The Application of the General Provisions of the Obligatory Relations Act to Maritime Contracts

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This paper is an in-depth analysis of a seemingly uncomplicated legal relationship. The relationship between two very significant acts - the Obligatory Relations Act and the Maritime Code, out of which the Obligatory Relations Act certainly falls under the category of general and the Maritime Code of special acts. The complexity stems from the fact that the Maritime Code although, in essence, determined by international agreements, is likewise relevant for establishing whether a provision of the Obligatory Relations Act, although unregulated either by the Maritime Code or binding international agreements, is acceptable for application in maritime contracts. In other words, it is a matter of the application of a provision of the Obligatory Relations Act to maritime contracts "in an appropriate manner".

KEY WORDS
~ Law
~ Conflict of laws
~ Interpretation
~ Agreements
~ Maritime contracts

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1. INTRODUCTION

The Obligatory Relations Act[1] is one of the most important acts in Croatian positive law. This by no means implies that any acts are irrelevant, but merely puts an emphasis on its objectively great significance. The same is true of the Maritime Code[2], especially since the Republic of Croatia is characterized by its exceptionally indented coast with over 1000 islands and a multitude of seafarers sailing on Croatian (unfortunately fewer and fewer) and foreign ships.

The thesis that there are no irrelevant acts requires almost no further explanation, it suffices to say that every legal system is a single consistent whole influenced by every, even the smallest change in any of its parts. It is not uncommon for a poorly conceived and/or ill-prepared amendment of a legal document to give rise to significant problems with the application of one or more other acts. In some instances, the legislator recognizes the oversight and reacts by adopting an amendment, sometimes the legislator does nothing but leaves everything up to court practice (which is unfortunately frequently the case) and sometimes the problem is resolved by the nullification of entire or parts of some acts by the Constitutional Court of the Republic of Croatia.

1. Obligatory Relations Act, OG 35/05., 41/08., 125/11. – hereinafter: ORA or Obligatory Relations Act. An act of the same name was previously in force and assumed on 8 October 1991, originally adopted in 1978 in the former FRY - Official Gazette of the FRY 29/78, 39/85 and 57/89, OG 53/91, 73/91, 111/93, 3/94, 7/96, 91/96, 112/99 and 88/01 – hereinafter: ORA 78/91 or Obligatory Relations Act 78/91.
2. Maritime Code, OG 181/04, 76/07, 146/08, 61/11, 56/13. – hereinafter: MC or Maritime Code). Code of the same name was previously in force - Maritime Code, OG 17/94., 74/94., 43/96. – hereinafter: MC 94 or Maritime Code 94.

Since the Republic of Croatia (in contrast not only to a great majority of EU member states, to which it belongs as of 1 July 2013, but also to other constituent parts of the former federation which officially announced the adoption of their civil codes in 2015-2016) not only does not have a civil code (containing all the necessary provisions representing an objective redundancy in special acts, which they unnecessarily make cumbersome), but is not even planning to adopt one, the Obligatory Relations Act functions as its substitute with all the advantages and disadvantages of such a solution. Therefore, recognizing the ORA as a surrogate of a non-existent and non-envisaged civil code, the topic of this paper is the relationship between the ORA and maritime contracts, i.e. the ORA and the part of the Maritime Code regulating maritime contracts. In this paper, maritime contract is defined as any contract regulated by the Maritime Code as a nominate contract, as well as any contract concluded in accordance with the principle of the autonomy of will and in the absence of the numerus clausus principle in contract law, which is in essence a maritime contract. Maritime contract law is actually a part of maritime private law, which, depending on its origin, can be classified as a) national and b) international. National law contains norms - collision rules determining the applicable law for international private-legal relations[3]. The maritime property law is most accurately described as consisting of maritime proprietary law and maritime law of obligations, with further subdivisions, *inter alia* into maritime law of contractual obligations and maritime law of extra-contractual obligations. The subject matter of maritime contracts, naturally, belongs to the domain of maritime law of obligations.

2. LEGAL SOURCES

Bearing in mind the topic of this paper, legal sources are any sources more or less directly dealing with contracts and especially maritime contracts. Of course, the highest legal source (as implied by the term *non plus ultra*[4]) is the Constitution of the Republic of Croatia[5] to which all legal and sublegal documents must conform (and if incompatible, put out of force and as a rule nullified in proceedings before the Constitutional Court of the Republic of Croatia or the High Administrative Court of the Republic of Croatia). In so doing, we must recognize the relativity[6] sometimes present in the treatment of international contracts as regulations which not only have supra-statutory legal force (as expressly acknowledged by the Constitution), but must simultaneously be compatible with the Constitution. However, international contracts are especially valuable for the topic of this paper, with emphasis on the possible relativization of integral relationship. Or to put it differently, international contracts have the legal force of supra-statutory laws and are frequently implemented into concrete legal texts containing references to such contracts. If and when this is the case, a possible consequence is that the documents cease to be on the same level, with one remaining at the level of the law and the other assuming the characteristics of a supra-statutory law.

