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COMPARATIVE ANALYSIS OF CONCESSIONS ON MARITIME DOMAIN IN PORTS OF REGIONAL SIGNIFICANCE IN CROATIA AND ITALY

SUMMARY

The port system is a particularly important segment of valorisation of the sea and of the maritime orientation of any country and together with shipping it constitutes a fundamental link of the maritime industry of a country. A strong maritime economy can be built by the developing of all of its segments, systematically linked into a single entity and mutually determined. In this respect, the ports play an especially important role because they constitute the primary benchmarks of development of the maritime economy of a country.
The system of concession of the maritime domain has a developmental and a protective role for the local community, the region and the country as a whole. Therefore, the system should be transparent and the procedure for granting concessions, as simple as possible. In general, concessions for the use of the maritime domain serve as a vehicle of development of the economy and allow control and supervision over the use of the maritime domain. The institute of concession is especially significant for developing countries where different interests and pressures on the maritime domain occur. In Croatia, in accordance with the law, the concessions granted in ports open to public traffic of regional importance are granted by the port authority, while in Italy they are granted by the maritime authority. The authors in the paper analyse the Croatian and Italian procedures for demarcation of the boundaries of the maritime domain and with the institute of concession. Procedures prescribed by the law for granting concessions in ports open to public traffic, their implementation in practice and their implications are especially analysed and compared. The authors explain the positive and negative sides of the legislative solutions and provide suggestions for improving the system.

Key words: maritime domain, concessions, ports open to public traffic, Croatia, Italy

1 INTRODUCTION

In Italy, the matter of maritime domain is regulated by three basic laws, namely: the Code of Navigation from 1942, the Regulation for its implementation from 1952 and the Law on the reorganization of legislation referring to port matters from 1994. The matter of maritime domain is very well regulated in Italian law, which can be contemplated within the framework of the Italian centuries-old maritime tradition.

Croatia has regulated the issue of the maritime domain to some degree after having established its sovereignty – significant attention was given to this matter in the Maritime Code passed in 1994 and in the new Maritime Code passed in 2004, plus in a number of other laws and regulations.

It is expected that in the context of the existing European developments the Italian and Croatian maritime legislation will one day find their concord within the European maritime legislation.

The conducted analysis and synthesis of port and concession systems in the Republic of Croatia and Italia besides presenting the conclusions on the compatibility and similarities of such systems in this paper and recommendations for improving the functioning of the systems, also defines the necessary actions for implementing the MoS project. In order to successfully implement the MoS project between the Republic of Croatia and the Republic of Italy, knowledge on the functionality of a port and concession system of the two countries is necessary, because only in this way can uniform application of the principles stemming from the MoS project be ensured[1].

2 THEORETICAL AND LEGISLATIVE DETERMINANTS OF THE PROLEM

Management of marine and coastal resources and of the maritime domain in particular, as a strategic Croatian resource, is not effective due to frequent changes in legal norms. A tangle of regulations, numerous hierarchical levels in the decision-making process, the length of the process and, indirectly, of the collection of the fees indicate that there is lack of a clear strategy and vision of development. There are very few managers in the public administration that use modern techniques and methods of decision making and information systems in the exploration and valorisation of the maritime domain [19]. Therefore this paper also contributes to the understanding of the significance and importance of the maritime domain for the Croatian economic development.

The *institute* of maritime domain in Italy as well as its civil law is rooted in the Roman law. In Croatia, the matters of public and maritime domain have been systematically approached only recently (1990s).

2.1 Maritime domain in the Croatian legislation

The Law on Maritime Domain and Seaports (LMDS) prescribes that the maritime domain is constituted by the internal sea waters and the territorial sea, their bed and subsoil and part of the land which is by its nature intended for public maritime use or has been declared as such, and everything connected with this part of the land on the surface or below it [19]. In this sense, the following are considered to constitute the maritime domain: the coast, the ports, the breakwaters, the levees, the shoals, the reefs, the estuaries flowing into the sea, the canals connected with the sea and in the sea and maritime subsoil all animate and inanimate natural resources [19]. Maritime domain is a common good of interest for Croatia and it is under its special protection, and it is used or exploited under the conditions and in the manner prescribed by the LMDS [19]. As a public good the coast was protected still in the Roman legal system (*res omnium communis, res que in publico usu habentur*). During the Middle Ages the coasts were under the domain of the feudal landlords (eg. repairing of the banks, lime production, etc.). The coast as a part of the public maritime domain was also defined by legal provisions of the states that Croatia was a part of:

- Article 287 of the Austrian General Civil Code
- Regulation on maritime domain in the Kingdom of Yugoslavia (SN 104/1939)

[1] This paper is the result of research work on the MoS project (Motorways of the Sea) as requirement of fulfilling obligations from subject C (research project) of the Maritime doctorate programme POMORSTVO.

- • The Law on maritime domain, waters, ports and harbours of the SR Croatia (NN 19/1974).

