year) private yachts with a flat tax rate of 20%, in order to make boat maintenance more sustainable for owners;
- c) the creation of a national “electronic” yacht register, in order to avoid the need to double police checks on yachts and to speed up all procedures;
- d) the creation of a new “marina resort” category to qualify marinas as

“floating open-air resorts”, with a subsequent VAT reduction (10% instead of 22%) on mooring services for tourists sleeping on board.

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POSTUPAK DODJELE KONCESIJE ZA LUKU NAUTIČKOG TURIZMA U HRVATSKOM PRAVU

Postupak dodjele koncesija na pomorskom dobru danas je u Republici Hrvatskoj reguliran dvama zakonima – Zakonom o koncesijama iz 2017. godine, koji je vrlo detaljan *lex generalis* i *lex posterior*, i starijim, ali specijalnim Zakonom o pomorskom dobru i morskim lukama i na temelju njega donesenoj Uredbi o postupku dodjele koncesije na pomorskom dobru. Zakonom o koncesijama u pravni je sustav Republike Hrvatske implementirana Direktiva 2014/23/EU Europskog parlamenta i Vijeća od 26. veljače 2014. o dodjeli ugovora o koncesiji, čiji je cilj stvarno otvaranje tržišta u slučajevima postojanja jasnog prekograničnog interesa. Koncesije za gospodarsko korištenje pomorskog dobra izgradnjom i pružanjem usluga u lukama nautičkog turizma nesporno spadaju u polje primjene Direktive. Budući da su sve osobe koje primjenjuju odredbe o koncesijama dužne cjelokupno nacionalno pravo interpretirati u skladu s tekstem i svrhom Direktive u radu će se ukazati na one odredbe Zakona o pomorskom dobru i morskim lukama koje su Direktivi protivne, te se stoga ne smiju primjenjivati. Analizirat će se i odredbe Zakona o pomorskom dobru i morskim lukama koje nisu suprotne Direktivi, ali nisu u skladu sa Zakonom o koncesijama.

S obzirom da je u pravnoj praksi i doktrini dvojbeno pitanje odnosa odredbi Zakona o pomorskom dobru i morskim lukama i Zakona o koncesijama, svrha je rada odrediti primjenom kojih pravila će se provoditi postupak dodjele koncesija, a da se pritom ne čini povreda prava Europske unije s jedne strane, i uvažavajući specifičnosti koncesioniranja na pomorskom dobru s druge strane. Analiza i usporedba važećih propisa, posebice odredbi koje su međusobno neusklađene, poslužit će za davanje prijedloga izmjena postojećih odredbi, a s ciljem postizanja zadovoljavajuće razine pravne sigurnosti.

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THE CONCESSION AWARDING PROCEDURE FOR NAUTICAL TOURISM PORTS UNDER CROATIAN LAW

Under Croatian law, the concession awarding procedure is regulated by two laws: the Concessions Act of 2017, a very detailed *lex generalis* and *lex posterior*, and the older, but insufficiently detailed *lex specialis*, the Maritime Domain and Seaports Act. The concession awarding procedure is regulated in more detail by a subordinate piece of legislation passed on the basis of the Maritime Domain and Seaports Act: the Regulation on the Procedure of Awarding a Concession in the Maritime Domain. Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts, which strives to ensure a real opening up of the market in cases of clear cross-border interest, was transposed into the Croatian legal system by the Concessions Act of 2017. Concessions for the economic use of the maritime domain by building a new port for nautical tourism and providing services in it undoubtedly fall within the scope of the Directive. Since all those who apply rules relating to concessions in Croatia are obliged to interpret all Croatian legislation in a manner that achieves the objective and purpose of Directive 2014/23/EU, the provisions of the Maritime Domain and Seaports Act that are not in line with the Directive are pointed out. The provisions of the Maritime Domain and Seaports Act that are compatible with the Directive but which are not in accordance with the Concessions Act are also analysed.

Since the issue of the relationship between the provisions of the Maritime Domain and Seaports Act and the Concessions Act regarding the concession awarding procedure is debateable in Croatian legal practice and doctrine, the purpose of the paper is to determine the exact set of applicable rules. These rules have to be in compliance with the European Union Directive on the one hand, and recognise the specifics of concessions in the maritime domain on the other. An analysis and comparison of existing provisions, in particular those which are mutually incompatible, will assist in making proposals to amend existing provisions, with the aim of achieving a satisfactory level of legal certainty.

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FINANCIRANJE PROJEKATA
IZGRADNJE LUKA NAUTIČKOG TURIZMA – NEKA RAZMATRANJA
(Pozvano predavanje)

Izlaganje će otvoriti kratku raspravu o važnim pitanjima vezanim uz pravo na upravljanje lukom nautičkog turizma i stvarnim pravima na obali, lukama te pripadajućoj suprastrukturi i infrastrukturi, a u kontekstu mogućih mjera osiguranja tražbina koje mogu očekivati financijeri razvoja, izgradnje i eksploatacije luka nautičkog turizma. Zatim ćemo se osvrnuti na ključna obilježja tipičnih oblika osiguranja tražbina koje financijeri obično zahtijevaju, tj. osobito na hipoteku i mortgage.

Izlaganje će zatim istražiti situacije kada po zakonu nije moguće kreirati stvarna prava (uključujući vlasništvo) na obali i drugim dijelovima pomorskog dobra, uslijed primjene pravnog režima po kojem se ti dijelovi smatraju *res extra commercium*. Stoga ćemo se usredotočiti na neke od ekonomskih i pravnih modela koji se primjenjuju kako bi se udovoljilo očekivanjima i potrebama zainteresiranih strana (uključujući državu, lokalnu i regionalnu upravu i samoupravu, ali i investitore koji razvijaju, grade i upravljaju lukama nautičkog turizma) u takvim slučajevima. Uslijedit će rasprava o projektnom financiranju općenito, te posebno o specifičnim modelima takvog financiranja, uključujući tzv. DBOT ili slične aranžmane.

Drugi načini financiranja, uključujući mogućnost primjene modela *equity*, *mezzanine* financiranja i instrumenata financiranja kao što su opcije koje daju pravo na prodaju ili pravo na kupnju te ustupanje potraživanja također će se razmatrati. U svakom slučaju, osvrnut ćemo se na njihova bitna obilježja te glavne prednosti i koristi, ali i moguće nedostatke.

Usput, istaknut ćemo neke osnove projektnog financiranja, kako dužničkih tako i kapitalnih opcija. Pritom se osobito uzima u obzir dugoročna priroda financiranja projekata infrastrukture i činjenica da se ono uvelike oslanja na procjenu novčanog tijeka koji će projekt generirati te da se obično osigurava na neregresnoj ili djelomično regresnoj osnovi.

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FINANCING MARINA PROJECTS – SOME CONSIDERATIONS *(Invited lecture)*

The presentation will open with a brief discussion of the relevance of issues relating to title to, and property rights over, the foreshore, ports, harbours and related superstructure and infrastructure in the context of the security rights that financiers financing the development, construction and/or operation of marinas will expect. We will then proceed to underscore the key features of the typical real security right that financiers would seek to obtain – in other words a hypothec or mortgage.

The presentation will subsequently explore those instances where the applicable laws prevent the creation of private property rights (including ownership) over the foreshore etc., deeming such property to be *res extra commercium*. It will therefore then focus on some of the economic and legal models that have been used to accommodate the expectations and exigencies of the parties concerned (including states, municipalities and sub-divisions thereof, as well as developers and operators of marinas) in such instances. A discussion of project finance generally, and of specific models within this category, including DBOTs or similar arrangements, will ensue.

Other financing solutions, including the possibility of using equity models, mezzanine finance, and instruments such as call and put options and assignments of receivables will also be explored. In each case, we will touch upon the salient characteristics and the main advantages and benefits and possible downsides.

