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## PUBLIC AND PRIVATE PORTS IN CROATIAN LAW

### ABSTRACT

*Existing classification of the Croatian seaports does not fit the level and meet the needs of the economic development of the Republic of Croatia, particularly after the Republic of Croatia joined the European Union. Equalizing public service offered by a port with the purpose of the port itself (general purpose – port open for public traffic, special purpose – port not open for public traffic) limits the economic development and aggravates the implementation of the basic market policies of the EU. Therefore, modernisation of the basic classification of ports in the Croatian legislation is suggested. Basic categorization of ports should be as follows: public service ports, private service ports and private ports for private needs of an entrepreneur.*

### KEY WORDS

*fishery ports; ports open to public traffic; public ports; private ports; ports for personal needs;*

### 1. INTRODUCTION

Seaports in Croatia are classified on ports open to public traffic and the so called “ports of special purposes” and this has been so for decades. The law, despite changes over the past ten years (particularly the joining of Croatia the EU on 1 July 2013) did not question this basic division.

However, language analysis itself, without dealing with legal theory, tells us that this basic division has one obvious defect – port open for public traffic is a typical phrase that ensures the port being open to all users on non-discriminatory grounds. However, the port of special purposes is not a term that is opposite to the port that is open to public. The port open for public traffic presents a characteristic of a port regarding the possibility of approaching it. Port of special purpose presents a division concerning the type, specialty of the port.

Therefore, this paper would like to analyse the existing division of the Croatian seaports and to see

whether it fits the current legal and technological frame, particularly the new requirements of development within the EU.

### 2. EXISTING LEGAL FRAME OF SEAPORTS

General legal status of the ports in the Republic of Croatia is determined by the Maritime Domain and Seaports Act [1] (further in the text: ZPDML). According to the law, a seaport is generally defined as “ground space immediately linked to the sea, with built and non-adopted shores, devices, machinery and other objects prepared for docking and protection of ships, yachts and boats, loading and unloading of goods and passengers, warehousing and other manipulation of goods, production, improvement and completing goods and other economic activities that are related to those activities in mutual economic, transportation or technological connection.” (Article 2. Para. 1. Item. 1. ZPDML). [2]

According to the purposes of ports, they are divided on ports open to public traffic and ports of special purposes. (Article. 40. Para. 1. ZPDML). Port open to public traffic is seaport that may be used by any physical and legal person under the same conditions, in accordance with its purpose and in the frame of available capacities (Article 2. Para. 1. Item. 2. ZPDML). So, it is a typical definition of a port that provides services *erga omnes*, meaning to all users on a non-discriminatory basis.

The second type of ports are ports of special purposes. It is a seaport that is under a special use or economic usage of physical or legal persons (port of nautical tourism, industrial port, dockyard port, fishery port, etc.) or state’s body (military port) (Article 2. Para. 1. Item. 3. ZPDML).

It is interesting how the law did not determine the types of ports of special purposes in the previously mentioned ZPDML nor in the Article 40 where they

are individually listed, but not determined as *numerus clausus*. However, also other types of ports of special purposes are allowed. It is listed that according to the activities performed those ports may be as follows: 1. military ports; 2. port of nautical tourism; 3. industrial port; 4. dockyard port; also 5. Sport port, fishery port and other ports of similar purposes. (Article 42. Para. 2. ZPDML). According to the importance for the Republic of Croatia, the ports of special purposes are divided onto: 1. ports of importance for the Republic of Croatia, and 2. Ports of county importance. [4]

The Government of the Republic of Croatia divided the ports of special purposes according to their importance for the Republic of Croatia (Article 43. Para. 1. ZPDML). Furthermore, when determining the measures for port classification, the Republic of Croatia will consider the total traffic of each port in the previous decade and its characteristics: operational capacity of the port, situation of port substructure and superstructure, capability of devices for procurement, maintenance and repair of vessels, importance of traffic relations and economic possibilities of further port development (Article 43. Para. 2. ZPDML).

There are other regulations that consider the classification of ports of special purposes, such as Regulations on classification and categorization of nautical tourism ports that was brought into force by the Minister of Tourism. [5]

Ports open for public traffic are run by port authorities, according to the ZPDML, and they are special public institutions. The Republic of Croatia is a founder of port authorities that operate ports of particular (international) economic importance for the Republic of Croatia; while a county is the founder of those port authorities that run ports of county and local importance.