2.2 Boundaries of the maritime domain in Croatian legislation

Demarcating the maritime domain is of special interest for Croatia, namely it provides the legal grounds for the registration of the maritime domain in the land registry books in its favour and the creation of an integrated management system of coastal and marine resources. The process of determining the boundaries of the maritime domain is carried out in accordance with the LMDS and the Ordinance on the procedure for determining of the boundaries of the maritime domain [23]. The procedure is conducted by the Commission for the demarcation of the maritime domain, appointed by the Minister upon proposal of a three-member county commission for borders established by the President of the County (Article 14) [19]. Neither the Law nor the Ordinance prescribe who may be a member of the committee, except that it consists of a president and two members. The Ordinance prescribes that the maritime domain boundary comprises the area used for maritime transport, sea fishing and other purposes that are related to the exploitation of the sea, in accordance with the zoning documents (Article 3, paragraph 3 point 2) [23].

The boundary of the maritime domain is determined on the basis of the existing natural and man-made legally constructed obstacles. If no change in the configuration of the sea shore occurs, the maritime line from the cadastral changes is applied. The Commission draws a proposal of the boundaries of the maritime domain in accordance with the Annual Management Plan, and exceptionally upon request if the area to which the request relates is not included in the Annual Management Plan of the maritime domain.

The parties submitting a request to determine the boundary of the maritime domain may be the Croatian Government through the relevant Ministry, government bodies and natural or legal persons (Article 4, paragraph 7) [23]. According to current practice, the requests received so far mostly related to a few tens of meters of length of the coastline. The process is slow and sluggish, and this is precisely one of the reasons why the maritime domain borders have not been fully defined in practice [5]. The boundaries of the maritime domain are established by the decision passed by the Commission of the Ministry, except in the case when the limits of the port area in the ports open to public traffic are defined. The decision contains the description of the boundaries of the maritime domain and the list of land and cadastral plots on the maritime domain that is instituted (Article 9) [23]. The Commission must submit its decision to the State Attorney's Office for the purpose of the maritime domain's registration in the land registry books. The registration of the maritime domain in the land registry books is effected in accordance with the Land Registration Act [21] and, indirectly, by the LMDS. Provisions on the registration of the common good in the land registry apply to the registration of the maritime domain. The common good is recorded in the land registry books if such registration is required by a person with a legal interest. The property folio should make manifest the status of the common good and the name of the person who cares for it, manages it and is responsible for the common good, unless the care, management and responsibility are that of Croatia. Accordingly, registration of the maritime domain is optional except when granting concessions. The consequence of the non-mandatory nature of registration is the fact that a large part of the Croatian coast is not registered in the land registry books. Persons acquiring real property that by its nature constitutes the maritime domain, cannot rely on the principle of trust in the land registry, because before purchasing of the property it can be visited, it can be established that it is located on the coastal area considered to be maritime domain and it can be concluded on this very basis that it constitutes the maritime domain. Another important prerequisite for the achieving of the principle of trust is that the legal transaction was entered into in good faith i.e. that is a valid [6, 185].

2.3 Maritime domain in Italian legislation

Maritime domain as a public good is inalienable and rights of third parties may not be instituted over it. The state controls and manages the maritime domain, and in this sense takes care about the public interest, especially in cases of restriction or exclusion of the general use

of the maritime domain. As a thing used by the general public *res in publico usu* the maritime domain, in principle, serves everyone according to its purpose [10, 164]. Public property (demanio pubblico) is regulated by the Civil Code [3]. In the section that refers to the resources that belong to the state, public and church bodies public good is defined in Article 822 whose translation reads: "To the state belong and are part of the public good the shoreline, the beaches, the anchorages and harbours, the rivers, the lakes and other waters that are considered public in special laws, and works intended for national defence." The second paragraph enumerates other goods that are considered public if they belong to the state, such as roads, railways, airports, waterworks, goods of historical, archaeological and artistic significance, collections, etc. In order for a thing to be considered public good, it is not sufficient that it belongs to the state. The characteristic of the public good is not attributive but natural. A regulation can only acknowledge such a public good and confirm its natural property that cannot be granted by an act of public administration. Belonging to a country is the subjective element of a public good, while its nature is the objective element. Only the sea, as the air, is *res communis omnium* which can be used by everyone, and so even the territorial sea, which is under the sovereignty of the state, is free for everyone. According to the Italian Civil Code the public good is inalienable and rights in favour of third persons may not be instituted over it unless the law prescribes so. The public administration takes care of the public good [7, 869]. The public good should be distinguished state-ownership, but it is possible, in accordance with the prescribed conditions, for the public good to become state property. The Italian Civil Code from 1942, "Il Codice Civile Italiano", defines in Article 822 the public goods and includes the maritime domain into them. This definition is has been taken up by the Code of Navigation, the "Codice della navigazione" which in Article 28 includes the following into the maritime domain:

- coastlines, beaches, harbours, anchorages;
- lagoons, estuaries with access to the sea, salt or brackish water which is at least part of the year connected with the sea;
- tunnels that can be used for maritime public use.