In passing, the presentation will highlight the fundamentals of project finance, whether in the form of a debt-based or equity-based model. In particular reference will be made to the long-term nature of the financing of infrastructure projects, and that they are largely based on cash flows generated by the projects and usually made on a non-recourse or limited recourse basis.

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**OVRHA I OSIGURANJE TRAŽBINA KONCESIONARA MARINE PO
HRVATSKOM PRAVU - PRIJEDLOZI DE LEGE FERENDA**
(Pozvano predavanje)

Pravnom analizom izvršenom u sklopu projekta DELICROMAR utvrđeno je da raznovrsne tražbine koncesionara marina prema korisnicima luka nisu osigurane na zadovoljavajući način. Nepostojanje pomorskog privilegija na plovilima, neizvjesnost u pogledu korištenja pravom retencije plovila, neprilagođen režim sudske prodaje kada je riječ o brodicama, dvojbena mogućnost ishoda privremene mjere zaustavljanja plovila, te vrlo ograničena mogućnost postupanja s napuštenim plovilima u marinama, obilježja su trenutnog stanja na ovom polju.

Kao izravan rezultat istraživanja provedenog u projektu DELICROMAR te zalaganja članova projektnog tima, u konačni prijedlog Zakona o izmjenama i dopunama Pomorskog zakonika, sačinjen u kolovozu 2018. godine, uvršteno je nekoliko odredaba kojima se opisano stanje u bitnome mijenja.

Tako bi definicija pomorskih privilegija trebala uključivati i tražbine za lučke naknade koje se naplaćuju u lukama posebne namjene.

U sklopu novounesenih odredaba posvećenih ugovorima u nautičkom turizmu nalazi se i odredba kojom se pružatelju usluge veza izričito daje pravo retencije plovila do potpunog namirenja naknade za vez i ostalih tražbina iz ugovora o vezu, kao i ostalih tražbina nastalih u vezi boravka plovila na vezu. Uz to, definicija ugovora o preinaci ili popravku broda izričito se proširuje na radove održavanja, servisiranja i slične radove, a primjena odredaba o ugovoru o preinaci i popravku broda izričito se proširuje na brodice i jahte, čime se i postojeće pravo retencije brodopopravljača proširuje na brodice i jahte na kojima je koncesionar marine ili treća osoba izvršio radove održavanja ili servisiranja.

Odredbe o ovrsi i osiguranju na brodu proširuju se i na ostale pomorske objekte, uključujući brodice, čime se brodice stavljaju u režim sudske prodaje koji se provodi pred trgovačkim sudovima uz primjenu postupovnih odredaba i odredaba o redosljedu razdiobe kupovnine kakve se već primjenjuju na brodove i jahte, te ih se izlaže mogućnosti zaustavljanja prema odredbama Pomorskog zakonika. Popis pomorskih tražbina radi kojih se može tražiti privremena mjera zaustavljanja plovila proširuje se tako da on izričito predviđa

tražbine koje proizlaze iz usluga učinjenih radi održavanja, čuvanja, ili stavljanja plovila na vez, kao i tražbine koje se odnose na naknade i pristojbe za korištenje luka.

Naposljetku, odredbe o vađenju i uklanjanju podrtina i potonulih stvari proširene su na podrtine, potonule stvari i napuštene pomorske objekte koji se nalaze na kopnenom dijelu pomorskog dobra, uz odgovarajuću primjenu odredaba o dobrovoljnom vađenju na postupanje s napuštenim pomorskim objektima na obali. Poštenu nalaznik može biti i tijelo koje upravlja pomorskim dobrom, odnosno lukom u odnosu na podrtine, potonule stvari ili napuštene pomorske objekte na svojem području nadležnosti te tako može pokrenuti postupak vađenja, poduzeti ga i steći vlasništvo nad tom stvari, čime se efikasnije rješava problem napuštenih plovila i drugih stvari na području luka i pomorskog dobra.

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**SECURITY AND ENFORCEMENT OF MARINA OPERATORS' CLAIMS
UNDER CROATIAN LAW – *DE LEGE FERENDA* PROPOSALS
(Invited lecture)**

The legal analysis as part of the DELICROMAR project has shown that various marina operators' claims against marina users are not secured in a satisfactory manner. Currently, the troublesome issues are the non-existence of a corresponding maritime lien, unpredictability in exercising the right of retention over the vessel, an inadequate system of judicial sale in cases involving boats, ambiguities regarding the possibility of arresting a yacht or boat, and limited possibilities when dealing with abandoned vessels in marinas.

As a direct result of research carried out as part of the DELICROMAR project and the endeavours of the project team members, several provisions were included in the final proposal of the Act Amending the Maritime Code submitted in August 2018, which will substantially change the described situation.

In particular, the proposed definition of maritime liens includes *inter alia* claims for port fees charged in special purpose ports. The new provisions on berthing contracts include a rule according to which the provider of a berth is expressly granted the right to retain a vessel until all berthing fees and other claims arising from the berthing contract, as well as other claims related to the vessel being berthed in the marina, have been satisfied. Furthermore, the definition of a ship repair and reconstruction contract is expressly extended to include maintenance, servicing and similar work, whilst the scope of application of these legislative provisions is expressly extended to boats and yachts in respect of which the marina operator or third party has provided maintenance or servicing.

The scope of application of the provisions on security and enforcement with regard to ships is extended to all other types of vessel, including boats, which means that boats have been included in the special system of judicial sale implemented by commercial courts applying the procedural and ranking rules applicable to ships and yachts. Therefore, boats are now exposed to the possibility of arrest under the provisions of the Maritime Code. The list of maritime claims in respect of which an arrest can be ordered is extended to expressly include claims for services rendered to a vessel for its operation,

management, preservation or maintenance, as well as claims for fees, dues and charges for the use of ports.

Finally, the scope of application of the provisions on wreck removal and recovery are extended to wrecks, sunken objects and abandoned vessels situated on the land area of the public maritime domain. In addition, the provisions on the recovery of wrecks shall apply *mutatis mutandis* when dealing with abandoned vessels on the shore. The legal concept of the honest finder shall apply *inter alia* to the port operator or to the entity managing the particular area of the maritime domain. This will allow the port operator to commence the administrative procedure of recovery of the wrecks, abandoned vessels and sunken objects situated within the area of the port operator's authority and to acquire ownership over these objects, which efficiently solves the problem of abandoned vessels in ports or in the public maritime domain.

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OVRHA I OSIGURANJE TRAŽBINA MARINE PO ŠPANJOLSKOM PRAVU *(Pozvano predavanje)*

Trenutno su u Španjolskoj marine regulirane regionalnim zakonodavstvom te podredno i državnim Zakonom o lukama i trgovačkoj mornarici. Ukratko, pravno uređenje marina u Španjolskoj raspršeno je u mnogim propisima. Štoviše, do danas u Španjolskoj ne postoji sustavan pravni propis koji bi uredio rekreacijsku plovidbu, unatoč njenoj nedvojbenoj ekonomskoj važnosti i nedavnoj velikoj reviziji španjolskog pomorskog prava u okviru Zakona o pomorskoj plovidbi, koji sadrži tek pojedine specifične odredbe koje se odnose na rekreacijsku plovidbu.

