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The Public Institution for Integrated Maritime Domain Management in Croatia – role and functions

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ABSTRACT

The aim of this article is the analysis of the existing maritime domain management system in Croatia, with a special attention to the port system management compared to maritime domain and port management systems in Italy, Spain and France. The research shows that Croatia does not have the strategy for integrated management of maritime domain. In respect of the size of national territory covered by maritime domain and its importance for the general Croatian economy, especially for tourism, we believe that is undeniable that this issue should be regulated as follows: the newly established Public Institution for Integrated Maritime Domain Management should manage the maritime domain and it should have branches on regional level. Thereby the management system of maritime domain would finally be consistent, managed from one place and under management of experts. At the same time, the strategy would be the base for the reform of the existing MDSA or for the completely new law on maritime domain and seaports.

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1 Introduction

The Republic of Croatia is well known for its natural resources. One third of Croatia's territory is maritime domain territory, made of the sea and the land that is connected to the sea in natural or functional way. The shore (land) area of Republic of Croatia has 31 067 m², and it is 6 278 km long, of which the mainland shore is 1880 km long, and the island shore is 4 398 km long. Also, the Republic of Croatia in 2014 held the 54th place in the world and 10th place in Europe for the renewable internal freshwater resources per capita (cubic meters), with 8 895 m³ available *per capita* [16]. In addition to the maritime domain and water resources, Croatia has great forest resources. It should also be noted that 44% of the Croatian national territory (2,490,000 hectares) is covered by forests [2].

The national law establishes how these resources of interest to the Republic of Croatia, can be used and employed. For example, according to the Concessions Act (2017) a concession can be granted on maritime domain

and for use of water resources, while forests and forest land owned by the Republic of Croatia can be leased for a period not longer than 5 years.

This brings us to the question: How Croatia national resources are managed? Croatia has a Water Resources Management Strategy and National Forest Strategy, but it doesn't have a strategic document for maritime domain management. For this reason Kundih [8] thinks that the maritime domain management system of Republic of Croatia is scattered and not connected between administrations and ministries in charge and regional governments and local authorities, national and regional port authorities, **port authorities and whole public administration**. Luković [9] in the article "Pomorsko dobro u traganju za strukom" stresses that the main prerequisite for maritime domain management is knowledge, and that Croatia leaves its economy to the law system, hence tries to solve the economy by laws. The State contributes directly to the maritime domain chaos by doing nothing. The administration started, but then interrupted because of the financial issues, the systematic definition of maritime domain

boundaries [6]. In this way, the State lost concession fees for maritime domain use.

The aim of this article is to analyse the existing maritime domain management system in Croatia, with a special attention to the port system management compared to maritime domain and port management systems in Italy, Spain and France. The hypothesis is that Croatian maritime domain and port management system is inconsistent and, consequently, economically ineffective.

2 Definition of maritime domain

The constitutional rule is that the maritime domain enjoys special protection of the state [14]. Article 52, paragraph 1 of the Constitution of the Republic of Croatia (Official Gazette = OG, no. 6/90, 135/97, 8/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 5/14) is worded as follows: "The sea, seashore and islands, territorial waters, airspace, mineral resources and other natural resources, as well as the land, forests, wildlife, other parts of nature, real estate and goods of particular cultural, historic, economic and ecologic significance which are of interest for the Republic of Croatia as regulated by law enjoy the State's special protection."

The Maritime Domain and Seaports Act (hereinafter: MDSA) (cro. *Zakon o pomorskom dobru i morskim lukama*, OG, no. 158/03, 100/04, 141/06, 38/09, 123/11, 56/16, 98/19), governs the legal status of the maritime domain, the establishing of its borders, the management, protection and use of maritime domain, the sorting of seaports, the port area, the establishment of port authorities, port activities and the performing of such activities, the construction and use of the port superstructure and infrastructure, as well as important issues related to the order at seaports (Art. 1 of the MDSA).

The essential features of the maritime domain are as follows: 1) goods in general use and the ones susceptible of being traded (lat. *res extra commercium*), 2) the legal unity of real estate (lat. *superficies solo cedit*) and 3) governed by a special regulation (MDSA).