However, running, building and usage of ports via system of port authorities relates only to ports open to public traffic. ZPDML strictly foresees in Article 81, Para 4: "The user of port concession is obliged to use the port in accordance with the concession decision and contract on decision and to maintain the port in regard to its purpose and demands of nautical demands within it." [3]

Ports of special purposes, except for ports for military purposes that fall under special rules, are determined by a decision on concession (ZPDML, Article 80. Para. 3.). The concession for port of special purposes is provided: 1. for ports of county importance, by the county authorities for the period of up to 20 years; 2. for ports of the importance for the Republic of Croatia, by the Croatian Government for the period of up to 50 years, and 3. for ports of importance for the Republic of Croatia, by the Croatian Government for the period of over 50 years with an approval of the Croatian Parliament (ZPDML, Article 80. Para. 4.). One should point out here that the county authorities in the hierarchy of the Croatian local self-government no longer exists so

these concessions are now provided by county authorities, even though it bears certain doubts, too.

The decision on the concession for ports of special purposes must be based on the zoning plans (ZPDML, Article 80. Para. 7.).

There are two categorizations of ports. The first one is by importance (of county importance and of importance for the Republic of Croatia). The second one (much more important for this paper) is the following categorization:

- Ports open for public traffic run by authorized port authority,
- Ports of special purpose run by a concessionaire.

Classification of the ports on Ports open for public traffic and Ports of special purpose should not be viewed only concerning the subject of management. According to Brooks [6] and according to Balthazar and Brooks [7] the models of port management may be viewed in regard to the activities that certain entities (public or private ones) perform in a port. The purpose of a port, its specialization, is not relevant at this moment and does not influence this classification.

### 3. PUBLIC SERVICE IN PORTS

#### 3.1 Ports open to public traffic

According to the strict order by ZPDML, port open to public traffic is a seaport that may be used by any physical and legal person in accordance with its purpose and in the frame of available capacities. It is a part that provides public service. It is a classic regulation that defines public ports all around the world. If they are open for international traffic (except for rare situations of a blockade or war), all ships may sail into it, regardless of their state of origin, and under the same conditions they may approach the port. If a port is open for domestic traffic – all domestic ships may sail into it (there is a specific with the EU and that is the ships from other member states of Schengen regime will be considered as domestic ships) [8].

Such port must not show any preference towards providing port services to a certain company, ship or ship owner or to limit the approach to the shore.

#### 3.2 Ports of special purpose

Ports of special purpose do not have an obligation of providing public services. Such port is under special usage or economic usage by physical or legal persons. In other words, the ports of special purpose are those used by physical or legal persons for their own needs within their activities. Approach to the port and sailing into it are made possible only to the ships whose owner is contracted with legal or physical person that is using the port.

As previously stated, ZPDML lists the types of ports of special purpose according to their activities: 1. Military ports, 2. Ports for nautical tourism, 3. Industrial ports, 4. Dockyard ports, 5. Sport ports, fishery ports and other similar ports.

Without further explanation, military ports do not provide public service. Those are ports non-open for public service and usually they do not allow approach and civilian ships may only use it in *force major* or in case of accident. [9]

Industrial ports are those immediately linked to some industrial system, firstly some that requires large amounts of raw material or its products are such that are suitable to be transported by a ship. An example of industrial ports is a port in front of a cement factory or in front of a power electricity company located on a shore.

One should distinguish the industrial function of a port from the industrial port. The difference is that when in industrial function, the goods are transferred to industrial warehouse and processed there; while in industrial ports, the raw material is transported to the factory that is located within the port.

The most important advantages given to users by industrial ports, compared to the port open for public transportation is that the industrial ports use its own shore and liaison, regulation of loading and unloading the goods, its own workers who are always at disposal, minimum of ship's staying in a port and decrease of expenses [10].

Dockyard ports are similar to the industrial ports. Their usage is connected exclusively to the dockyard needs and they do not provide public service.

Another example of port run by the association members. "Sport ports are defined as ports that serve to berth ships listed in the Croatian register of boats for fun and leisure that are owned by association members that have concession in the port. Similar to LNT, sport ports with capacity of 200 berths in the sea are of significance for the Republic of Croatia, while those with less than 200 berths in the sea are of county importance. Sport port is defined by a decision on concession."