The Code of Navigation does not define the coastlines or the beaches. In theory and practice the coastline expands into the mainland up to the ultimate limit of reach of a regular tidal wave. The width of the coast depends on the configuration of the land and its width can be zero in the case of high, steep banks. Its width may vary and it may also be reduced due to natural phenomena (corrosion, bradiseismic oscillations). Coast and beach do not necessarily have to co-exist, such as in the case of a steep coast. This is why the maritime administration has been granted the authority to decide in the matters of delimitation of the maritime domain. In accordance with the Code, buildings and other structures belonging to the State which are within the boundaries of maritime domain and the territorial waters are considered to be an appurtenance of the maritime domain. In accordance with the provisions of the Civil Code the matter of the boundaries is raised by the submission of a request to define the limits, the so called *actio finium regundorum* [3]. In the absence of other facts the judge in such a dispute abides by the cadastral maps which are invaluable for the determination of the boundaries of the maritime domain. The use of the maritime domain is regulated and supervised by the administrative body of the Merchant Navy. The boundaries of the maritime domain are defined by mutual accord of the relevant ministries, among which an important role is played by the ministries of transport, navigation and finance (treasury).

Maritime offices of various degrees of authority have significant authority in the delimitation of the maritime domain, and act as a maritime zones with a maritime manager at the helm, marine departments with the harbour master at the helm and maritime districts with district office director at the helm. The final decision in case of dispute is brought by the Ministry of Transport and Navigation in agreement with the Ministry of Finance. The width of the maritime domain may be increased at the expense of private property for minor areas through expropriation proceedings in favour of public interest. Parts of the maritime domain can be destined for other public purposes at the request of the maritime administration.

2.4 Maritime domain boundaries in Italian legislation

The Department Head initiates the procedure of delimitation of the maritime domain, he invites, in accordance with the existing regulations, the public bodies and the physical persons that may have an interest in the case, to present their findings and to participate in the relevant activities. In case of a dispute it is referred to the Minister of Traffic and Navigation who decides on the matter with the assent of the Minister of Finance. When it is necessary to include property or structures contiguous to the maritime domain into the maritime domain, the Minister competent for the matters of traffic and navigation issues a Statement of general interest for expropriation and the decision on the expropriation, with the consent of the Minister of Finance. The decision contains the right of immediate occupation of the good that is the subject of expropriation. Areas or zones that cannot be used for general purposes, are exempt from the maritime domain by a decision of the Minister of Transport and Navigation with the consent of the Minister of Finance.

3 METHODOLOGICAL APPROACH TO THE RESEARCH

A comparative analysis of the port systems and the analysis of the procedure for granting concessions in Croatia and Italy was carried out for the purposes of this paper.

3.1 Analysis of the Croatian port system

The legal framework is the basic foundation for the management of a port because it defines the division, ownership and manner of management of a port. Thus, in the field of maritime affairs the Maritime Code [12] was adopted in 1994 and the Seaports Act [17] in 1995. Both laws were succeeded by new legislation and the following were adopted:

- in 2003 the Law on Maritime Domain and Seaports [19]
- in 2004 - the Maritime Code [13]
- in 2004 - the Ordinance on the classification of ports open to public traffic and special purpose ports [24]
- in 2006 - and in the following years a number of amendments to the Law on Maritime Domain and Seaports [15].

3.2 Top of Form

The Law on Maritime Domain and Seaports (LMDS), i.e. that part of the Law which addresses the seaports open to public traffic, did not bring any significant changes with respect to the Seaports Act. Its greatest innovation was that it had united the maritime domain and the seaports in a common document.

The Maritime Code from 2004 united all laws and regulations related to maritime navigation, and by the adoption of the Law on Maritime Domain and Seaports a part of the provisions of the Code had been repealed. For these reasons, the Maritime Code is relevant for the analysis of the legal guidelines on the management of sea ports in Croatia only in the part concerning the ships and will therefore be excluded from the following considerations on the management of seaports. According to their purpose, ports are divided into ports open to public traffic and special purpose ports. Ports can be opened for international traffic and open to domestic traffic. A port may include one or more port basins (Art. 41 and 41) [19]. A special law prescribes the conditions for acquiring of the status of a port open to international traffic and of a port open to domestic traffic. According to the size and importance for Croatia, ports open to public traffic are divided into ports of special (international) economic interest for Croatia, of regional importance and of local relevance. According to the activities carried out in the special purpose ports, these ports can be: military, nautical ports, industrial, shipbuilding, sports, fishing and other ports of similar purposes. According to their importance for Croatia special purpose ports are divided into: ports of importance for Croatia and ports of regional relevance. The law prescribes the port activities that may be carried out in ports open to public traffic, but also other activities, if this is prescribed by a special regulation, as well as performing of other activities that do not reduce or aggravate the performance of primary port activities. The implementation of the legal provisions in practice is very complex and a whole series of problems and shortcomings occur, both legal and traffic related [4, 103]:

1) Legal:

- transformation of publicly owned companies that are burdened with financial difficulties and operate with losses on the basis of the original concession;
- the granting of concessions and thereafter a public tender for concessions – *this is realised gradually and only for performance of services*;
- exaggerated impact of the institute of maritime domain.