Razni regionalni zakoni propisuju, više ili manje detaljno, posljedice u slučaju neplaćanja naknada za korištenje marina i usluga koje se u njima pružaju. Oni ovlašćuju tijela koja upravljaju lukama da privremeno obustave pružanje usluga ili da onemoguće korištenje prostora marine dužniku do namirenja ili osiguranja plaćanja duga uslijed kojega je došlo do obustave pružanja usluge. Nadalje, tijelo koje upravlja lukom ovlašteno je imobilizirati ili ukloniti plovila na vezu ili na sidru pod određenim zakonskim uvjetima i po propisanom postupku, neovisno o obliku upravljanja marinom (izravnom ili neizravnom, tj. javnom ili privatnom). Pravilnici marina obično predviđaju pravo retencije plovila u korist tijela koje upravlja marinom. Međutim, teško je utvrditi ima li i privatni koncesionar marine (u sustavu posrednog upravljanja marinom), čiji odnos s korisnicima je uređen privatnim pravom, temeljem važećih propisa pravo na zadržanje plovila u slučaju neplaćanja naknada za usluge i troškova vezanih uz korištenje veza u marini.

S druge strane, pravilnici marina izričito predviđaju da, kada je to primjereno, plovila mogu poslužiti kao stvarno jamstvo za otvorena potraživanja marine s osnova pruženih usluga, naknada za vez i naknade štete nanesene marini ili trećim osobama. Stoga se čini da ovakve odredbe pravilnika marina upućuju na primjenu pravila o pomorskim privilegijama iz Zakona o pomorskoj plovidbi.

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**SECURITY AND ENFORCEMENT OF MARINA OPERATORS' CLAIMS:
AN OVERVIEW OF SPANISH LAW**
(Invited lecture)

Marinas in Spain are currently regulated by relevant regional legislation and by the national State Ports and Merchant Navy Act. In short, the regulation of marinas in Spain is very fragmented. In addition, at this moment Spain lacks a systematic body of rules governing recreational navigation, despite its undoubted economic importance and the recent significant modification of Spanish maritime law as a result of the Maritime Navigation Act (MNA), which contains only certain specific references to it.

The various regional acts prescribe, in greater or lesser detail, the consequences of default in the payment of outstanding fees for the use of marinas and the services provided by them. They empower port authorities to temporarily suspend the provision of services and/or to prevent the use of marina areas until payment has been made or the debt that generated the suspension has been sufficiently secured. Furthermore, port authorities are empowered to immobilise or remove moored or anchored pleasure craft, under prescribed circumstances and according to the prescribed procedure, regardless of the form of marina management (public or private). Marina operating and policing regulations commonly provide for the marina operator's right to retain pleasure craft. Nonetheless, under the present law it is difficult to establish that a private marina operator (a private concessionaire), whose relationship with users is governed by private law, also has the right to retain craft in the event of non-payment of service fees and expenses arising from the use of a mooring in a marina.

On the other hand, marina operating and policing regulations expressly stipulate, where appropriate, that vessels can be presented as a guarantee for outstanding fees for provided port services, berthing fees and any damage caused to marina facilities or to third parties. It seems that these regulations refer to maritime liens governed by the Maritime Navigation Act.

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PRAVNO UREĐENJE PRUŽANJA USLUGA U NAUTIČKOM TURIZMU U HRVATSKIM LUKAMA *DE LEGE LATA* I PRIJEDLOZI *DE LEGE FERENDA*

Intenzivan razvoj nautičkog turizma u Republici Hrvatskoj započeo je osamdesetih godina prošlog stoljeća. On je povezan uz osnivanje i početak poslovanja društva Adriatic Croatia International Club d.d. (u daljnjem tekstu: ACI, prvotnog naziva Adriatic Club Yugoslavia i Adriatic Yacht Club). ACI je bio državno poduzeće osnovano sa ciljem razvoja nautičkog turizma na istočnoj obali Jadrana. U to vrijeme, lučke usluge u nautičkom turizmu pružao je uglavnom ACI, koji je držao šesnaest marina duž hrvatske obale, a osim toga, bilo je svega nekoliko manjih marina koje nisu bile u okviru ACI-ja (kao što su Punit i Hramina). U tom smislu treba istaknuti kako su usluge u nautičkom turizmu tada u pravilu pružale luke nautičkog turizma, dok su ostale vrste luka pružale samo one vrste usluga za koje su bile namijenjene u skladu sa zakonom. Posebice u posljednjem desetljeću, potražnja za uslugama u nautičkom turizmu u Hrvatskoj u stalnom je porastu. Međutim, pravna pravila koja reguliraju pružanje usluga u nautičkom turizmu u Hrvatskoj nisu adekvatna za ogromne promjene koje se događaju u praksi. Primjenjiva pravila Zakona o pomorskom dobru i morskim lukama (u daljnjem tekstu: ZPDML) i njegovih podzakonskih akata koji reguliraju pružanje usluga u nautičkom turizmu manjkava su. Pored toga, problemi postoje i kada je riječ o njihovoj provedbi. Zbog toga je Ministarstvo nadležno za pomorstvo, još 2009. godine započelo javnu raspravu o novom lučkom zakonodavstvu, te je objavljen prvi nacrt ZPDML-a. Od tada je okupljeno nekoliko stručnih komisija te izrađeno više nacrta ZPDML-a, ali ni jedan od njih nije stupio na snagu. To je imalo za posljedicu da se usluge u nautičkom turizmu pružaju čak i u sportskim lukama, iako postojeći propisi to izričito zabranjuju, te na privezištima izvan lučkih područja, bez da njihovi pružatelji imaju koncesiju za obavljanje tih djelatnosti. Te se usluge pružaju i u lukama otvorenim za javni promet od osobitog (međunarodnog) gospodarskog značaja za Hrvatsku, što može ugroziti sigurnost linijskog prijevoza putnika morem. Brojna sporna pitanja postoje i kada je riječ o pružanju usluga u nautičkom turizmu u lukama otvorenim za javni promet od regionalnog i lokalnog značaja. Ta se pitanja analiziraju u ovom članku te se podnose *de lege ferenda* prijedlozi za pravno uređenje pružanja usluga u nautičkom turizmu u Hrvatskoj.

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***DE LEGE LATA* LEGAL REGULATION OF THE PROVISION OF NAUTICAL
TOURISM SERVICES IN CROATIAN PORTS AND
DE LEGE FERENDA PROPOSALS**

The intensive development of nautical tourism in the Republic of Croatia started in the 1980s. This was when the joint-stock company the Adriatic Croatia International Club (ACI, previously known as the Adriatic Club Yugoslavia and Adriatic Yacht Club) was founded and started operating. ACI was a state-owned company whose main business aim was to develop nautical tourism on the eastern coast of the Adriatic. During this period, nautical tourism services were provided mainly by ACI, which held sixteen marinas along the Croatian coast. There were also several smaller marinas which did not operate within the ACI framework, such as Punat and Hramina. It should be pointed out that nautical tourism services at this time were as a rule provided by nautical tourism ports, while other types of port provided only the services for which they were intended by law. In the last decade in particular, demand for nautical tourism services in Croatia has been increasing. However, the currently applicable legal framework regulating the provision of nautical tourism services in Croatia is not sufficient to deal with the tremendous changes taking place. The applicable provisions of the Maritime Domain and Seaports Act (the MDSA) and its by-laws regulating the rendering of nautical tourism services are deficient. In addition, their enforcement is unsatisfactory. For this reason, the Ministry of Maritime Affairs started a public debate on new port legislation back in 2009, when the first draft of the MDSA was released. Since then, several expert commissions have met and a number of MDSA drafts have been produced, but none of them have come into force. As a consequence, nautical tourism services are provided even in ports designed for sports purposes, although the regulations in force in Croatia explicitly forbid this, as well as in anchorages outside port areas, even though no concession for such activities has been granted to the providers. These services are also provided in ports open to public transport of special (international) economic importance, which could endanger safety on liners transporting passengers by sea. There are also many issues regarding the provision of nautical tourism services in ports open to public transport of regional and local importance. These issues are analysed in this paper and *de lege ferenda* proposals for the legal regulation of providing nautical tourism services in Croatian ports are made.