It is unquestionable that those ports do not provide public service. However, for the following categories of ports of special purpose, foreseen by the Croatian legal system, one can question the fact whether they provide public service.

Fishery ports are also one type of ports of special purpose. Typical example would be an association of several fishermen who got a concession on a part of the seaside and runs a fishery port for the needs of its members. Ships are on berth there and even large maintenance works are completed. There is also a service of procurement for ships and unloading the fish. Such ports *de iure* do not have an obligation to accept fishermen's boats that are not contracted with a

concessionaire (such as the association). It means that each fisherman's boat must come with fish to their main port, which is contracted by the concessionaire. Other fishery ports simply do not have to welcome it. Such solution limits the movement of the fishermen's boats because one must always count on a ship being close to the unloading point.

The question is what if another fishermen's boat wishes to unload its fish? Should they travel tens of miles to their mother port where their contracted concessionaire is? Because unloading of fish requires certain space, hygienic conditions and technological conditions (approach to the vehicles) and supervision is required for several reasons (safety, tax office, health reasons), from several services and authorized bodies. Points of unload are limited and defined by sub-legal regulations, concretely by the Regulations on conditions and putting fish and other sea organisms on the market.

That Regulation introduces a completely new term – *discharging point*. Article 3 Para. 1 of the listed Regulations says: "Fishermen who perform fishing with their fishermen's vessel of 15 meters length or longer may unload the fish only at particular points for discharging (discharging points)": Furthermore, Para. 2 of the same Article introduces a new category – *discharging point for small vessels*. "Fishermen who perform fishing on a vessel shorter than 15 meters may unload their fish on points listed in Para. 1 of this Article as well as on the points specially chosen for small vessels." Based on the authorization from the Regulations, the minister who is in charge of fishing brought the Decision on the list of discharging points for fishermen's vessels who perform economic fishing on the sea.

It is a special question what if a ship of another EU state member wished to unload fish in the port. If it is not a public port open to public services, no one is obliged to accept it. That is directly against the instruments of joint fishermen's policy where it is stated: "Help producers, processors and distributors to get a fair price for their products and to make the buyers believe the sea fruits they are consuming." [15] This goal cannot be functional unless it is strictly determined that the fishery ports are those where no public service is provided.

The Republic of Croatia knows a wide category of nautical tourism ports. Regulations on categorization of nautical tourism ports [16] recognizes those four categories: anchorage, landfill of vessels, dry marina, and marina.

Marina is a typical example of a port of nautical tourism. Marina is a part of water space and shore, and separated and arranged for providing services, accommodation of tourists in vessels and other services (Article 10 of the Regulations). Marina is a port of special purposes that provides service of keeping vessels,

but one may maintain and repair a vessel there since there are services located in the marina or outside of it. The Mediterranean type of marina, which is common in Croatia, is characterized by relatively small surfaces with infrastructural facilities. They are connected with touristic locations or can be part of one. They have limited number of berths and are kept for guests in the summer seasons who reside in the port [3]. Part of the berth is commonly saved for regular guests or for charter companies who pay monthly or yearly fares.

According to the Croatian Regulations, marina does not have an obligation to provide public service! A yachtsman, who wishes to enjoy the services of a marina cannot have a guarantee that they would be able to enjoy it under non-discriminatory conditions. The provider of the concession may contract (which is already a part of the bidding documentation for concession) [17] the concessionaire to provide public service, but it is only optional between the provider of the concession and concessionaire – in the contract that is usually not published (available is only the decision on providing concession).

This all leads to legally questionable and delicate situation for potential user of the marina who cannot see the marina as a public service and cannot expect publicly available service based on non-discriminatory grounds, as it should be at the ports open for public transportation.

One should point out that the Regulation for determination of purpose of a part of port open for public traffic of county and local importance foresees the space division on the basis of operational, utility and nautical part of the port for fishermen's boats in order to have berth ensured for fishermen's boats and nautical vessels that do not want to or cannot use services of fishermen's and nautical ports of special purposes [18].

This does not solve the issue of public service in the ports of special purposes. Moreover, ports of nautical tourism and ports open for public traffic speculate with berths in a way that they are offered to the yachtsmen as a daily berth or as a permanent berth based on contract on long-term lease.