As it happens, it is in the domain of the maritime law that there exists an exceptionally large number of international conventions which, providing they are ratified and published, acquire the status of supra-statutory laws. For example, maritime transportation is regulated by the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading (Hague rules), 1924, with protocol modification in 1968 (Visby rules) and 1979, the United Nations International Convention on the Carriage of Goods by Sea (Hamburg rules), 1978, the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (Rotterdam rules), 2009.[7]

As for contractual issues, the main Croatian law (*sedes materiae*) is the Obligatory Relations Act. Since this paper does not deal (only) with contracts in general, but with maritime contracts specifically, the legal source status is also accorded to acts not primarily dealing with contracts, but with the maritime problem area, including maritime contracts, i.e. primarily to the Maritime Code. In a way, legal sources are also regulations which were in force prior to the above, especially when bearing in mind the rule that the regulation in force at the time of acquisition is applicable to a concrete situation, even if a later regulation contains changes either convalidating something that was initially invalid or regulating something that was initially valid differently, with the effect on earlier acquisitions.

Customs likewise have the meaning of a legal source, especially based on a very clear express provision contained in Article 12 of the Obligatory Relations Act. The Act differentiates

3. The division to private and public law is relevant for maritime law because, e.g. the relations between two countries pertaining to sea boundary demarcation are a public law issue. See in Drago Pavić, Pomorsko imovinsko pravo, Književni krug Split, Split, 2006., pg. 30.
4. Nothing further beyond, higher of the highest .....
5. Constitution of the Republic of Croatia, OG 56/90, 135/97, 8/98 – final draft, 113/2000, 124/2000 – final draft, 28/2001, 41/2001 – final draft 55/2001 - corrigenda, and Amendment to the Constitution of the Republic of Croatia published in OG 76/2010, 85/10 – hereinafter: the Constitution.
6. A rare occurrence which must nevertheless be noted to arrive at the adequate conclusions. Real-life examples are the European Union and NATO Treaties of Accession - can anyone envisage, realistically, those treaties being modified to conform to the (Croatian) Constitution. A clear-cut example of the opposite is the amendment of the Constitution to allow for an EU accession referendum to be held under conditions (not in the sense of a guaranteed outcome, but in the sense of fair game, allowing the outcome with not only the higher, but sufficient number of votes to "win") allowing for both the negative and the positive outcome.
7. Ivo Grabovac, Odgovornost prijevoznika u prjevozu stvari u Pomorskom zakoniku Republike Hrvatske i u međunarodnim konvencijama, Književni krug, Split, 2010, pg. 9.

between trade customs, legal customs and customs, all with their own specific characteristics, but without questioning that all three categories are to be considered legal sources having precedence over dispositive legal norms[8].

Naturally, apart from the regulations having legal force, sublegal regulations also have the meaning of legal sources. Apart from the above, any other regulation at the legal or sublegal level directly or indirectly dealing with the problem area which is the topic of this paper, also has that meaning.

Court practice and legal science are also commonly considered legal sources[9]. However, after the accession of the Republic of Croatia into the European Union, court practice obtained an entirely new significance. Namely, although Croatia had an obligation to observe European court practice and interpret the Croatian regulations in accordance with the so called *community acquis or acquis communautaire* during the accession negotiations, after 1 July 2013, that became an obligation equal to the observance of the Constitution. A Croatian judge became a European judge, although not by name, but rather by being obligated to apply European legal norms and interpret them in accordance with *acquis communautaire*.

As for legal science, one of the effects of formal EU membership is the absence of interstate borders inside the EU, meaning that the scientific papers of German, Italian, Austrian and other scientists from the EU compete with those of Croatian scientists on equal terms, with the only criterion being the force of argument. Otherwise, as things go, science and only science can provide real answers to an array of questions regarding the relationship between a general (Obligatory Relations Act) and a specific regulation (Maritime Code) in essence marked by a number of international agreements having supra-statutory force regardless of the manner of their implementation into the Maritime Code. More precisely, as a rule, legal texts do not regulate this issue, but leave everything up to someone else and that someone else can only be science. This allows for the recognition of possible modification of scientific attitudes in advance, without any intervention by the legislator.[10]

3. THE HISTORY OF THE OBLIGATORY RELATIONS ACT AND THE MARITIME CODE

3.1. The History of the Obligatory Relations Act

Examining the Obligatory Relations Act is almost impossible without paying some attention to its relatively long history dating back not only to the former act of the same name (ORA 78/91) originally adopted in the FRY and taken over, along with some other acts, by the Republic of Croatia after it gained its independence, but also to the great European civil codes or codices out of which one (ABGB or OGZ or the Austrian General Civil Code[11]) is still applied before Croatian courts and generally accepted as the basis of the Croatian civil law. Although the other great European civil codes (the Austrian General Civil Code - Allgemeines Burgerliches Gesetzbuch / recognized in our law as the OGZ / from 1811, the French Civil Code - Code civil from 1803, the Montenegro General Proprietary Code - OIZ from 1888, the German Civil Code - Burgerliches Gesetzbuch - BGB from 1896, which entered into force and effect on 1 January 1900, the Italian Civil Code - Codice civile from 1938), do not have such a (direct) effect, they are still significant as a part of the continental European legal circle to which the Republic of Croatia doubtlessly belongs. The most important characteristic of that legal circle is exactly that the central position belongs to the civil law, or more precisely private law system around which the entire legal order is formed.[12]