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**PРАВНИ IZAZOVI RAZVOJA
NAUTIČKOG TURIZMA U CRNOJ GORI**
(Pozvano predavanje)

Analiza normativne uređenosti nautičkog turizma u Crnoj Gori prilično je kompleksna, uslijed činjenice da je predmetna materija sadržana u više zakonskih i podzakonskih akata, koji u ovisnosti o sadržaju, parcijalno uređuju navedeno područje.

Zakon o turizmu i ugostiteljstvu iz 2018. godine, nautički turizam definira kao "plovidbu i boravak turista nautičara na plovnim objektima, kao i boravak u lukama nautičkog turizma - marinama i ostalim prihvatnim objektima, radi odmora i rekreacije" i uređuje pitanja podnošenja prijave o početku obavljanja djelatnosti, sadržaj prijave i obaveze pružatelja turističkih usluga. Za pravno uređenje ovog područja važna je primjena Pravilnika o vrstama objekata nautičkog turizma, minimalnim tehničkim uvjetima i njihovoj kategorizaciji iz 2003 godine.¹

Pobliža definicija luka za potrebe nautičkog turizma sadržano je u Zakonu o lukama iz 2008. godine, u kojem se, pored osnovne definicije luke (čl. 2), preciznije definiraju dva pojma: nautička usluga i luka nautičkog turizma. Pod lukom nautičkog turizma smatra se luka - marina "namijenjena za smještaj, čuvanje, zaštitu, održavanje, popravak, opremanje i sidrenje jahti i čamaca", dok se pod nautičkom uslugom smatraju usluge koje obuhvaćaju "lučku pilotažu, tegljenje, privezivanje i odvezivanje plovnih objekata". Nadalje, Zakon o lukama (čl. 7.) klasificira luke na luke od nacionalnog i lokalnog značaja, i u skladu s ovim Zakonom doneseni su Pravilnik o sadržaju i načinu vođenja registra koncesija u lukama i Odluka o određivanju luka prema značaju iz 2014. godine.

Zakonom o lukama utvrđuje se i način davanja luka na korištenje (čl. 9.-14.), i to na temelju instituta koncesije uređenog Zakonom o koncesijama, koji se u crnogorskom pravnom sustavu primjenjuje od 2009. godine.

¹ S obzirom da se u čl. 131. st. 2. Zakona o turizmu i ugostiteljstvu navodi da će se podzakonski akti za provođenje ovog zakona donijeti u roku od godinu dana od dana njegova stupanja na snagu, to će se ovaj Pravilnik primjenivati do donošenja novih propisa iz čl. 131.

U čl. 6. ovog Zakona utvrđuje se da je, između ostalog, predmet koncesije luka, te da se njime uređuju sljedeća pitanja: “izgradnja, održavanje i korištenje ili rekonstrukcija, modernizacija, održavanje i korištenje ili korištenje” luka.

Međutim, kada su u pitanju luke nautičkog turizma u Crnoj Gori, one su po Zakonu o morskom dobru u nadležnosti Javnog preduzeća Morsko dobro, i ovaj gospodarski subjekt, sukladno zaključcima Vlade, i pozivom na čl. 7. Zakona o morskom dobru, zaključuje, umjesto ugovora o koncesiji, ugovore o zakupu luke za potrebe nautičkog turizma (marine), pozivom na Uredbu o prodaji i davanju u zakup stvari u državnom vlasništvu, koja je donijeta na temelju čl. 40. st. 4. Zakona o državnoj imovini.

Ova činjenica je vrlo važna, kako sa stanovišta uređenja prava i obaveza ugovornih strana, tako i sa stanovišta raspodjele javnih prihoda koje zakupodavac ili koncedent ubire u ime države. Zakon o koncesijama drugačije uređuje raspodjelu ostvarenih sredstava, kada su u pitanju javni prihodi, u odnosu na Zakon o financiranju lokalne samouprave. Članci 28. i 76b. ovog zakona koji se primjenjuje kod zaključenih ugovora o zakupu i temeljem kojih zakupodavac i jedinice lokalne samouprave po ovom osnovu raspodjeljuju ostvarene nadoknade u omjeru 50:50%, u odnosu na omjer 70:30% u korist koncedenta, kako to utvrđuje Zakon o koncesijama. Sa stanovišta javnih prihoda važan je i Zakon o boravišnoj taksi, na osnovu kojeg je 2016. godine (čl. 7. st. 8.) donesena Uredba o visini boravišne takse za plovne objekte nautičkog turizma (brod i jahte) “koji borave u Crnoj Gori u unutrašnjim morskim vodama, rijekama i jezerima” ...

Navedeni, sažeti pregled ukazuje na složenost normativnog uređenja nautičkog turizma, kompleksnost pitanja koja treba dodatno urediti, nepostojanje cjelovitog zakonskog rješenja i u konačnici postojanje djelomične kolizije određenih zakonskih rješenja, u prvom redu instituta ugovora o koncesiji. U predmetnom radu se ne tretiraju pitanja iz područja Zakona o sigurnosti pomorske plovidbe, već se težište stavlja na pravni status luka nautičkog turizma (marina) i ostvarenje javnih prihoda po osnovu njihovog korištenja.



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THE LEGAL CHALLENGES FACING THE DEVELOPMENT OF NAUTICAL TOURISM IN MONTENEGRO

(Invited lecture)

An analysis of the normative regulations governing nautical tourism in Montenegro is rather complex due to the fact that the field is covered by several laws and by-laws which, depending on the content, only partially regulate the area.

The Tourism and Hospitality Act of 2018 defines nautical tourism as the “sailing and stay of nautical tourists on vessels, as well as stays in nautical tourism ports, marinas and other reception facilities for vacations and recreation” and regulates the issues of submitting applications to start operations, the content of applications, and the obligations of tourist facility providers. The application of the Ordinance on types of nautical tourism facilities, minimal technical conditions and their categorisation of 2003¹ is important in the legal regulation of this area.

A narrower definition of ports for the purpose of nautical tourism is contained in the Ports Act of 2008 in which, apart from the basic definition of a port (Article 2), more precise definitions of the terms “nautical services” and “port for nautical tourism” are given. A port for nautical tourism is defined as a port/marina “intended for the accommodation, storage, protection, maintenance, repair, equipping and anchoring of yachts and boats”, while nautical services include “harbour pilots, hauling, mooring and towing”. In addition, the Ports Act (Article 7) classifies ports of national and local importance, and on the basis of this Act the Ordinance on the content and manner of keeping the register of concessions in ports and the Decision on determining ports in terms of their importance of 2014 were enacted.

The Ports Act also establishes the manner of granting concessions for the use of ports (Articles 9 to 14), which is defined in detail by the Concessions Act, which has been in force under Montenegrin law since 2009. Article 6

¹ Given that Article 131, paragraph 2 of the Tourism and Hospitality Act states that subordinate legislation for the implementation of this act shall be adopted within one year of the date of its entry into force, this ordinance will apply until the adoption of the new regulations referred to in Article 131.

of this law, among other things, defines the subject of a port concession, and also regulates questions relating to the “construction, maintenance and use; or reconstruction, modernisation, maintenance and use; or use” of ports.

However, according to the Public Maritime Domain Act, nautical tourism ports in Montenegro are under the jurisdiction of the Public Enterprise for Coastal Zone Management. This corporate entity, in line with government conclusions and upon the basis of Article 7 of the Public Maritime Domain Act, instead of a concession agreement concludes lease agreements for the use of ports/marinas for the purpose of nautical tourism, all upon the basis of the Decree on the sale and lease of state-owned property, which was issued pursuant to Article 40, paragraph 4 of the State Property Act.