### 3.3 Ports in relation to the EU Regulations

As a member of the EU the Republic of Croatia must enforce the basic market policies Treaty on the Functioning of the European Union, such as regulation of market competition, principle of equal treatment, policy of banning discrimination, policy of mutual understanding, policy of linearity and transparency. [19]

“The Croatian ports must be ready to accept regulations from the EU Treaty that regulate basic freedom and competition, caring at the same time about all characteristics (space limitations, issues regarding environment, safety, etc.) of ports. Frame policies of

this sort are necessary; otherwise, the ports would always guarantee fair competitiveness if required or free access, and must apply general policies from the Contract.” [20] Non-requirement of providing public service (except place where it is understandable: military ports, industrial ports, sport ports) are not considered acceptable. “Port activities must be performed in harmony with the rules on the market competition and rules on the basic freedom guaranteed by the Contract with EU.” [21]

## 4. PROPOSALS FOR NEW PORT CLASSIFICATION

The basic classification of the Croatian ports on ports open for public traffic and ports of particular purposes is actually an old one and it dates back to before 1990 in completely different political and social circumstances. There were ports used for transshipment of goods and passengers and those ports were open for public traffic. All other ports were special purpose ports.

According to the modern scientific theory there are three main functions of a port: transportation, commercial, and industrial [22]. Transportation function ensures access of vessels, persons and objects from a vessel, transshipment of goods and linking with inland transportation systems. Commercial function refers to warehousing of goods and other services with added value on goods that increases its market value. Within the commercial function, Dundović and Kesić particularly emphasize buying and selling of goods in a port. Industrial function of a port developed from the previous two ones and merges transportation, commercial and industrial activities on the whole port area. Industrial port should be recognized from the industrial port that does not have a commercial function. In an industrial port, cargo and goods are raw material for further processing or serves for exporting produced half-products or complete products of a same industry. Its existence is linked exclusively with the production process and personal use for the purpose of industry.

Similarly, “fishermen's ports may serve for the purposes of allocating fishermen's ships, transshipment of cargo, warehousing in freezers, sorting fish, maintenance of ships and not rarely even the accommodation of industrial machines for fish processing.” This makes it clear that fishery ports may have transportation, commercial or industrial function. Fishery port in small towns may only have the transportation role. Local ports may have ensured berth for fishermen's boats, basic port services such as procurement and basic port infrastructure such as in any other public port of similar size. Larger fishery ports should have a commercial function beside the transportation one. These ports should ensure acceptance of goods and warehousing too, and if required, other services with



value added such as sorting and packing of fish. These ports should be categorized as public ports where fishermen's boats may freely arrive regardless of their nationality or membership in a particular organization, association, or so on. Finally, if there is a need that certain factories for fish processing have their own accepting capacities, there may be fishery ports for basic needs of a producer. In that case we are talking about an industrial port outside of the general, public usage and it should be categorized as such [12].

We may talk about marina as a third example – marina with a purpose to provide services to small yachtsmen who, as it is a common thing in Croatia, after a whole day on the sea (or spending at most 2-3 days there) come to the marina to collect supplies, enjoy its restaurants or maintain their vessels – that is provided by a public service. Yachtsmen, without particular announcement and without special contract, come to marina and expect it to provide them with public services, which they are ready to pay for according to the price list. It is a typical role of a public port. On the other hand, if a marina is completely oriented to the usage by a particular charter company, so it does not foresee capacities for other yachtsmen – it is a typical private port for personal needs of an entrepreneur and it should be categorized as such.

Based on such analysis there pops up a question of a port purpose that should be separated for the issue of providing public services.

It would be wrongful to comment that ports open to public transport are some “general” ports while the ports with special purposes are somewhat “specialized”. Not every port open to public traffic provides all port services. The amount of services provided should depend on the needs (such as, not every port should have ferries or cruisers) but on the economic plans as well. As for ports of special purposes, they are disconnected from general purpose and serve the special purposes of a commercial company-concessionaire. Its main characteristic is the usage for personal needs of a commercial company or some other legal or physical person regardless of the port function, “speciality” and type of vessels that are located there.

Should we take into consideration the analogy in general classification of the transporter's and transportation services on public services (public transportation) and services for personal needs of a private entrepreneur (transportation for personal needs), regardless of the transportation means, there will appear a new and more suitable port classification:

- *public service ports (including tool ports and landlord ports)* (ports open for public traffic – ports that provide public service and are run by a port authority),
- *private service ports* (ports open for public traffic) – ports that provide public service and run by a private entrepreneur,

- *private ports (excluding private service ports)* (ports for private needs of an entrepreneur) – ports that do not provide public service and are run by an entrepreneur.