2) Traffic:

- uncertainties in the determination of the position and role of the port system – problems encountered by the ports are often considered as problems of independent economic and transport operators, and the fact that the port system constitutes a part of the national economy and of the overall transport system with very high multiplying effects is overlooked;
- lack of clarity regarding the importance, classification and scope of operations of individual ports.

In order to find an optimal solution with respect to the management of the Croatian port system the provisions of the LMDS should, first and foremost, be taken into account, they represent the *lex specialis* on the subject matter, the Maritime Code (for regulations that are not defined by the LMDS and, indirectly, the Institutions Act [20] as a regulation of general impact, whose application is subsidiary (Art. 48, paragraph 5 *"Unless this Act provides otherwise, the regulations on institutions apply to the port authority."*) [19]. It is logical to conclude that the organization, management and operation of the port authority is regulated by the LMDS.

It should be noted that the port authority is a non-profit legal entity that acquires this attribute by the registration of the decision on the establishment of the port authority in the register of institutions (Article 2, paragraph 1) [20]. Depending on the legal regime of the port for whose operation a port authority is established, the port authority is established either by Croatia or by the county on whose territory the port is situated. The port authority is a non-profit legal person regulated by the regulations on the institutions with the purpose to fulfil specific tasks by use of appropriate means. Unlike other public companies or institutions that provide services of general interest regardless of whether they are financially viable or not, the port authority of regional (county) importance proves and confirms its economic sense as an entity that with its overall business policy contributes not only to a better exploitation, but generally contributes to a better management of the entire port area which it controls. This means that the port authority operates on economic principles and that the accumulated profits are reinvested in the construction and utilization of the port area under its competence.

For the purpose of management, construction and use of ports open to public traffic of county and local importance, several port authorities may be established on the territory of any county upon request of the municipal or city council, in which case the applicants are also co-founders. Such a provision, in the legal sense, entitles the county to decide autonomously on the optimal model of management of the ports of county and local importance. The decision on the establishment of the county port authority can be brought after the port area is determined, which is determined by the county assembly for all ports open to public traffic of county and local importance on its territory, in accordance with the physical plan and with the consent of the Croatian Government. The port authority bodies are the management board and the director. The management board is composed of five members of which two members and the director are appointed by the founders, one member is appointed by the Minister and one member is appointed by the representatives of the concessionaires who hold concessions within the area under the competence of the port authority.

The current model of management of ports of county importance constitutes a decentralized management model, i.e. on the territory of a single county there are several independent port authorities. The analysis of the business operations of the county port authorities lead to certain conclusions which indicate that the current model of management of ports of county importance presents more disadvantages than advantages [8, 134].

3.2 Analysis of the Italian port system

The national sea ports are defined in the Law on the reorganization of legislation referring to port matters, from 1994 [14] and are divided into the following categories and classes:

- Category I: port or a specific port area, intended for military defence and state security;
- Category II, class I: port or a specific port area of international economic importance;
- Category II, class II: port or a specific port area of national economic importance;
- Category II, class III: port or a specific port area of regional and interregional economic importance;

Ports that are also the headquarters of port authorities, are classified in one of the first two divisions of Category II. The Ministry of Defence, with prior consent of the Ministry of Transport, Navigation and Public Works prescribes by a decree the characteristics and the position of specific ports or port areas of Category I and passes the regulations on the activities to be carried out in ports of Category I. Ports and specific port areas of Category II, class I, II and III, have the following functions: commercial, industrial, passenger transport, fishing, tourism and recreation. The modifications of the dimensions and characteristics, as well as the changes in the classification of ports take place at the initiative of the port authorities or, where there are none, maritime authorities of the relevant regions. Port Authorities were established for the ports of Ancona, Bari, Brindisi, Cagliari, Catania, Civitavecchia, Genoa, La Spezia, Livorno, Manfredonia (By the Ordinance of the President of the Republic dated 12 October 2007, issued in the Official Gazette of 18 December 2007, n. 293 the Port Authority of Manfredonia was abolished), Marina di Carrara, Messina, Naples, Palermo, Ravenna, Savona, Taranto, Trieste and Venice which, in compliance with the law, implement and carry out the following:

- implement the business policy, plan, coordinate, promote and carry out the control of port operations as defined in Article 16, paragraph 1 of the Law, and control other commercial and industrial activities in ports, with authority to regulate the schedule and the safety of navigation;
- ordinary and extraordinary maintenance of the port area and maintenance of the sea floor;
- securing and controlling the supply of services of general interest to port users, other than services defined in Article 16, paragraph 1.

Port authorities are regarded as legal entities and under public law they have administrative autonomy (Art. 12) [14], as well as a fiscal and financial independence within the limits set by the law (This does not apply to the provisions of the law dated March 20, 1975, n. 70, as amended, and the provisions of the Ordinance of 3 February 1993, no. 29, as amended). Property and financial management of the Port Authority is defined by the ordinance on the accounting approved by the Minister of Transport and Navigation, in consultation with the Minister of Finance. The annual financial statement of the port authority is inspected by the Ministry of Transport and Navigation for the coming year, that approves it. The bodies of the Port Authority are the Director, the Port Board, the Secretary-General and the Board of Auditors.