3 Public institution for integrated maritime domain management

In this chapter we will elaborate two key factors for the development of the Croatian maritime domain:

- a) The management of maritime domain, and
- b) The supervision of maritime domain.

3.1 The management of maritime domain

By the management of maritime domain we mean the maintenance, the improvement, care and maritime domain protection during the public use, special use or commercial use based on the concession or concession authorisation (Article 10 of MDSA). The Republic of Croatia

manages, protects and is responsible for the maritime domain, directly or through regional or local authorities according to the MDSA regulation. According to this regulation local authorities, that means municipalities and cities, have the authority to manage, maintain and protect maritime domain. Local authorities are responsible for protection and maintenance of parts of the maritime domain in public use, located in those particular areas (Article 10 (3) of MDSA).

Public use of maritime domain means that anyone has the right to use the maritime domain according to its nature and purpose. A concession can be granted for the commercial use of maritime domain (e.g. in nautical ports) or for special use of maritime domain after defining maritime domain boundaries and registering in land registry. The concession is granted for a period of 5 to 99 years. The common rule is that the concession for commercial use of the maritime domain is based on tender, while the concession for special use is based on the request of the stakeholders (Article 17 of MDSA). Different rules depend on purpose of concession. A concession for commercial use of maritime domain gives the concessionaire the possibility to gain potentially a profit from the use of a common good, while the concession for special use of maritime domain is granted in favour of the community.

We believe that in case of concession for special use of maritime domain is out of question to apply the European Union rules on economical use of public goods.

Maintenance and protection of the maritime domain in public use is considered being an ordinary management of the maritime domain (Article 11(3) of MDSA). The ordinary management of maritime domain is based on the annual plan (Article 11(2) of MDSA).

What is the limit of the local authority when we speak of maintenance and protection of the maritime domain in public use? So far we haven't found satisfactory answer to this question. Cities and municipalities give a different interpretation of this issue.

Extraordinary management of maritime domain includes restoration of maritime domain outside of ports caused by exceptional events (Article 11(4) of MDSA) and it is done by local (regional) authorities, i.e. counties (Article 11(5) of MDSA).

Considering previous, usually negative, experiences in the application of MDSA and MDSA's subordinate regulations, especially the interpretation and application of Regulation on the procedure for establishing maritime boundaries (OG, no. 8/04, 82/05), we think that the time is right to regulate the foundation of a Public Institution for Integrated Maritime Domain Management (hereinafter: Public Institution), with a new law or with the amendment to the existing one. The purpose of the Public Institution is a complete management of maritime domain. That means that commercial and public interests and the protection of the maritime domain have to be coordinated. The founder of the Public Institution should be the Republic of Croatia,

and Croatian Government would have founder's rights and duties. The Public Institution would be a legal entity with a public authority that performs activities prescribed by law and it is signed into a court register. The headquarters of Public Institution should be in Split, and the branches would be in Rijeka, Pula, Senj, Zadar, Šibenik and Dubrovnik.

The Public Institution would have the following authority in the management of the maritime domain:

- Prepares, creates and manage a national database of maritime domain of Republic of Croatia
- Together with the Ministry prepares the proposal for a Strategic Plan for Administration and Management of maritime domain and a Strategic Plan for Administration and Development of Maritime Ports
- Develops an Annual Work Programme
- Proposal of legal and other normative acts about maritime domain and maritime ports
- Issuing and changing decisions on establishing, defining and changing the boundaries of maritime domain and port area
- Cooperates with the competent State Attorney's Office in a registration process of determined and/or existing maritime domain in cadastre and land register
- Suggest the plan of strategic investments for a 5-year period, that is approved by Ministry
- Prepares the documentation for tenders for concession granting for authorised concession granters
- Constantly monitors the work of concessionaires and of holders of concession authorizations in the implementation of their duties and monitors the activity reporting of concession and authorisation granters on detected irregularities
- Management of funds earned by fees payed by: boat owners registered in Boat Register, yacht owners registered in Yacht Register, owners of the foreign boats/yachts that do commercial activities in Republic of Croatia
- Coordination among state, regional and local authorities in order to avoid sectorial approaches and to guarantee the full strategical interests of Republic of Croatia on maritime domain.