The development of private law brought about the division into separate legal branches and the formation of a single, and certainly most comprehensive, set of legal rules regulating certain proprietary and some non-proprietary relations. That set continued being referred to as civil law, the term, in a way, used as a synonym for the entire private law[13]. The most relevant civil code for the Republic of Croatia is beyond doubt the OGZ, because the legislator of the former state[14] and the legislator of the current state expressly allowed for the application of the legal rules of the OGZ[15]. Based on the general rule that disputes are resolved

8. Learn more: Vilim Gorenc in: Zlatko Ćesić, Vilim Gorenc, Hrvoje Kačer, Hrvoje Momčinović, Drago Pavić, Ante Perkušić, Andrea Pešutić, Zvonimir Slakoper, Ante Vidović, Branko Vukmir, Comment on ORA, RRIF plus d.o.o., Zagreb, 2005., pg. 24-27, Vilim Gorenc in: Vilim Gorenc, Loris Belanić, Hrvoje Momčinović, Ante Perkušić, Andrea Pešutić, Zvonimir Slakoper, Mario Vukelić, Branko Vukmir, editor: Vilim Gorenc, Comment on Obligatory Relations Act, Official Gazette, Zagreb, November 2014, pg. 26.-29.
9. It must be pointed out that (quality) professional documents which are sometimes more useful and better than scientific papers (but lacking some formal elements which would make them scientific) can also have this meaning.
10. Similar to the recognition of the position of the medical science on the issue of the criteria for the establishment of death as a natural and legal fact, which is unregulated by law. Learn more: Blanka Ivančić-Kačer, Smrt kao pravna činjenica i dostignuća suvremene medicine kroz prizmu krionike, Godišnjak 15-2008., Aktualnosti hrvatskog zakonodavstva i pravne prakse, građansko, trgovačko, radno i upravno pravo u praksi, Organizator, Zagreb, 2008, pg. 487.- 499.
11. The Austrian Civil Code was published by the imperial patent of 1 June 1811, providing that it entered into force first on 1 January 1812 in Austrian northern provinces and then in the other provinces as they were freed from the French occupation. - Mihajlo Vuković, Pravila građanskih zakonika s naknadnim propisima, sudskom praksom, napomenama i podacima iz literature, Školska knjiga, Zagreb, 1961, pg. V-VI.
12. Nikola Gavella in: Nikola Gavella, Mira Alinčić, Petar Klarić, Krešimir Sajko, Tanja Tumbri, Zlatan Stipković, Tatjana Josipović, Igor Gliha, Hrvatsko pravno uređenje i kontinentalnoeuropski pravni krug, Zagreb Law School, Zagreb, second unrevised edition 1994, pg. 7-8.
13. Petar Klarić, Martin Vedriš, Građansko pravo, Official Gazette, Zagreb, July 2014, pg. 11.
14. Act on the Irrelevance of Legal Regulations Adopted Prior to 6 April 1941 and During Enemy Occupation - Official Journal of the FRY 86/1946.
15. Act on the Manner of Application of Legal Regulations Adopted Prior to 6 April 1941 (Official Gazette 73/91).

in accordance with the regulations in force at the moment of occurrence of the disputed events (because regulations, as a rule, do not have a backward or retroactive effect, although the Constitution exceptionally allows for such a possibility), many disputes are still resolved by the application of regulations which are no longer in force (by the merit of their being in force at the moment of the occurrence of the disputed event), including by the application of the OGZ. If relevance for Croatian law (and science and legislation and general) was measured by the merits of the person or persons generally credited with the authorship of sorts of a large legal project, an honorary position would certainly be awarded to the great Croatian jurist, Baltazar Bogišić[16] who practically crowned his exceptionally large legal opus with years of successful work on the drafting of the text of the General Property Code for the Principality of Montenegro[17], in which he held the position of the Minister of Justice. Among other things, the simplicity and comprehensiveness of the language he used in that text are held in especially high regard[18].

In the early 1960s in the former state, the need for the adoption of an own obligatory relations act was beginning to be seriously considered, which led to the publication in 1969 of the so called Draft of the Code of Obligations and Contracts[19] which was a far cry from the ambition to develop a civil code, but was generally exceptionally well received by the legal profession. The most important (and strangest) thing about the Draft is that for an entire decade after its publication in 1969 until entry into force of the Obligatory Relations Act 78/91, it was practically treated as an act with legal force and effect in court practice, with the courts referring to the legal rules stated in a certain article of the Draft. In 1978, the Draft (with certain modifications imposed by the then current government which, due to the non-proprietary and non-market oriented world view, found some of the solutions offered in the Draft too radical and unacceptable) developed into a legal text. That legal text was very highly thought of in the professional circles and together with the Inheritance Act[20] from 1955, belonged to the very top of the legislation of the former state.