The basis of good management of a port is achieving high level of its functionality. According to the World Bank's classification, the functionality of each port is managed by performing the following activities:

- managing port area and licensing the activities,
- regulation of economic activities and surveillance of port services,
- regulation of maritime safety, protection of public goods and environment,
- planning of capital investments and port development,
- performing yachtsman services and exploitation of port objects,
- marketing and promotion of port area and port activities,
- performing transportation services, transshipment and warehousing,
- performing additional activities on port area. [23]

Models and organization of port management are the base on which the authority and the carrier of the listed activities depend, and they can be distinguished regarding the relations between public and private sector and relations of public and private interest.

Balthazar and Brooks [7] group functionally conditioned activities on regulative (*regulator*), ownership or management activities (*landlord*) and operative or commercial activities (*operator*) when regulated activities are separated from other port activities. Essential for port classification regarding the public or private interest is who is the bearer of management and how autonomous they are when applying certain activities.

However, in the countries with the institute of maritime domain, such as Croatia, the elements of classification that refer to the ownership over port area should be considered in a context of possibilities that they become subject of transfer from the public (general) to the private. If there is no such possibility, each activity within functional marks of a port should be put under local or regional regulation frame. For such purpose, Brooks [6] suggested adjustment of the so-called devolution matrix depending on the characteristics of particular country or area.

On the tail of this idea *Table 1* includes the division of authorization over certain activities between public and private entity taking the previous methodology into consideration (by Balthazar & Brooks) as well as specific division of ports with special purposes in Croatia, by their types. On the contrary, from the initial division, there is a modification of dividing activities in a way that they were given *public service functions* taking into consideration the Croatian port theory and practice. *The devolution matrix* was created for picked activities within three basic port functions: *regulatory*

functions, port functions, and public service functions. It presents providers or bearers of certain activities at public ports and at ports with special purposes and special types of ports of special purposes.

One should point out that public/private does not stand for the division according to the ownership but in relation to typical functions. A port may be a public one even if it is operated or owned by a private operator (in countries where a maritime domain is not a domain without the title of ownership as in the Republic of Croatia). Also, various models of public/private

partnership in public ports are possible. [24] An opposite situation is also possible – a port run by a state can be a port for personal needs provided it serves the needs of coastal guards.

Within such division a certain specialization of ports is possible: such as ports of yachtsmen's tourism of container, fishery and other ports. Of course, it does not exclude the possibility of establishing a private port for personal needs of an entrepreneur, should a company want a terminal for the needs of personal transshipment, should a sport association need a port

Table 1 – Devolution matrix for Croatian so called „Special purpose ports“ based on Balthazar & Brooks (2001) activity classification

	Port activities	Public ports	Nautical ports	Fishery ports	Industrial ports	Shipyard ports	Sport Club ports
REGULATORY FUNCTIONS	Licensing, concession award	○	○	○	○	○	○
	Port development and categorization	○	○	○	○	○	○
	Port policy and environmental policy	○	○●	○●	○●	●	○●
	Land acquisition (sub-concession)	○●	●	●	●	●	●
	Port monitoring	○	○	○	○●	●	●
PORT FUNCTIONS	Port area management	○	●	●	●	●	●
	Port safety and security	○	●	●	●	●	●
	Marketing of location, planning	○	○●	○●	●	●	●
	Capital investment in port infrastructure	○	●	○	●	●	○
	Capital investment in port equipment and services	○●	●	●	●	●	●
	Port facility maintenance and repair	○	●	○●	●	●	○●
	Waterside maintenance, dredging	○	●	○●	●	●	○●
	Marketing of operations	○	●	●	●	-	-
PUBLIC SERVICE FUNCTIONS	Pilotage and towage	●	-	-	●	●	-
	Berth providing	○	●	●	NPS	NPS	NPS
	Mooring service	○●	●	●	NPS	-	-
	Cargo and passenger handling	●	-	●	NPS	-	-
	Vessel supply & utility	○	●	●	NPS	-	-
	Waste management	○	●	●	NPS	-	-

Legend:

○ provided by public body

● provided by private port operator (concessionary)

○● provided in common partnership

NPS not public service, provided only for own customers

for its members only or an association a fishery port or yachtsmen port for accommodation of tourist boats and long-term berth landing during winter time.