This fact is very important, both from the point of view of regulating the rights and obligations of contracting parties, as well as from the point of view of the allocation of the public revenues which the lessor or concession grantor collects on behalf of the state. The Concessions Act regulates the allocation of collected public revenues differently from the Local Government Finance Act. Articles 28 and 76b of this latter act are applied to concluded lease contracts, and on the basis of this the lessor and the local self-government unit allocate the fees on a 50-50 basis, compared to the 70-30 split in favour of the concession grantor under the Concessions Act. From the point of view of public revenues, the Residence Tax Act is also important. On the basis of this act (Article 7, paragraph 8), in 2016 the Regulation on the amount of sojourn tax for vessels (boat and yachts) used in nautical tourism was adopted for those “who reside in Montenegro on inland waters, rivers and lakes”.

The overview points out the complexity of the normative arrangement of nautical tourism, the intricacy of the issues that need to be further regulated, the lack of a comprehensive legal solution, and finally the existence of conflict in the application of certain legal solutions, particularly with regard to the concept of concession agreements. The paper does not deal with issues related to the Maritime Safety Act but rather the focus is on the legal status of ports/marinas used in nautical tourism and the allocation of public revenues arising from their use.

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STANDARDNI MODELI UGOVORA O VEZU ZA HRVATSKE MARINE KAO KORAK NAPRIJED

Istražujući ugovore o vezu koji se koriste u poslovnoj praksi hrvatskih marina, ustanovili smo da među njima ne postoji takva razina usklađenosti da bi se moglo govoriti o standardiziranom ugovoru o vezu formuliranom u okviru autonomnog prava hrvatskih marina. Ipak, u praksi i teoriji postoji zajednički stav da bi standardizacija općih uvjeta ugovora hrvatskih marina bila moguća, poželjna i korisna, ponajviše u interesu pravne sigurnosti. Stoga smo se u okviru znanstvenoistraživačkog projekta DELICROMAR (broj UIP 2013-11-3061) Jadranskog zavoda Hrvatske akademije znanosti i umjetnosti koji financira Hrvatska zaklada za znanost usmjerili na formuliranje prijedloga standardnih općih uvjeta ugovora o vezu koji bi se koristili u praksi hrvatskih marina.

U prvoj fazi istraživanja izvršena je detaljna analiza sastojaka ugovora o vezu, sadržaja usluga koje marine pružaju u okviru ugovora o vezu, prava i obveza ugovornih strana te ostalih relevantnih ugovornih utanačenja koja se primjenjuju u poslovnoj praksi hrvatskih marina. Slijedila je sinteza svih relevantnih podataka i pravnih pitanja vezanih uz pojedine ugovorne klauzule, a na temelju toga formirani su i sistematizirani modeli ugovora o vezu.

Predmet ovog rada je cjelovita analiza pojedinih modela ugovora i to ugovora o najmu veza, ugovora o najmu veza i nadziranju plovila te ugovora o najmu veza i ispunjavanju drugih dodatnih usluga i radova. Iscrpno se obrađuju bitni sastojci svakog modela ugovora te prava i obveze ugovornih strana. Podrobno se proučava ugovorna odgovornost, a govori se i o sklapanju i prestanku ugovora. Radi boljeg razumijevanja složenih odnosa koji nastaju sklapanjem i izvršavanjem određenog modela ugovora o vezu tumače se tipične ugovorne klauzule.

Sistematizacija ugovora prema modelima predstavlja važan korak naprijed koji će znatno pridonijeti pravnoj sigurnosti, predvidivosti pravne zaštite, jedinstvenom sudskom tumačenju ugovora o vezu te unaprijediti poslovnu praksu hrvatskih marina.

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STANDARD BERTHING CONTRACT MODELS FOR CROATIAN MARINAS AS A WAY FORWARD

Our research shows that the level of similarity amongst berthing contracts used in the business practice of Croatian marinas is not sufficient to lead to the conclusion that a standardised berthing contract has crystallised under Croatian law. However, the common position both in theory and in practice is that the standardisation of marina operators' general terms and conditions in berthing contracts would be possible, desirable and useful, mostly in the interests of legal certainty. Therefore, as part of the DELICROMAR (no. UIP 2013-11-3061) research project of the Adriatic Institute of the Croatian Academy of Sciences and Arts, financed by the Croatian Science Foundation, we have focused on formulating a proposal for standard general terms and conditions for berthing contracts to be used by Croatian marina operators.

In the first phase of the research, berthing contracts were thoroughly analysed, including the elements of the contract, the contents of the services regularly provided by marina operators under berthing contracts, the rights and obligations of the contracting parties, and other relevant contract terms used in the business practices of Croatian marinas. A synthesis of all the relevant information and legal questions related to the particular contractual clauses followed, and on the basis of this we formulated a set of systemised berthing contract models.

The subject matter of this paper is a complete analysis of particular contract models, including contracts for berthing rental, contracts for berthing rental and vessel supervision, and contracts for berthing rental and the provision of additional services and work. We thoroughly analyse the contractual liability of the parties, and look into the conclusion and termination of berthing contracts. For a better understanding of the complex legal relationships arising from particular berthing contract models, we give an interpretation of typical contract clauses.

The systematisation of marina operators' berthing contracts based upon the various contract models represents an important step forward that should contribute considerably to legal certainty, the predictability of legal protection, a uniform judicial interpretation of berthing contracts, and to the improvement of marina operators' business practices.

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UGOVOR O VEZU U LUCI NAUTIČKOG TURIZMA PO NIZOZEMSKOM PRAVU (Pozvano predavanje)

More, rijeke i kanali igraju važnu ulogu u svakodnevnom životu u Nizozemskoj. U toj se zemlji nalazi najveća luka u Europi, a to je luka Rotterdam, ali i približno 1,100 marina. Preko 500,000 rekreacijskih plovila raznih vrsta i dimenzija može se naći u nizozemskim vodama, a nautički turizam je veoma jaka grana gospodarstva.

S tim u vezi otvaraju se razna pravna pitanja poput odgovornosti marine za različite vrste šteta, te postoji opsežna sudska praksa koja se tiče tih problema. Mnogi sporovi polaze od pitanja kako pravno kvalificirati ugovor koji sklapaju vlasnik plovila i marina jer upravo to će odrediti opseg i doseg odgovornosti marine. Ovisno o tome odredit će se na kojoj strani leži teret dokazivanja štete, njenog opsega i visine te odgovornosti za naknadu te štete. Ugovor o vezu može se kvalificirati kao ugovor o najmu mjesta za vez ili, pak, kao ugovor o čuvanju plovila (ostava). Ako se ugovor kvalificira kao ostava, marina je u obvezi vratiti plovilo ostavodavcu u stanju jednakom onome u kojem je plovilo bilo prije početka ostave. Na marini leži teret dokazivanja da je obveza čuvanja plovila ispunjena i da se je pri čuvanju plovila poduzelo sve što bi se razumno moglo očekivati od marine kao ostavoprимca. Situacija je sasvim drukčija kod ugovora o vezu koji je kvalificiran kao ugovor o najmu.

Okolnost koja dodatno komplicira interpretaciju ugovora o vezu u ovim predmetima jest ta da mnoge komercijalno vođene marine ne ograničavaju svoju djelatnost isključivo na pružanje usluge veza. Često se provode radovi održavanja i popravka plovila čak i temeljem istog ugovora o vezu. Tada se postavlja pitanje kako kvalificirati takav ugovor, da li kao zaseban ugovor o izvođenju radova ili kao sastavni dio ugovora o vezu.

Raspravit će se opisane dileme i relevantna sudska praksa kao i mogućnost primjene privremene mjere osiguranja potraživanja marine zaustavljanjem plovila u marini ili pravnog instituta retencije na plovilu u marini.