After the proclamation of independence by the Republic of Croatia, among other things, the amending of the taken over Obligatory Relations Act was beginning to be considered. Namely, when the Act was taken over, by the nature of things, only the most essential modifications were made, leaving the bulk of the work for the future activities of the legislator. It became clear shortly after the beginning of work of the appointed task force that an entirely new, integral legal text was required. Exactly because the extant legal text was held in such high regard, nobody questioned the approach to work in which deviations from the basic propositions of the existent text were minimal. The same approach continued to be applied even after the idea of amendment of the Act was abandoned in favour of the decision to work on the development of a completely new, integral legal text.

When the text of the Obligatory Relations Act was finally complete, it was clear that it was not only based on its predecessor, but resembled it very closely. However, it is this approach that additionally ensured that the Obligatory Relations Act would surpass the Obligatory Relations Act 78/91 in every sense, which is even more significant considering that the ORA 78/91 was a very good law. There are many improvements, as in the special part dealing with nominate contracts, as well as in the part dealing with damage as the most relevant part of extracontractual obligatory relations. It is the general part of the Obligatory Relations Act that has the most relevance for the special acts, including the Maritime Code, exactly because this is where the Obligatory Relations Act steps in as a substitute for the civil code we don not and, as things stand, will never have[21]. Two amendments were made (the first in 2008 and the second in 2011[22]) in the tenth year after entry into force of the Obligatory Relations Act, neither of which contains any provisions which would be of relevance for the topic of this paper.

The Obligatory Relations Act has three parts (Part one, Part two, Part three) and 1165 articles (amendments excluded)).

Part one (Articles 1-246) is significant for this paper because this is the general part containing the provisions which make up the standard key part of civil codes. This part contains legal

16. Baltazar (Baldo, Valtazar) was born in Cavtat, on 20 December 1834 and spent most of the time he was working on the Code in Paris, in which he had permanent residence, like elsewhere throughout Europe.
17. See the integral text in the book: Baltazar Bogišić, Izabrana djela, Tom I, Opšti imovinski zakonik za Knjaževinu Crnu Goru.. CID and JP Official Gazette of the Socialist Republic of Montenegro, Podgorica, 2004.
18. A frequently quoted proof is Article 1006 which says as follows: The course of time amends not that which was. This is no revolutionary solution, but merely a version of the old Roman rule: Quod ab initio vitiosum est non potest tractu temporis convalescere. However, it is precisely in the language and expression that the value of this version lies.
19. Draft of the Code of Obligations and Contracts (hereinafter: Draft). See the integral text in the book: Klasici jugoslavenskog prava – Mihajlo Konstantinović, Obligacije i ugovori, Skica za Zakonik o obligacijama i ugovorima, Official Journal of the FRY, Belgrade, 1996.
20. Inheritance Act, OJ FNRJ 20/1955, 19/1965, final draft 42/1965. – hereinafter: IA or Inheritance Act 55.
21. Still, it must be noted that the activities on the development of the European Civil Code are in progress, providing that the date of its completion is unknown and if it is completed, it is not only unknown whether it will be adopted as such, but also how many imperative provisions it will impose and how much will be left up to the national legislators (for the time being this is still a national issue) and how the Code will be implemented in practice. However, even if it is never adopted, the very work on the Civil Code is certainly of great use and every state can (and we believe should) use it without any special limitations to improve its own national legislation.
22. The second amendment is all the more unusual because another act (Act on the deadlines of fulfilment of financial obligations) put Article 174. of the Obligatory Relations Act, out of force and regulated its subject matter.

norms about the basic principles, participants of obligatory relations, establishment of obligations, obligation types, obligations effects, changes in obligatory relations and cessation of obligations. Among other things, it also contains a key provision in Article 14, paragraph 3 of the Obligatory Relations Act stipulating that the provisions of the Act relating to contracts also apply, in an appropriate manner, to other legal transactions. Although it is true that the same effect would be achieved even without such a provision (since the Obligatory Relations Act has the meaning of a surrogate of the non-existent civil code by nature, with or without an express provision) this legal provision nevertheless represents a positive contribution to legal safety. The provision is simultaneously very clear and flexible, the latter owing to the use of the legal standard "in an appropriate manner" which not only allows for, but imposes a creative approach to the problem, rather than promoting an automatic assumption of the solution. The creative approach implies the need to recognize the essence and nature of maritime contracts, including which parts of the Obligatory Relations Act are compatible and which are not.