## 5. EXAMPLE OF A REFORM OF INLAND PORTS IN THE REPUBLIC OF CROATIA

The basic Croatian regulations on the seaports should have been changed before June 2009 due to the adjustment to the new concession frame [25]; however, that has not happened yet. The new proposal of the Law on Maritime Domain and Seaports [26] classifies ports according to their purpose into four categories:

- 1) Ports open for public traffic;
- 2) Ports of special purposes;
- 3) Moorings;
- 4) Anchors.

Furthermore, the following classification of ports of special purposes is suggested:

- 1) Military port;
- 2) Shipyard port,
- 3) Industrial port;
- 4) Fishery port;
- 5) Yachtsmen port,
- 6) Sport port;
- 7) Port for gasoline supply of vessels.

As one can see, the authors of new legal solutions have remained at the present basic classification of ports which has now become even more complex, under four categories. The division of ports with special purposes is also slightly changing so the port for gasoline supplying vessels has now appeared and is not to be open for public traffic! So the port which is by the definition supposed to provide public service, because gasoline supply is a public service in other branches of traffic, such as road and air traffic (where the special regulations regulate it particularly as public service) [27] in this proposal it is proposed as a port of special purposes only.

We believe it is very important to mention that the Proposal of the Law on Maritime and Seaports did not pass the Parliament's debate. Even before the Parliament's Board for Maritime, Traffic and Infrastructure responded to the Proposal – the Parliament was dismissed due to the end of its mandate. In the Croatian constitutional practice that means that all the existing proposals were “deleted”. That means that the new Croatian Government must propose them again, should they wish to do so.

The existing Proposal of the Law on Maritime and Seaports cannot be treated any longer as a relevant solution, because the new Government may have significantly different views, even if a similar coalition is elected. Additionally - leaving the proposals of important legal regulations for the end of an agenda, so that they would “be dropped” once the Parliament is

dismissed, in Croatian political practice often stands for the members of the ruling coalition not reaching an agreement on its content, while at the same time not revealing their discrepancies.

Let us mention that inland ports in the Republic of Croatia have included this proposed classification on public and private ports in its Article in 2007 when the Law on Inland Navigation and Inland Ports (ZPLUV) [28] came into force: “Regarding the type of inland ports, ZPLUV from 2007, as the basic Law, foresees only ports open for public transportation. They are divided into those of state significance and those of county significance and finally on private ports.” [29]

Similar solution was listed under the latest amendments and additions of ZPLUV that came into force in late 2014 [30]. The changed Article 117. Para. 1 states:

*Ports are classified by their purpose:*

- *Public ports – ports that are obliged to provide public services, where a vessel under domestic or international law may arrive due to transshipment operations, supply procurement, change of staff or some other reason in accordance with this Law;*
- *Private ports – ports that do not perform public services but are at disposal to the port user for performing basic economic activity.*

Furthermore, (Article 119) public ports are distinguished between state significance ports and ports of county importance.

It is unclear why there are two completely different classifications of ports in one state, particularly because the Croatian inland navigation ports implement the model of the same management as those that are seaports. We believe that the solution used by the inland navigation ports seems to be much more modern and of better quality.

## 6. NEW PORT CLASSIFICATION AND REAL STATUS OF MARITIME DOMAIN

According to ZPDLM, maritime domain (Croatian: Pomorsko dobro) is a general affair and of interest for the Republic of Croatia. That means that the maritime domain is in non-ownership regime and the Republic of Croatia is strictly following the Roman tradition: “*Naturali iure omnium communia sunt illa: aër, aqua profluens, et mare, et per hoc litora maris.*” (“According to the natural law the following is common for everyone: air, water and sea, so is the sea shore.”) [31].

Also, ZPDLM completely respects the policy of unity of a property, superficies solo cedit, and in accordance with specific regulation Article 5 of ZPDLM that says that buildings and other objects on a maritime domain permanently linked to the maritime domain are considered as the property of a maritime domain. Furthermore, the paper once again emphasises that

one cannot obtain ownership on a maritime domain nor any other real rights, on any grounds.

New division of ports proposed in this paper is not directly linked to ownership issues on a maritime domain, or non-possibility of establishing ownership regime on it – public ports and private ports is a division linked to providing of public services, not a division related to ownership over a maritime domain, or over facilities on a maritime domain.