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MARINA OPERATOR BERTHING CONTRACTS UNDER DUTCH LAW
(Invited lecture)

The sea, rivers and canals play an essential role in day-to-life in the Netherlands. Not only is the Netherlands home to the largest port in Europe, Rotterdam, but there are also approximately 1,100 marinas located in the Netherlands. More than 500,000 pleasure craft in all shapes and sizes can be found in the Netherlands, and nautical tourism is a major industry.

This of course also gives rise to all kinds of questions regarding, for instance, the liability of marina operators for all kinds of claims, and there is ample case law available regarding these issues. Many of these cases start with the question of how to qualify the agreement concluded between the owner of the pleasure craft and the marina operator, because this then determines to which extent the marina operator is liable and which party bears the burden of proving the damage, its scope and extent, and the underlying liability. A berthing contract can either be qualified as a contract for the hire of a mooring place or an agreement for the custody of a vessel. If the agreement qualifies as an agreement of custody, the marina owner is under the obligation to return the vessel in the same condition as it was before the custody commenced. The marina operator has the burden of proving whether the vessel was properly looked after and whether the custodian did everything as reasonably as could be expected whilst taking care of the vessel. The same does not apply when the agreement qualifies as a rental agreement.

A complicating factor is that many commercially operated marinas do not restrict their activities to offering mooring facilities alone. Often maintenance and repair work are also carried out under the same agreement, which raises the question of how to qualify this agreement: as a contract for carrying out work or as a berthing contract.

These issues and the relevant case law, but also the consequences in respect of the attachment of vessels and right of retention, will be discussed.

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**OSIGURANJE ODGOVORNOSTI LUKA NAUTIČKOG TURIZMA
U HRVATSKOJ SUDSKOJ PRAKSI
(Pozvano predavanje)**

Počeci osiguranja odgovornosti luka nautičkog turizma u Hrvatskoj vezuju se uz izgradnju i razvoj prvih marina šezdesetih godina prošlog stoljeća, a intenzivan razvoj ova vrsta osiguranja doseže tijekom osamdesetih godina paralelno uz osnivanje i razvoj lanca marina ondašnjeg Adriatic Club Yugoslavia (ACY), a današnjeg Adriatic Croatia International Club d.d. (ACI d.d.). Tijekom tog razdoblja došlo je do međusobnog usklađivanja i standardizacije općih uvjeta marina i općih uvjeta osiguranja odgovornosti marina, zahvaljujući zajedničkim naporima stručnjaka predstavnika obje branše, tj. marina i osiguratelja. Stoga je i najranija sudska praksa vezana uz sporove iz odgovornosti marine i osiguranja te odgovornosti rezultat upravo na taj način organiziranih pravnih odnosa.

Devedesetih godina tržište u Hrvatskoj se liberalizira, javlja se veći broj osiguratelja u utakmici za novim osiguranicima, a grade se i nove marine. Usporedo dolazi do naglog razvoja čartera jahti i brodica, a znatno se povećava i broj jahti i brodica koje se koriste u privatne svrhe, rastu i njihove prosječne vrijednosti, a tehnologija njihove gradnje, strojeva, instrumenata i opreme sve je profinjenija. Sve to dovodi do promjena u poimanju i ocjeni odgovornosti marina, načinu njihova rada i naglašene kompetitivnosti među svim sudionicima na tržištu. Opći uvjeti marina se prilagođavaju novim zahtjevima tržišta, a diversificira se i osigurateljna praksa, te se više ne može govoriti o standardiziranim općim uvjetima marina kao ni o ujednačenim općim uvjetima osiguranja odgovornosti marina.

Sudska praksa u ovim predmetima koleba te se čini da postoji visok stupanj pravne nesigurnosti i nerazumijevanja građanskopravne odgovornosti koncesionara marina, a posljedično i opsega osiguranja te odgovornosti. U ovom izlaganju na primjerima iz hrvatske sudske prakse razmatrat ćemo najspornija pravna pitanja koja se javljaju u predmetima iz osiguranja odgovornosti marina, s naglaskom na mogućnost izravne tužbe protiv osiguratelja odgovornosti, identitet oštećenika, odgovornost marine iz ugovora o vezu, sporne uzroke najčešćih oblika šteta te na sporne ugovorne klauzule o isključenjima iz osiguranja.

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**MARINA OPERATOR LIABILITY INSURANCE IN
CROATIAN JUDICIAL PRACTICE**
(Invited lecture)

The roots of marina operator liability insurance practice in Croatia are tied to the construction and development of the first marinas in the 1960s. The intensive development of this type of insurance took place in the 1980s along with the establishment of a chain of marinas operated by the Adriatic Club Yugoslavia (ACY), nowadays the Adriatic Croatia International Club d.d. (ACI d.d.) During this period, a mutual adjustment and standardisation of the general terms and conditions of marina operators and insurers took place, thanks to the joint efforts of professionals representing the stakeholders, i.e. the marinas and insurers. Thus, the earliest judicial practice relating to marina operator liability and insurance was a result of the establishment of these legal relationships.

In the late 1990s, with the liberalisation of the Croatian market, a number of insurance companies emerged competing for new clients, and new marinas were developed. At the same time, a sudden development of the yacht chartering market took place. There was also a substantial rise in the numbers of yachts and pleasure boats used for private purposes. Their average value increased and the related technologies and materials became more sophisticated. All this led to changes in the definition of marina operator liability, their business models and to a high level of competitiveness amongst all stakeholders on the nautical tourism market. Marina operator general terms and conditions were adjusted to the new market requirements and insurance practice diversified. There are no more standard marina operator general terms and conditions or standard marina operator liability insurance clauses.

Judicial practice in this field varies. There seems to be a high level of legal uncertainty and a lack of understanding of marina operator civil liability and consequently the scope of the insurance of such liability. The presentation deals with the most controversial legal issues arising in relation to marina operator liability insurance in examples taken from Croatian case law. In particular, we focus on the issue of direct action against the insurer, the identity of the insured party, liability arising from berthing contracts, controversies relating to the most frequent causes of loss or damage, and the interpretation of the most troublesome standard insurance exclusions.

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USPOREDBA HRVATSKOG I ENGLESKOG PRAVA I PRAKSE OSIGURANJA ODGOVORNOSTI MARINE

S obzirom na razinu odgovornosti kojima je u redovitom poslovanju izložena, svaka bi marina trebala imati policu osiguranja odgovornosti. Iako ugovaranje osiguranja odgovornosti marine nije obvezno, broj i imovinska vrijednost plovila u marini, kao i broj osoba koje borave na plovilima ili u ostalim objektima u marini, dovoljni su razlozi ugovaranja osiguranja ove vrste. Predmet je osiguranja odgovornosti marine prema hrvatskom pravu i praksi osiguranje odgovornosti iz djelatnosti marine, što podrazumijeva njezinu ugovornu i izvanugovornu odgovornost (prema korisnicima usluga koje pruža te prema trećima). Englesko tržište osiguranja odgovornosti marinama najčešće nudi paket pokrića odgovornosti koji se kreira prema potrebama pojedinog osiguranika – marine. Navedeni paketi, uz osiguranje odgovornosti iz djelatnosti marine, uključuju i osiguranje odgovornosti brodograditelja (*ship repairers liability*), osiguranje odgovornosti prema trećima i tzv. opće osiguranje odgovornosti za poduzetnike (*Commercial General Liability, CGL*). U nekim slučajevima paket pokrića osiguranja odgovornosti marine na londonskom tržištu osiguranja uključuje i odgovornost marine prema zaposlenicima (*employee coverage*).