Part two (Articles 247-1162) contains the so called contractual obligatory relations (general provisions pertaining to contract conclusion, representation, contract interpretation, contract invalidity and effects, individual contracts, extracontractual obligatory relations (infliction of damage, acquisition without legal grounds, agency without mandate, public promise of reward and securities). This entire part is exceptionally significant for this paper, although in a different manner. The general provisions of the obligatory part are relevant because they, as a rule, are either not contained at all or are contained to a limited extent in special regulations, and provisions on individual contracts are important because special regulations (including the Maritime Code), as a rule, even if they contain provisions on a specific contract, regulate it by a smaller number of articles (and insufficiently in terms of contents), meaning that the contractual provisions from the Obligatory Relations Act for specific contracts are applied. The part dealing with extracontractual obligatory relations is exceptionally important due to provisions on damage, with emphasis on the fact that this part also contains Article 349 of the Obligatory Relations Act stipulating that if not stipulated otherwise in the contractual part, the provisions of the Obligatory Relations Act on the compensation of extracontractual damage apply.

Part three (Articles 1163-1165) contains transitional and final provisions which are not especially significant for the topic of this paper, because the moment of entry into force as a criterion for the resolution of antinomies is less relevant than the other two criteria - which regulation is of higher and which of lower order by the criterion of the adopting legislator and which regulation is general and which special by the criterion of the closeness to and manner of approach to the subject matter in question.

3.2. The History of the Maritime Code

Maritime property law, just like maritime law in general, historically developed side by side with the development of the commodity trade and seafaring in the function of such trade. At first, it was merely common law (lex mercatoria), but later on the customs gave rise to the establishment of specific institutes of maritime law, first through the statutory laws of Medieval autonomous towns and later through national codifications. Sea-related property-rights relations are universal and international in character. The regulations of the Austro-Hungarian Empire regulated only maritime administrative law. A draft of maritime commercial law was devised in the Kingdom of Yugoslavia in 1937, but never became law[23].

It should be clearly stated that it was entirely possible for the Maritime Code not to regulate the contractual part at all. This is up to the legislator who can opt for either of the two extreme approaches (first-entirely rely on the general law regulating contracts and second - regulate the entire problem area by a special act, in this case the Maritime Code) or any number of possible compromise or moderate solutions in which the special act relies on the general to a greater or lesser degree, i.e. to a greater or lesser degree contains its special solutions deviating from the general to a greater or lesser degree.

In the new independent state, an integral legal text consolidating the maritime law subject matter (including maritime contracts) was not adopted until 1994. During those three years, the provisions of an array of special acts were in force, which were put out of legal force and effect by the transitional and final provisions of the Maritime Code 94 (Article 1053), in which they are precisely listed[24].

23. Drago Pavić, Pomorsko imovinsko pravo, Književni krug Split, Split, 2006., pg. 30.-34.
24. Act on Coastal Sea and Epicontinental Belt (Official Gazette, no. 53/91), Maritime Domain and Seaports Act (Official Gazette, no. 19/74, 39/75, 17/77, 18/81) in part pertaining to maritime good and with the exception of Articles 67, 68, 69, 71, 73, 76, 77, 79 which will be put out of force after the adoption of the corresponding legal documents from Article 1043 of this Act, Maritime and Inland Navigation Act (Official Gazette, no. 53/91), in part pertaining to maritime navigation, Pilotage Act (Official Gazette, no. 15/74), with the exception of Article 4, paragraphs 2 and 3, Article 6, Article 7, Article 8, Article 9, Article 10, Article 11, Article 12, Article 13, Article 14, Article 15, Article 16, Article 17 and Article 18 which will be put out of force after the adoption of corresponding legal documents from Article 1043 of this Act. Legal and physical persons who performed sea pilotage prior to the entry into force of this Act may continue performing the same job until the adoption of corresponding legal documents from Article 1043 of this Act, Act on the Safety of Sea and Inland Navigation (Official Gazette, no. 55/90 - final draft), with the exception of Article 13, Article 17, Article 18, Article 19, Article 20, Article 21, Article 22, Article 23, Article 24, Article 40, paragraphs 2 , 3, 4 and 5, Article 42, Article 43, Article 44, Article 45, Article 46, Article 51, paragraphs 3 and 4, Article 53, Article 54, Article 55, Article 56, Article 57, Article 58, Article 59, which will be put out of force after the adoption of corresponding legal documents from Article 1043 of this Act, Act on the Establishment of Navigational Ability of Vessels at Sea and in Inland

The Maritime Code 94 is considered *corpus iuris* maritimi because complete maritime law relations were regulated by a special code[25]. Its predecessor was the federal regulation called the Maritime and Inland Navigation Act[26] (taken over as state regulation on 8 October 1991), followed by the Maritime Code 94 and, in little under four years, by the Inland Navigation Act[27]. The Inland Navigation Act 98 survived for less than a decade when put out of force by entry into force of the Act on Inland Navigation and Ports[28].