3.3 Concessions in the port area – Croatian system

In Croatian legislation the concession is defined as a right by which a part of the maritime domain is partially or totally excluded from general use and granted for a particular use or commercial exploitation to natural and legal persons registered as tradesmen [1, 13].

Concessions and concession deeds are defined by the LMDS and the Ordinance on the procedure for granting of concessions on maritime domain [22], and in particular, the Concessions Act [16] and the Public Procurement Act [15] which provides the procedure for publication and calls for tenders. According to these documents the concession may be granted after the boundary of the maritime domain is established and the maritime domain is registered in the land registry books (Art. 7) [19]. However, the LMDS does not provide any elucidations into what is the procedure if the maritime domain is burdened by substantive or acquired rights that block the registration into the land registry books. There are two types of concessions: concessions for economic exploitation of the maritime domain and concessions for special use of the maritime domain.

The concession for the economic exploitation of the port area as a maritime domain allows the carrying out of economic activities with the use of existing buildings or other structures on the maritime domain, or without them. The concession for economic exploitation of

the maritime domain is given on the basis of a public call for tenders, and the decision is brought by the concession grantor (Articles 17 and 18) [19]. In order for a concessionaire to be granted a concession, such concessionaire must be registered as an entity performing the economic activity that is the subject of concession, have at its disposal appropriate technical, professional and organizational skills to operate the concession, provide a performance guarantee for the realization of the concession plans and programs and provide proof that there are no outstanding previous concession fees and, finally, may not be an entity to which a prior concession had been revoked/terminated on grounds of poor contract performance. [2, 129].

The period for which the concession is awarded is defined in several ways depending on the purpose, scope and amount of investment needed and the overall economic effects achieved by the concession. So the concession for the exploitation of the port area on the maritime domain, or construction of buildings of importance to the county is granted by the county assembly for a period of up to a maximum of 20 years, while the awarding procedure is conducted by the authorized administrative body in the county (Art. 20, paragraph 2). [19] The concession for economical exploitation of the maritime domain which includes construction of structures of importance for Croatia is awarded by the Croatian Government for a period of up to 50 years, and the awarding procedure is conducted by the Ministry, while the concession for the construction of new structures of importance for Croatia, which require significant investments, and the overall economic effects cannot be achieved within 50 years, is awarded by the Croatian Government with the approval of the Parliament for a period up to 99 years. Following the decision of the public call for tenders the concession grantor has the right to reject all bids i.e. cancel the procedure. If this applies to the islands and areas that are influenced by the Islands Act and if the tenders received are equivalent, preference is given to the tenderer who has its headquarters or is resident on the island [11, 555]. Then within eight days the chairman of the expert body submits his report and opinion to the body authorised to conduct the procedure, and the latter must prepare a draft decision on the awarding of the concession within the following eight days. The decision on the award of concession defines the scope and the conditions for special use, and in particular it contains:

- the area of the maritime domain that is awarded for use or commercial exploitation,
- the manner, conditions and the awarded period of use or commercial exploitation of the port area,
- the degree of exclusion of general use,
- the concession fee,
- a list of the infrastructure and superstructure in the port area,
- the rights and obligations of the concession grantor and of the concessionaire (Art 24) [19].

The decision on the award of a concession is based on the findings and opinion of an expert commission for concessions and is the basis for entering into the Concession contract that stipulates: a detailed description of the purpose for which the concession is granted, the conditions to be met by the concessionaire, the amount and method of payment of the concession fees and the guarantees to be provided by the concessionaire (Art. 25, paragraph 2) [19]. If the concessionaire does not conclude the concession contract within a specified period of time, the concession will be revoked. The concessionaire must to pay an annual fee, which is composed of a fixed and of a variable part and its amount is determined in accordance with the economic feasibility and profitability of the use of the maritime domain.

3.4 Concession contract in Croatian legislation

The right to perform port activities, the right to use the existing infrastructure and superstructure, as well as the right to construct new buildings and other superstructures and infrastructure is granted by the concession contract. The concession may be transferred in full, under the same conditions under which it was granted, with the consent of the concession grantor and a proposal of transfer substantiated in writing. The concessionaire that has been granted a concession for economic exploitation may subcontract ancillary services to a smaller extent to natural or legal persons with prior consent of the concession grantor. Natural and legal persons that are sub-contractors of such activities must use the maritime domain in ac-

cordance with the conditions under which the concession was granted (Art. 26) [19]. The concessionaire can submit to the concession grantor a substantiated proposal for awarding of the concession to another natural or legal person if the concessionaire can no longer carry out its obligations under the concession agreement, or if it deems that the performance of the activities would be more effective if a part of the activities were subcontracted (Articles 4 – 6 Regulation). The concession grantor must, within 30 days from receiving of such proposal give or refuse his consent to the proposal, and if consent is granted, the concession grantor shall enter into a concession agreement with the sub-concessionaire.