Since the buildings and objects on a maritime domain are the property of the maritime domain (general affairs) it is clear that one cannot establish a mortgage over it. As it makes the development financing extremely difficult – the legislator offered a compromise in Article 34 of ZPDML – a possibility of a lien on the concession. According to Article 34 of ZPDML, Paragraph 4: “A lien gives the right to a lienor to use the concession on his own should he fulfil the condition for concession owner or may this right be transferred to a third person who also fulfils the condition for concession ownership, under the condition to get an approval from the concession provider.” From the economic point of view – this solution is extremely clumsy. “It is hard for one to expect that banks, that may apply for a lienor position most frequently, accept the offered type of insurance”. [32]

Financing of the port development until today was generally based on assets from the State budget of the Republic of Croatia and loan arrangements [33]. It is believed that this development model, with direct investments from the state, is no longer acceptable and that the whole model of full commitment to the principle *superficies solo cedit* must be questioned. It should also seriously consider an option to allow the facilities on the maritime domain, particularly in the port area, to fall under the ownership regime so that they may be mortgaged. It should be emphasised that a general regulation, the Law on Ownership and other Property Rights, in its Article 3 Paragraph 4 says: “Buildings and other objects built on a general domain based on a concession are legally not part of the general domain. They create a separate estate while the concession is in power.” This means that general regulation does not require complete implementation of the policy *superficies solo cedit*, and that is a request of a separate regulation, ZPDML. [34]

Due to exceptional changes in economic circumstances, where one cannot expect primary state financing, this issue must be taken under consideration seriously even regardless of the application of old or the acceptance of a new model of port development. We believe that the current regime of financing is not sustainable while the other one, that would include public and private partnership, did not manage to develop along with the present legislation. “In the composition of the Port of Rijeka several projects of public-private partnership underwent realization, but were

unfortunately unsuccessful” [33]. If that was not possible to achieve within the system of our most developed port, we surely cannot expect any better results from the others.

## 7. CONCLUSION

The “self-understandable” classification of seaports into ports open to public traffic and ports of special purposes has failed to fulfil its purpose for many years now. Particularly in the light of fulfilling four basic market freedom policies of the European Union: freedom of movement of goods, freedom of movement of persons, freedom of providing service and freedom of movement of capital [34].

The existing classification of seaports was considered legally and technologically-organizationally a traditional one and self-understanding. That was definitely not a good idea due to significantly changed economic and other circumstances in the 21<sup>st</sup> century and due to clear definition and larger possibility to involve private capital into further development of the ports. The issues of ports are often considered separately as if they were independent economic and transportation subjects. One forgot at the same time that the port system is a part of national economy and total national and international traffic and logistic chains with particularly high economic multiple effects [35].

Certain categories of ports of special purposes, mainly yachtsmen’s ports, fishery ports, ports proposed for supply of vessels with gasoline, should provide public service and should be open for public traffic. Surely, it should not disable the opening of such ports as private ones, in the previously mentioned situations (such as when a yachtsmen’s port is purposed to charter companies only).

Modern division that would distinguish ports that provide public service (public ports) and ports that do not provide public service (ports for personal needs) would be more appropriate to the present time; such division is clearer, it respects the basic economic freedoms of the EU, makes the development easier and clarifies the business relations in the world of financing. We believe that a Croatian employer *de lege ferenda* should turn into that direction and accept this division for seaports that has already been applied on inland navigation ports.

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**SAŽETAK**

Postojeća podjela hrvatskih morskih luka ne ispunjava razinu i potrebe ekonomskog razvoja Republike Hrvatske, posebno nakon ulaska Republike Hrvatske u Europsku uniju. Izjednačavanje javnog servisa kojeg nudi luka s namjenom same luke (opća namjena – luka otvorena za javni promet, posebna namjena – luka koja nije otvorena za javni promet) ograničava ekonomski razvoj i otežava primjenu temeljne tržišne politike EU. Stoga se predlaže modernizacija temeljne klasifikacije luka u hrvatskom pravu. Temeljna kategorizacija luka trebala bi biti podjela na: javne luke, privatne luke koje obavljaju javnu uslugu i privatne luke za osobne potrebe.

**KLJUČNE RIJEČI**

ribarske luke; luke otvorene za javni promet; luke posebne namjene; javne luke; privatne luke; luke za osobne potrebe;

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