4. INTERRELATIONSHIP OF THE OBLIGATORY RELATIONS ACT AND THE MARITIME CODE

4.1. General

This paper deals with the interrelationship of two legal texts adopted by the same legislator (the Croatian Parliament), but at different times, differing not only by the criterion of specialization, but also by the role of international agreements applicable to their field of regulation. To make the issue more complicated than it appears *prima facie*, the issue of the so called legal gaps is always present, i.e. of situations in which due to the lack of a concrete legal norm we must derive one using the legal tools and rules, free of any arbitrariness and wilfulness, simultaneously ensuring the maximum of legal safety. Legal gaps are not the same thing as the collision of regulations. As opposed to interpretation in the usual sense, when the legal norm exists, but its interpretation and manner of application are disputed, legal gap implies the absence (non-existence) of the norm. All points of contention relating to the application of an act fall into one of the three typical categories:

a) Legal provisions are unclear, ambiguous or even contradictory. In this case, the provisions are interpreted using recognized techniques;

b) Legal system is not harmonized. In this case, individual acts are contradictory;

c) There are no rules for the resolution of the case at hand.

In case under c), we have a legal gap. Therefore, the establishment of existence of a legal gap means recognizing the need for legal regulation in areas not covered by positive law[29].

As for interpretation, its basic function is the establishment of several possible meanings and the selection of one, most favourable reading of a legal document which is unclear and/or ambiguous in a certain social situation[30]. Apart from numerous other interpretation methods, it is well known and undisputed that in European law, target or teleological interpretation has absolute priority, as well as that such interpretation allows for the establishment of a meaning not covered by the options derived from language interpretation.

Obviously, the interpretation procedure needs to examine whether there exists a collision of regulations (partly requiring and partly not requiring an examination of the contents or essence of the regulations) and what is proscribed by the legal norm given precedence over the other or others. This includes the highly likely possibility of combining several legal norms which are not mutually exclusive, but complete each other.

As for possible collision of any regulations, the rules on the resolution of the conflict of laws or collision of laws apply, as one of the most important issues of the legal orders altogether. The conflict between two incompatible legal norms or the antinomy of legal norms is, as a rule, resolved by the application of the criteria of a) chronology, b) hierarchy and c) specialization[31].

The criterion of chronology or the temporal criterion refers to the moment of the beginning of existence of a legal norm (its entry into force), an easily established fact, at least in the case of ius strictum. Although everything appears crystal clear, we must point to a specificity of Croatian law in which we can even find an example of an act which officially entered into force on 3 April 2003, the transitional and final provisions of which stipulate the beginning of application six months after its entry into force[32], resulting in a situation in which we have an act which is in force but is not applied, raising the question of the purpose of such an act[33].

The criterion of hierarchy is based on the level of the adopting legislator. According to this criterion, the Croatian Parliament has precedence over the municipal council of a local self-governing unit. Judging by the same criterion, county assembly has precedence over municipal or city council. These cases are clear from the standpoint of the criterion of origin[34], but the status of the norm of higher and lower order can also be associated with a) effects (a norm capable of derogating the other is considered higher), b) obligation of the addressee (the lower of

Waters (Official Gazette, no. 18/69), with the exception of Article 15, Article 16, Article 17 and Article 18 which will be put out of force after the adoption of corresponding legal documents from Article 1043 of this Act, Article 12 of the Act on the Establishment of Tasks from the Self-Governing Domain of Local Self-Governing and Governing Units (Official Gazette, no. 75/93).

25. Ivo Grabovac, Prijevoz stvari u unutarnjoj plovidbi u Hrvatskoj – de lege lata i de lege ferenda, Književni krug, Split, 2007, pg. 7.
26. Maritime and Inland Navigation Act, Official Journal of the FRY, no. 22/77, 13/82, 30/85, 80/89 and 29/90) was taken over in the framework of the Act on the Assumption of Federal Laws from the Domain of Maritime and Inland Navigation Applied in the Republic of Croatia as Republic Laws, OG 53/91
27. Inland Navigation Act , OG 19/98, 151/03, 138/06. – hereinafter: Inland Navigation Act 98,
28. Act on Inland Navigation and Ports, OG 109/07, 132/07, 51A13, 152/14.-hereinafter: Act on Inland Navigation and Ports.
29. Đuro Vuković, Pravna država, Zgombič i partneri, Zagreb, 2005, pg. 107.-108.
30. Nikola Visković, Pojam prava, second revised edition, Logos, Split, 1981, pg. 292.
31. Norberto Bobbio, Eseji iz teorije prava, Logos, Split, 1988, pg. 125.
32. Inheritance Act, OG 48/03., 163/03., 125/11, 35/05., 127/13. - hereinafter: IA.
33. Learn more: Norberto Bobbio, op.cit., pg. 128.-135.
34. Norberto Bobbio, op.cit., pg. 126.

the two sources is the one whose owner is expressly prohibited from issuing a norm contrary to the norms issued by the other owner), c) consequences (the norm the violation of which by the other norm may result in the initiation of proceedings for the establishment of inadmissibility or invalidity or illegitimacy of the other norm is considered higher).

The criterion of specialization also differs from the chronological criterion or the temporal criterion and the criterion of hierarchy in that its application necessitates an examination of the subject being regulated, while the chronological criterion merely requires the establishment of the date of publication in the Official Gazette and the content of the transitional and final provision regulating entry into force and the criterion of hierarchy an insight into the preamble of the legal norm detailing its adopter, all regardless of the subject being regulated[35].