The concession is revoked: "if the concessionaire fails to build, within the prescribed deadline, buildings or other structures for the purpose of which the concession was granted, if the concessionaire does not comply with the legal provisions and regulations or does not adhere to the terms of the concession, if the concessionaire does not utilize the concession or uses it for purposes other than those for which it was granted or in excess of the scope for which it was granted, if he carries out on the maritime domain assigned to him in the concession, without authorization, activities that have not been defined by the concession or are contrary to the approved project, in case of irregular payment of the concession fee, and if the does not maintain or irregularly maintains or fails to protect the maritime domain in the manner provided for in the concession contract." (Art. 30, paragraph 1) [19]. It should be borne in mind that in the case in which the concessionaire, due to specific reasons of which he is not culpable (e.g. force majeure), fails to enter into the concession contract, he is obliged to sign the contract upon the cessation of such reasons. The wording "irregular payment of concession fees" signifies failure to pay at least two consecutive fees. The decision on the termination of the concession is brought by the concession grantor and he must notify the concessionaire about the reasons for revocation (Art. 30, paragraph 5) [19], at which point the concession contract is terminated and the concessionaire is not entitled to compensation for termination.

The concession terminates: "upon the expiry of the period it was awarded for, by renouncing of the concessionaire, upon death of the concessionaire if he is a natural person or termination of the concessionaire if it is a legal person unless the successors do not present a reconfirmation of the concession within 6 months from the death of the concessionaire, by revoking of the concession or by a mutually agreed termination of the concession contract." In this case the concessionaire is not entitled to compensation, but shall be entitled to remove any newly built structures if they are not permanently attached to the maritime domain, and if such removal is possible by the very nature of things without damage to the maritime domain. If removal is not possible, the new constructions will, in accordance with Art. 33 of the Law on Maritime Domain and Seaports, be considered appurtenances of the maritime domain.

3.5 Concessions in the port area – Italian system

Italy has no special law on concessions, but concessions are defined by special regulations pertaining to the public good on which the concession is granted. Concessions are divided into concessions of the public good, i.e. real property such as public land which belongs to the state, including mines and subsoil resources, and those on services of public interest such as transport, communications and the like with ancillary services. This paper focuses on the concessions of the port areas or of the maritime domain that are of special importance for Italy given it is surrounded by the sea.

The previously mentioned Regulation for the implementation of the Italian Code of Navigation contains detailed regulations on concessions in its second heading which addresses the matter of maritime domain in the articles from 5 to 57. The maritime administration has broad authority over the use of the port area or the maritime domain, which is articulated especially in the concessions in which the concessionaire is permitted exceptional use of a public property. These are the so-called constitutive concessions. The maritime administration and the port authority are competent for awarding of concessions over the port areas that constitute the maritime domain. The concessions within the port area are granted by the port authority, while the maritime administration grants the concessions for activities outside the port area. The maritime administration may

grant the exploitation and the use of the port area or maritime resources and sections of the territorial sea for a defined period of time and the concession includes the exclusive use of the maritime domain or the territorial sea. The concessionaire loses his concession rights if he fails to fulfil the obligations under the concession contract, or when there are reasons of public interest that determine the termination [10, 164].

The procedure for the award of concessions is initiated upon submission of a request. Anyone who intends to occupy the port area, the maritime domain, the territorial sea or any of the appurtenances of the maritime domain, make changes or restrictions in their use, must submit a substantiated request to the manager of the maritime zone. The request must state the purpose and the duration of the concession.

When private property that borders the port area or the maritime domain is concerned, the applicant concessionaire must seek authorization from the maritime administration, which may issue a concession if such work encroaches on the maritime domain. With respect to the duration and the works that they may possibly require, concessions in the port area and the maritime domain are granted for a number of years, namely: for over fifteen years (under the competency of the Ministry of Transport and Navigation), from four to fifteen years and up to four years.

Concessions granted from four to fifteen years or shorter that entail works and devices that are not easily removed from the maritime domain are the competence of the zone manager. The concessions for shorter periods that do not require major investments are the responsibility of the harbour master [7, 871] and even though they are called "concessions under license", the legal nature of the concession remains the same. The institute of temporary concessions exists "between concessions", it is granted when an old concession has expired until the granting of a new one. Before granting of a concession that includes carrying out of construction works, the maritime administration requests the opinion of the administrative body that supervises construction, and with respect to the amount of the concession fee and ownership over the maritime domain, it always consults the competent financial institution. In the case of multiple requests *prior in tempore potior in jure* is derogated, so the first party submitting the request does not have priority since the crucial factor is the public interest, so the preferred concessionaire is the one that provides stronger guarantees and offers a better utilization of the good. If no such reasons exist, calls for tenders are invited for concessions for periods longer than four years. For concessions of up to four years the previous concessionaire has priority. When the competent authorities do not agree on the constructiveness of a concession, the final decision is brought by the Minister of Transport and Navigation, and in the case of disagreement regarding the amount of the concession fee, the Minister of Transport and Navigation decides in agreement with the Minister of Finance (fees are symbolic when it comes to concessions granted for charity or humanitarian purposes). If the granting of the concession entails a concession of particular importance because of the value of the concession or of its purpose, the concession request is disclosed to the public.