S obzirom na navedeno, smatramo potrebnim opširnije istražiti organizaciju osiguranja odgovornosti marine prema uvjetima hrvatskog i engleskog prava i prakse. Ujedno, izbor poredbenopravne analize osiguranja odgovornosti marine na primjeru engleskog prava i prakse slijedi i zbog značaja londonskog tržišta osiguranja u svijetu osiguranja općenito, pa tako i u predmetu osiguranja odgovornosti marine. Stoga je cilj ovog rada razmotriti glavna obilježja osiguranja odgovornosti marine u kontekstu hrvatskog i engleskog prava i prakse. U prikazu obilježja osiguranja ove vrste navode se pravni izvori reguliranja osiguranja odgovornosti marine, analiziraju se standardni uvjeti osiguranja odgovornosti marine nekih osiguratelja, navode se i najčešće odgovornosti marine u praksi osiguranja odgovornosti te visina i opseg odgovornosti kod takvih šteta, kao i osigurateljne metode procjene rizika odgovornosti marine, tj. okolnosti koje se uzimaju u obzir za procjenu rizika osiguranja odgovornosti marine. Naznačene teme uspoređuju se na primjerima izabраних prava i poslovne prakse.

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A COMPARISON OF CROATIAN AND ENGLISH LAW AND BUSINESS PRACTICE RELATING TO MARINA OPERATOR LIABILITY INSURANCE

Given the level of liability to which marina operators are exposed in the course of their business, each marina should have a liability insurance policy. Marina operator liability insurance is not compulsory by law, but the number and value of vessels in marinas, as well as the number of people on vessels or on marina premises, pose significant liability risks, and reasons for arranging this type of insurance exist. The subject matter of marina operator liability insurance under Croatian law and in the business practice of Croatian insurers is the marina operator's civil liability arising from or in relation to its business activities, including contractual liability (towards the users of marina services) and non-contractual or tort liability (third-party liability). The English marine insurance market commonly offers a package of liability insurance coverage that is tailor-made according to the needs of a particular client (the insured marina operator). Along with insuring the marina operator against liability arising from its core business of providing a safe berth for recreational vessels, the standard package usually includes cover for ship repairer's liability, third-party liability and so-called CGL liability (*commercial general liability*). In some cases, insurance packages on the London insurance market also include employee coverage.

In view of the above, we find it important to further investigate the legal and business set-up of marina operator liability insurance, focusing on the standard terms and conditions of coverage under Croatian and English insurance law and practice. At the same time, the choice of English law and insurance practice for this comparative analysis stems from the global importance of the London insurance market, particularly in the field of marine insurance and therefore also in the specific case of marina operator liability insurance. The aim of this paper is to discuss the main features of marina operator liability insurance in the context of Croatian and English law and practice. The analysis discusses the relevant legal framework regulating this type of insurance contract and focuses on the standard terms and conditions of marina operator insurance used in practice. We look at the most frequent types of claim under marina operator liability insurance and the extent and scope of the liability covered. Finally, we take into consideration the methods of risk assessment specific to this type of insurance and the circumstances that are taken into account when assessing the risks involved in marina operator liability insurance.

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IZVANUGOVORNA ODGOVORNOST LUKE NAUTIČKOG TURIZMA U OKVIRU HRVATSKOG ZAKONODAVSTVA

U radu se pruža kratak prikaz rješenja hrvatskog zakonodavstva glede utvrđivanja izvanugovorne odgovornosti luke nautičkog turizma. Pod odgovornošću luke nautičkog turizma podrazumijevamo odgovornost fizičke ili pravne osobe koja posluje i pruža turističke i druge usluge u nautičkom turizmu te upravlja lukom nautičkog turizma. Za razliku od ugovorne odgovornosti luke nautičkog turizma koja obuhvaća odgovornost prema korisnicima djelatnosti i usluga koje luka pruža, izvanugovorna odgovornost obuhvaća odgovornost prema trećima i to za štete u slučaju smrti, ozljede ili oštećenja zdravlja trećih osoba, za štete na njihovoj imovini te štete zbog onečišćenja.

Hrvatski pravni okvir unutar kojeg se regulira djelatnost nautičkog turizma ne sadrži posebna rješenja ili poseban režim izvanugovorne odgovornosti luke nautičkog turizma, stoga se u radu razmatraju primjenjivi pomorskopravni propisi te pravila općeg odštetnog prava. Odgovornost luke nautičkog turizma prvenstveno će se procjenjivati prema općim pravilima iz Zakona o obveznim odnosima jer se pomorskopravni propisi primjenjuju na pitanje izvanugovorne odgovornosti vlasnika ili korisnika plovila. Posebno se analiziraju pravila odštetnog prava iz Zakona o obveznim odnosima te se ističe da Zakon propisuje subjektivnu odgovornost kao pravilo, a objektivnu odgovornost kao izuzetak. Pravila o objektivnoj odgovornosti primjenjuju se na štete od opasnih stvari ili djelatnosti ili kada je to posebno propisano. Međutim, koje se stvari ili djelatnosti smatraju opasnim, Zakon o obveznim odnosima nije definirao već je to prepustio sudskoj praksi. To znači da se u postupku utvrđivanja odgovornosti luke nautičkog turizma, sve dok sud ne izvrši kvalifikaciju da li se neka stvar ili djelatnost u luci smatra opasnom, ne zna da li će luka odgovarati na temelju subjektivne ili objektivne odgovornosti. Pored toga, s obzirom na velik broj propisa kojima se uređuje obavljanje djelatnosti u nautičkom turizmu, postupak utvrđivanja odgovornosti luke nautičkog turizma zahtijevat će dobro poznavanje i detaljnu analizu niza pravila kojima se reguliraju obveze i dužnosti luke nautičkog turizma.

Sa ciljem postizanja većeg stupnja pravne sigurnosti, kako za samu luku nautičkog turizma kao nositelja imovinskopravne odgovornosti, tako i za treće osobe oštećenike, naglašava se potreba da se u zakonskom okviru kojim se uređuje djelatnost nautičkog turizma jasnije reguliraju pravila izvanugovorne odgovornosti luke nautičkog turizma.

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MARINA OPERATORS' NON-CONTRACTUAL LIABILITY WITHIN THE CROATIAN LEGAL FRAMEWORK

This paper provides a brief overview of Croatian legislation on the determination of the non-contractual liability of nautical ports. The term “port liability” refers to the liability of any physical or legal person that operates and provides tourist and other services in nautical tourism, and manages a nautical port. As opposed to the contractual liability of nautical ports, which includes liability towards the users of services provided by the port, non-contractual liability includes third-party liability for damages in the event of the loss of life, personal injury, health impairment, damage to property and damage from pollution.

The Croatian legal framework regulating the activity of nautical tourism does not include particular solutions or regimes regarding the non-contractual liability of nautical ports. Therefore, this paper considers the relevant maritime law regulations and those of the general law of obligations that apply. Due to the fact that maritime law regulations apply to the issue of the non-contractual liability of the vessel owner or user, nautical port liability is primarily assessed in accordance with the general rules of the Civil Obligations Act. The rules of tort law under the Civil Obligations Act are analysed in particular, and it is pointed out that the Act prescribes fault-based liability as a rule and strict liability as an exception. The rules regarding strict liability apply to damage from dangerous goods or activities or when specifically prescribed. However, the Civil Obligations Act does not specify which goods or activities are considered dangerous, so it has been left to judicial practice to determine this. This means that in the procedure of determining the liability of a nautical port, until the court determines whether a certain thing or activity of the port qualifies as dangerous, it is not known whether the port will be held responsible in accordance with fault-based or strict liability. Furthermore, given the large amount of regulations that govern the performance of nautical tourism activities, the procedure of determining the liability of nautical ports requires good knowledge and a detailed analysis of the series of rules regulating the obligations and duties of nautical ports.