A simplified approach is usually applied in which antinomies are resolved by simple application of simple rules. Those rules are: a) *lex posterior derogat legi priori* (subsequent law derogates the earlier law) b) *lex superior derogat legi inferiori* (higher law or legal norm derogates the lower) and c) *lex specialis derogat legi generali* (special regulation derogates the general).

Everything is relatively simple as long as the above criteria give the same result, i.e. give precedence to the same legal norm. However, the problem arises when one criterion gives precedence to one and another criterion to the other legal norm. In that case the hierarchy of the three antinomy resolution criteria needs to be established. The standpoint that in the relationship between the temporal and the hierarchical criteria the former is always weaker than the latter, while in the case of the specialization criterion the things are nowhere as clear, can be said to prevail in science. This last criterion can simultaneously be the strongest[36] and the weakest, and the resolution is reached by means of interpretation, the testing of the fairness or by the application of the rule that equals must be treated equally and non-equals unequally[37].

4.2. In Concreto

In the concrete case of the relationship between the general provisions of the Obligatory Relations Act and maritime contracts, i.e. the part of the Maritime Code regulating maritime contracts, the application of all three criteria must be explored to establish whether they arrive at the same solution, i.e. conclusion or not. If they do, everything is clear, otherwise, the collision of the criteria must also be dealt with. In other words, we need to establish which criterion has precedence.

a) criterion of chronology,

Judging by this criterion, the Obligatory Relations Act is later (it entered into force on 1 January 2006) and the Maritime Code earlier act (entered into force on 29 December 2004). Therefore, the Obligatory Relations Act should have precedence as the later law. It should be pointed out that the adoption and entry into force of subsequent amendments, both to the Obligatory Relations Act and the Maritime Code, does not alter the basic position on precedence. The case would only be different if an amendment to one of the acts (temporally adopted after the other act) directly dealt with a concrete area - in that case, their relationship would change for that particular part of the regulation, with the earlier becoming later. However, it should also be pointed out that in the case of a wider legal issue or problem (e.g. a specific contract from the Maritime Code) it is entirely possible for the later regulation to be applied in the part regulated by that regulation (but not completely), with the earlier regulation being applied to other parts, i.e. a combination and application of both regulations.

b) criterion of hierarchy,

Judging by this criterion, the Obligatory Relations Act and the Maritime Code are the documents of the same ranking or level, because both were adopted as laws by the Croatian Parliament[38]. In principle, there are no ambiguities here. However, the fact of being linked with international agreements (which may occur in several ways, by having the content of an international contract fully or in part integrated into the text of a Croatian law, by no formal changes to the legal text being made by the Croatian legislator, but the very fact that a ratified and

35. Norberto Bobbio, op. cit., pg. 127.
36. E.g. in the first years of work of the Constitutional Court of Italy there exists a tendency to affirm the validity of a normal act, i.e. hierarchically lower act / regardless of the date of its entry into force/ if it can be validly proved that that act, regulating temporally and spatially limited cases, derogates very general constitutional principles to meet specific requirements - i.e. if its exceptionality can be proved to be justified in the name of fairness and that its reach is so limited that it neither obscures nor brings into question the validity of the general principle of validity.
37. Norberto Bobbio, op.cit., pg. 134.-135.
38. This must be stressed because the same legislator can also adopt documents of different levels, e.g. the Croatian Parliament adopts both laws and the Constitution, with the Constitution obviously being the document of the higher order. Similarly, the Croatian Parliament ratifies international agreements, therefore, after publication, making them supra-statutory laws (although, the proclamation as the formal act of the President of the Republic is required, although s/he does not have the right of veto, but there are likewise no mechanisms for direct legal struggle against the passivity of the President).

published international agreement represents a document of the higher order, which ex lege derogates the contrary provisions of the documents of the lower order) still changes such relations.

If an international agreement deals only with the so called general provisions (in the context of this paper, the subject matter of the Obligatory Relations Act) not contained by the Maritime Code, there is no collision, i.e. both acts will be applied, each in its own domain, regardless of the fact that the Obligatory Relations Act (by means of the international agreement and its status, regardless of the manner of its implementation) will have the status of the act of the higher level.