Normally, a decision on the granting of a concession contains the following information: location, scope and borders of the maritime domain in concession, purpose and duration of the concession, nature, shape, dimensions and the structure of the building on the conceded maritime domain, manner of use of the concession and, possibly, the period of its allowed disuse, details on the concession fee, method and terms of payment, security deposit, special conditions and general information about the concessionaire. The awarded concessions are registered in a Register.

The concessionaire responds to the maritime administration for the commitments undertaken, and to third parties for damages caused to persons and things in the utilization of the concession. The concession may be amended by a supplementary administrative decision. The concession ends with the expiry of the period for which it was granted. The concession may be revoked by an administrative decision due to the revised assessment of the public interest. Revocation operates *ex nunc*. Concessions granted for periods of up to four years may be revoked on the basis of the full discretionary right of the maritime administration, while particular reasons must exist for the revocation of concessions granted for periods longer than four years.

In order to fully compensate an entity that in special cases waives its rights in favour of the public interest, the concessionaire may request an equivalent in money, and the decision about such a compensation is brought by a state body (the government).

The concession is extinguished when natural circumstances occur that render impossible its continued utilization. A concession may not be transferred to another without the authorization of the maritime administration. It can be inherited, but the maritime administration must reconfirm the rights of the successor within six months. The right to the concession terminates for the following reasons: failure to make the investments prescribed by the concession contract or failure to construct the agreed structures, disuse (continued) or misuse of the concession, alterations to the purpose of the concession, failure to pay the concession fee, unauthorized substitution of the concessionaire and unfulfilled obligations under the concession.

The maritime authority establishes the termination of the concession by its decision, which under cases a) and b) may be postponed at the request of the concessionaire. When the concession terminates the fixed equipment and structures built by the concessionaire become the property of the state. The maritime authority may, indeed, require their removal in order to reinstate the previous situation on the maritime domain. The Regulation for the implementation of the Code of Navigation also regulates the jurisdiction over the use of mechanical devices for loading and unloading of cargo and warehouses owned by the state, the space to accommodate cargo. Concessions also comprise the fishing rights and extraction of sand and other substances. Special permits are required for the storage of flammable and explosive materials.

3.6 The concession contract – Italian legislation

Regardless of whether the concession is granted by the maritime administration or by the port authority the concession contract is generally standardized and very often it is a type of adhesion contract. The deed carries the register number for the current year and a serial number. The heading features the name of the body granting the concession. The legal basis for granting of the concession on maritime domain follows, which is always Art. 36 and following of the Code of Navigation, Art. 5 and the following of the Regulations for the implementation of the Code of Navigation and, if the concession is granted by the port authority, Article 18 of the Law 84, from 1994. The concessionaire states whether the opinion of the administrative bodies of finance and construction was requested and obtained and whether the contract was preceded by a previous concession, i.e. whether a concession had previously existed on the property or some other license. The name of the applicant is stated or the result of a public tender if any. The concession award contains the following information: the identity of the concessionaire, description and information on the maritime domain (location, size, etc.), description of the purpose of the concession (storage, bathing facilities etc.), description of the method of payment and the amount of the fee, the duration of the concession period and the statement on payment of the deposit. This is followed by the general conditions of concession relating to: vacating and returning to the original state of the conceded good in the case the concession is not renewed, revocation and termination of the concession, the obligations of the concessionaire to indemnify the concession grantor from all claims and damages that a third party may demand in connection with the use and exploitation of the maritime domain, the strictly personal use of the concession, the prohibition to amend the boundaries of the concession or to carry out construction which is not permitted by the concession, acceptance of the port area in the state in which it is found with the obligation of ordinary and extraordinary maintenance, the obligation of the concessionaire to insure the port area or the maritime domain against fire with a policy endorsed in favour of the concession grantor, the right of the grantor to recall the concession or to determine its termination, indemnification of the concessionaire from any liability arising due to the weather, the sea, floods and liability for damage to electrical and hydraulic installations, the obligations of the concessionaire to settle all the costs related to the concession and the general clause on the application of the Code of Navigation and the Regulations on the implementation of the Code of Navigation for all the events not cov-

ered by the concession contract. Depending on their particular use, concessions also include special conditions such as: method of payment of the concession fee, the obligation to pay higher fees if the Ministry decides so, the obligation to obtain the necessary permits if construction work is planned, all other conditions that the concession grantor considers to be a prerequisite for the proper management and use of the maritime domain.

The concession act is completed with the signatures of the concession grantor and the concessionaire. It is precisely this last signature that constitutes the act of acceptance of the terms of the concession, which gives it a *sui generis* character involving both private and public law elements: concession-contract or contract of concession.

4 DISCUSSION AND PROPOSALS

Management of the maritime domain must enable the harmonization of multiple, interdependent and overlapping interests on the maritime domain and in a coordinated way preserve the coastal resources so as to provide maximum economic gain without destroying the basic natural resource in the process. The implementation of these goals in practice encounters specific legal blockades whose consequence is the fact that the maritime domain is not functionally used for economic development and at the same time it is endangered by multiple human activities that result in its devastation.