With the aim of achieving a greater degree of legal certainty, both for nautical ports, who have civil liability, and for all parties that may be affected by their activities, it is emphasised that there is a need for a clearer regulation of the non-contractual liability of nautical tourism ports within the legal framework governing nautical tourism.

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PRAVNI ASPEKT SIGURNOSTI PLOVIDBE U HRVATSKIM MARINAMA

Nautički turizam predstavlja važan segment pomorske i turističke djelatnosti u Republici Hrvatskoj. Taj dio turizma ima izraženu pomorsku komponentu. Turističke usluge u nautičkom turizmu pružaju se, osobito, u marinama, kao vrsti luka nautičkog turizma, te na plovnim objektima nautičkog turizma. S obzirom da marine predstavljaju početne i završne točke plovidbe plovnih objekata nautičkog turizma, u njima kontinuirano boravi velik broj takvih plovila. Osiguranje standarda sigurnosti plovidbe u marinama, jamstvo je uspješnog odvijanja djelatnosti nautičkog turizma. Odgovornost za sigurnu plovidbu u marini je na koncesionaru svake pojedine marine, što proizlazi iz njegova pravnog statusa *tijela koje upravlja lukom*. Naime, koncesionar je obvezan, sukladno *Pomorskom zakoniku, Zakonu o pomorskom dobru i morskim lukama* te *Pravilniku o uvjetima i načinu održavanja reda u lukama i na ostalim dijelovima unutarnjih morskih voda i teritorijalnog mora Republike Hrvatske* donijeti pravilnik o redu u luci i uvjetima korištenja marinom. Tim pravilnikom posebno se regulira način odvijanja prometa u marini, namjena pojedinog dijela obale, postupak javljanja, načini uplovljavanja, pristajanja, vezivanja, premještanja, sidrenja i isplavljanja plovnih objekata te način kontrole nad obavljanjem tih radnji. Postavlja se pitanje koja ovlaštenja ima koncesionar marine u slučaju kršenja odredbi toga pravilnika u segmentu sigurnosti plovidbe osobito s obzirom na činjenicu da koncesionar marine nema zakonom propisane javne ovlasti, ali u obavljanju svojih poslova vrši određene radnje koje imaju elemente javnih ovlasti. U ovom radu analiziraju se obveze koncesionara, kao i njegove možebitne javne ovlasti, u poslovima osiguravanja standarda sigurnosti plovidbe u marinama.

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LEGAL ASPECTS OF NAVIGATIONAL SAFETY IN CROATIAN MARINAS

Nautical tourism represents an important part of maritime and tourist activities in the Republic of Croatia. This sector of tourism has a distinctive maritime component. In particular, nautical tourism services are provided in marinas which are nautical tourism ports, and also on vessels used for nautical tourism. As marinas represent the starting and ending points in the navigation of vessels used in nautical tourism, there is a large number of such vessels staying in marinas on a continuous basis. Ensuring navigation safety standards in marinas guarantees the successful completion of nautical tourism activities. The concessionaire of a marina as port operator is responsible for safe navigation in the marina under the concessionaire's legal status as port operator. Namely, in accordance with the *Maritime Code*, the *Maritime Domain and Seaports Act* and the *Ordinance on the Conditions and Mode of Maintaining Order in Ports and Other Parts of the Inland Waters and Territorial Sea of the Republic of Croatia*, the concessionaire is obliged to issue internal regulations on maintaining order in the port and also conditions of use of the marina. These regulations specifically govern the management of traffic in the marina, the purpose of particular shore areas in the port, reporting procedures for entering and leaving the port, mooring, berthing, anchoring and sailing within the port, as well as the methods of monitoring these procedures. The question arises as to what powers marina concessionaires have in the event of the violation of port regulations regarding the safety of navigation, especially given the fact that no public powers of the concessionaire are expressly prescribed by law, although certain statutory duties they perform as port operators qualify as elements of public authority. This paper analyses the obligations of concessionaires, as well as their potential public powers in ensuring navigational safety standards in marinas.

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RAZVOJ SIGURNOSNIH STANDARDA U MARINAMA

Iako Republiku Hrvatsku možemo smatrati sigurnom zemljom, potrebno je kontinuirano ulagati u prevenciju kriminaliteta i razvoj visokih sigurnosnih standarda. Osobito se to odnosi na turizam kao vitalnu gospodarsku granu. Pri tome je važno postići ravnotežu između potrebe turista za sigurnošću i njihove želje za slobodom kretanja, bezbrižnošću i odmorom.

Kroz tu prizmu razmatrani su sigurnosni standardi u marinama kao važnom segmentu nautičkog turizma. Obavljena je kvalitativna analiza sigurnosnih aspekata poslovanja na uzorku od 14 marina koje posluju u Republici Hrvatskoj. U okviru analize razmatrani su sigurnosno relevantni događaji u marinama koji obuhvaćaju sigurnost veza, sigurnost plovila i imovine na plovilima te sigurnost plovidbe u marini. Također je razmatrana sigurnost imovine marine i podkoncesionara. Analiza je obuhvatila i osobnu sigurnost korisnika marine, zaposlenika, vanjske izvore ugroze, ali i potencijalne unutarnje izvore ugroze.

Rezultati analize ukazuju, između ostalog, na potrebu snažnijeg percipiranja sigurnosti kao relevantnog poslovnog procesa i na potrebu integriranog upravljanja sigurnošću u marinama. U skladu s tim na kraju članka iznesene su određene preporuke sigurnosnih standarda koji bi se mogli implementirati u marinama.

Takvi standardi ne bi ovog trenutka trebali biti na razini onih koji su kroz zakonska rješenja implementirani u odnosu na luke, ali podrazumijevaju naglašeniji pristup upravljanju sigurnošću u marinama i na strateškoj i na operativnoj razini. Pretpostavke za takav pristup su kvalitetne sigurnosne analize i sigurnosne procjene koje trebaju objektivno sagledati sve relevantne rizične čimbenike. Osim toga, važna su također implementirana tehnološka sigurnosna rješenja i adekvatno osposobljeni zaposlenici marina, ponajprije mornari koji obavljaju svoje poslove neposredno na dokovima. Njihova spremnost izravno utječe na kvalitetnu prevenciju štetnih događaja, ranu reakciju, ali i učinkovito postupanje u izvanrednim situacijama.

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THE DEVELOPMENT OF SECURITY STANDARDS IN MARINAS

Although we can consider the Republic of Croatia as a safe country, it is necessary to continuously invest in crime prevention and the development of high security standards. In particular, this concerns tourism, as it is a vital economic sector. It is important to achieve a balance between tourists' need for security and their desire for freedom of movement, a relaxed environment and rest.

Through this prism, security standards in marinas are considered as an important segment of nautical tourism. A qualitative analysis of security aspects of business operations was carried out on a sample of 14 marinas operating in the Republic of Croatia. As part of the analysis, events relevant to security in marinas were considered. These events include the security of berths, vessels, property on vessels, and navigation in the marina. The security of marina operators' and sub-concessionaires' property was also considered. The analysis further covers the personal security of marina users and employees, external sources of threats, and also potential internal sources of threats.

The results of the analysis, among other things, point to the need for a stronger perception of security as a relevant business process and the need for integrated security management in marinas. At the end of the article, there are certain security standard recommendations that could be implemented in marinas.

At present, such standards should not be at the level of those implemented through legal solutions for ports but should include a more pronounced approach to maritime security management at both the strategic and operational levels. The assumptions underlying such an approach are quality security analyses and security assessments, which should objectively consider all relevant risk factors. The technological security solutions implemented are also important, as are adequately trained marina staff, especially those who work directly on the docks. Their readiness has a strong influence on the quality of the prevention of harmful events, early reaction, and the effective processing of emergency situations.