If an international agreement deals (only) with the special provisions (the subject matter of the Maritime code), those provisions will have precedence, which would be the case even if there was no international agreement, if the provisions in question were directly and only contained in the Maritime Code.

c) criterion of specialization

Judging by this criterion, the Obligatory Relations Act is general and the Maritime Code special law. Here is where one of the oldest legal principles comes into play, the principle of *lex specialis derogat legi generali*[39] (special act derogates the general), which gives precedence to the Maritime Code. The principle applies in general, as well as specifically to maritime contracts. That means that, e.g. if the Maritime Code proscribes an obligation not proscribed by the Obligatory Relations Act, that obligation exists. Similarly, if the Obligatory Relations Act proscribes an obligations not proscribed by the Maritime Code, such obligation does not exist for maritime contracts. This applies only in principle, since in law, the basic rule is that there are exceptions to every rule. Namely, there is also the possibility that there exists an obligation which is not expressly proscribed, but (as the only or one of several options) is derived during the procedure of interpretation in law[40]. In this event, the interpretation must establish the true meaning of a certain legal norm, which can completely change the relationship which in the beginning seemed likely. The complexity of this procedure, in which even experts frequently err, can be discerned from a significant part of Croatian maritime law literature which quotes another author (clearly agreeing with him, without even a hint of the critical tone)[41]. The author claims that in our civil law (namely in the Obligatory Relations Act, in Article 1067, paragraph 1 and Article 697, pg. 1) a mixed solution is accepted when defining the term of force majeure, namely, the subjective-objective theory of force majeure. Although the confirmation of this position can be found in professional literature[42], the legal problem here is that the claim lacks argumentation (neither in favour, since it obviously has support, nor against the quoted position), which is unacceptable and scientifically completely unjustified. Since we are talking about concrete legal norms from the Obligatory Relations Act, which contain the formulation "which could not have been foreseen, avoided, nor prevented" (Article 697, paragraph 1), i.e. "which he could not foresee and the consequences he could not avoid, nor prevent", argumented analysis is not only inevitable, but very simple. Since the verb MUST appears nowhere in the quoted articles in the appropriate verbal form, but both definitions contain the verb COULD, interpretation is very simple. If the verb used was MUST know, those would be subjective criteria of a subject or subjects (regardless of the extent of examination of that or those persons or the use of average values for a specific category - at least average attention is required of a subject having the ability to work). Since the verb used was COULD, objecitivization is certainly implied (regardless of any one concrete person), if not for any other reason, than at least because exculpation is impossible, since it is impossible to prove, e.g. that someone COULD NOT HAVE KNOWN something (including that it was and still is impossible for some other cognizant person to inform that party, which cannot be impossible and similar). A much less ambiguous legal provision would exclude the need for discussions of this type and contribute to the legal safety and the rule of law.

Establishing whether a special law (in this case the Maritime Code) regulates an entire legal institute (i.e. not only what the Obligatory Relations Act has, e.g. in relation to the contracts of carriage, but also what falls under the so called general part, e.g. invalidity, actio Pauliana, defects of will...), which is a very rare exception, or, which is the rule, specially regulates that which is required by the specificities of the subject matter (in this case the maritime law component), leaving everything else to the general law is important. In such a situation (applicable to the case dealt with in this paper), it only remains to be established whether anything in the nature of maritime contracts "by the nature of things" requires a special approach to a particular issue, i.e. how to apply the syntagm "apply in an appropriate manner" to the application of provisions of the Obligatory Relations Act to individual maritime contracts. Not excluding the existence of the described specificities, it should be pointed out that they are

39. Special law derogates the general. – Dragomir Stojčević-Ante Romac, Dicta et regulae iuris, Latinska pravna pravila, izreke i definicije sa prijevodom i objašnjenjima, fourth revised edition, Suvremena administracija, Beograd, 1984, pg. 262, saying no. 149.

40. According to one definition, interpretation is ".... a spiritual activity revealing the possible meanings of legal provisions and in them the hypotheses, identification, determination of the offence and the sanction, establishing which interpretation is the best" - More: Nikola Visković, Teorija države i prava, Birotehnika, Zagreb, 2001, pg. 243.

41. Ivo Grabovac, Odgovornost prijevoznika u prjevozu stvari u Pomorskom zakoniku Republike Hrvatske i u međunarodnim konvencijama, Književni krug, Split, 2010., pg. 23.

42. Petar Klarić, Martin Vedriš, op.cit., pg. 602.

still exceptions which should be conclusively proved on a case to case basis. After all, that is what the logical premise demands - if the legislator decided to regulate a contract (e.g. on carriage) by a special act (the Maritime Code) although the contract of carriage as a nominate contract is regulated by the Obligatory Relations Act, the logical conclusion is that the legislator included ALL the provisions believed to have precedence over those from the Obligatory Relations Act into the Maritime Code.

5. CONCLUSION

This paper examines the legal issue of the resolution of the possible collisions or antinomies between legal documents, in this instance, on the concrete example of two acts - the Obligatory Relations Act and the Maritime Code, in the part dealing with maritime contracts.

With emphasis on the meaning of the procedure of interpretation of legal norms which is the *condicio sine qua non in law* (including for the resolution of the collision issue), conclusions were reached which give absolute precedence to the Maritime Code based on the criterion of speciality (which is usually considered the most important criterion). However, as stated, that applies only to the part regulated by the Maritime Code, with the Obligatory Relations Act being applicable to maritime contracts in the part unregulated by the Maritime Code. Consequently, as a rule, both acts will be in application - the Obligatory Relations Act in the so called general part and in the special part if the subject matter is not covered by the norms of the Maritime Code.

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