The legal regime on concessions in Croatian law is organised in two ways. The basic normative act is the Law on Concessions from 2012, which as a general law governs the principal issues of concession granting. In addition to this law there are other special laws, which regulate the possibility of granting of concessions in particular areas.

Thus, among others, LMDS contains relatively detailed provisions on the conditions for granting of concessions for the use and exploitation of the maritime domain. According to these provisions the concession of the maritime domain is a form of special use and utilisation of the maritime domain and it can be granted to natural and legal persons. Fundamental issues governing the concession are defined in the decision on the awarding of the concession which is brought by the concession grantor and which represents a specific type of individual and unilateral act of government. Another type of document that appears in the process of granting of concessions is the concession contract which is entered into, on the basis of the decision on the awarding of the concession, between the concession grantor and the concessionaire. It should be noted that the scope of authority held by the concession grantor permeates the entire concept of the concession, where the Ministry has control and jurisdiction over any discussion of any issues and over resolving of any disputes in relation to the awarding, execution, revocation, seizure or amendment of the decision on the awarding of the concession on the maritime domain.

The port area (maritime domain) is a public good of special interest to Croatia, which it manages and protects through the port authorities. The delimitation of the port areas is closely connected with the system of delimitation of the maritime domain which is entrusted to a special Committee for the Drafting the Proposed Boundaries. Nevertheless, the decision on determining of the boundaries of the port areas is brought by another committee which is formed at the competent Ministry. The fact that one procedure is led by two separated bodies is not only incomprehensible but in violation of the Law on General Administrative Procedure [18]. It is logical to conclude that one body, in this case the county committee, should conduct the procedure and bring a decision. The Italian legislation clearly institutes and defines this procedure via its maritime administration. Taking this into account, it should also be introduced in Croatia for the members of the county committee to be independent experts in the field of maritime domain appointed by the bodies of the Ministry and bodies of the local and regional government. Thereby, the premise should be followed according to which the maritime domain is not just a mere portion of the sea but a part of the marine territory of particular importance for Croatia over which it exercises a special regime. It is logical to conclude that the committee members do not have to be employees of the bodies, but the bodies should only propose them as their representatives. Furthermore, the registration of the maritime domain in the land registry in Croatia should be mandatory, in the same way as it is clearly defined in the Italian legislation, prima-

rily because it is of interest to the state, and without the registration of its designation as maritime domain it could be an object of sale and other means of acquiring of property and other substantial rights over it, which, unfortunately, actually happens.

The concession procedure for the concession of a port area in Croatia, if all the prescribed deadlines are adhered to, is very long (more than 145 days) and the costs of the process are relatively high. The problem is also that no difference is made between a concession for a small port area or maritime domain, such as for a gas station (approx. 30 m of coast) and a much larger area, such as e.g. a shipyard, the procedure for the granting of a concession is always the same.

5 CONCLUSION

Croatia has no strategy for managing of the maritime domain. The boundaries of the maritime domain are still not demarcated, the maritime domain is not registered as such in the land registry and property issues have not been resolved. In Italy, the maritime domain is clearly identified and registered in the land registry and the procedure for obtaining of a concession is much simpler and more efficient.

Concessions on the maritime domain in Croatia always follow institutional changes, which results in an uneven praxis and an exceedingly restrained economic activity on the maritime domain. In order to improve the system it is necessary to establish a very clear and precise model of evaluation of the maritime domain as well as a model of establishing of the concession fee, which should result from a transparent legal and economic framework of the concession system.

It will not be possible to initiate economic development on the Croatian maritime domain, nor provide adequate protection and conservation of the natural resources without a uniform application of the law. Also, it is important to establish a precise definition of concepts such as “seashore” in the Maritime Code or “marine lot” in the Land Registration Act. The clear definition of terms in the scientific and professional circles would accelerate not only the necessary theoretical but also the practical solution of many, still unresolved, problems in this sphere.

In Croatia, there is no strategy for managing maritime demesne, while borders still remain undefined, the maritime demesne is yet to be registered in the land registration books and ownership issues remain unresolved. In Italy, maritime demesne is clearly defined and is registered in the land registration books, with the procedure being much simpler and more efficient. Concessions for maritime demesne in Croatia continually follow institutional changes, resulting in non-uniform practice and exceptionally restrained business activity on maritime demesne. In order to improve the system, a very clear and accurate valuation model of maritime demesne should be established including a model for determining concession fees, which would result from a transparent legal and economic framework of the concession system. Economic development will not be able to be initiated on the maritime demesne, nor will the appropriate protection and conservation of natural resources be ensured if unambiguous application of the law is not achieved. Furthermore, a precise definition of concepts such as the seashore in the Maritime Code or marine parcels in the Land Registration Act must be established. A clear definition of the concepts in academic and professional circles would quicken not only the necessary theoretical but also practical implementation of many remaining issues in this field. The conclusions from the research indicate that there are significant differences that would prevent the implementation of objectives of the MoS project. Based on the above mentioned, users (port, transporter, shipper and others) will receive equal treatment and access to procedures within both port systems.

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