3.2 The supervision of maritime domain

The risks threatening economy development are particularly visible on the Adriatic Sea. They arise from the extreme litoralisation, increased tourism and maritime transportation development, climate change, excessive urbanisation of the coastline and other contemporary threats. In this regard, it is worth citing the academician Barbić [1]; *For an effective protection of the sea, the seabed and coastline, it is not sufficient to adopt the regulations, but they must be regularly implemented treating everyone*

equally. In order to achieve this, a constant and efficient supervision of the application and implementation of national and international regulations on the protection of maritime environment is required. Based on this regulation, sanctions are imposed upon all the ones who do not comply with the regulations. The people mostly fear the imposing of sanctions, being compelled to act in compliance with the regulations, though only if they are aware that the supervision is such and that it is quite possible that they will be caught in the act of violating legal norms. The very sanction, no matter how drastic it is, will not be effective if the perpetrator is aware that it is not likely that he or she will be caught. This is why the functioning of supervisory authorities is important.

In that regard, instead of the new law on maritime domain and seaports the Croatia Parliament adopted the Harbomasters' Act (hereinafter: HA) (cro. Zakon o lučkim kapetanijama, OG, nr. 118/18), that took effect on 1 January 2019.

This new law defines the maritime domain as a public good of special interest to the Republic of Croatia, defined by the existing law that regulates maritime domain and concessions on maritime domain (MDSA).

Supervision of maritime domain is implemented by inspections of the application of law and other regulations that regulates maritime domain and concessions on maritime domain (Article 4 of HA). Navigation safety and supervision of maritime domain are planned, organised and implemented according to the planning measures that establish the strategy of maritime development and integral maritime policy of Republic of Croatia, i.e. strategy of fluvial transport development and according to other planning measures based on this Law and other regulations.

HA applies sanctions for every law violation (breach of provisions, chapter II).

The Article 78 of HA provides as follows:

(1) Legal entities may incur fines from 100 000 HRK up to 500 000 HRK if they, despite the interdiction in form of verbal warning, do the following: 1. The legal entity continues to use the maritime facility or domestic navigation facility or their devices that are banned (Article 42(5)); 2. Continues the use or the commercial use of the maritime domain by doing different activities on maritime domain such as building and/or executing works on maritime domain or any other form of use of maritime domain and its properties (Article 43(4)), 3. Continues to work in the port, port area, offices or other facilities or continues to use port devices that are banned (Article 44(5)).

(2) For the infraction of the above, the responsible person in legal entity will be fined from 40 000 HRK up to 50 000 HRK.

(3) For the infraction of the above, physical person – craftsman and any other self-employed person will be fined from 50 000 HRK up to 100 000 HRK.

(4) For the infraction of the above a physical person will be fined from 40 000 HRK up to 50 000 HRK.

(5) If the infraction of the above is done for the opportunism and if the offender had the material gain, that offender will pay a double fine compared to the fines defined by the paragraph 1.

We believe that HA solved well the question of supervision/ monitoring of maritime domain.

4 Comparative maritime laws

In all observed countries, like in Croatia, the concession is the only legal way to use the maritime domain for commercial purpose. As far as the management of the port system is concerned, each country has its specific model of port management, and more generally, a maritime domain management/administration based on longtime tradition.

4.1 Italy

The management of maritime domain, ports and nautical ports in Italy is regulated by few interconnected laws. The goal of the regulations, constantly upgraded, is the protection of maritime domain and the more efficient management.

On a national level, General Authority for Supervision of Port Authorities, port infrastructure and maritime traffic and traffic on internal waters is a professional body that is part of the Ministry of Infrastructures and Transport. It is a part of the Department of Transport, Navigation, General Affairs and Staff, that is, among other, explicitly competent for maritime domain and the construction of port infrastructure.

The legal regime of the maritime domain (*demanio marittimo*) is explicitly defined by the Article 822/1 of the Italian Civil Code (*Codice civile*). This Article states that seashore, beach, moorings and ports (*il lido del mare, la spiaggia, le rade e i porti*) belong to the state, i.e. are owned by the state. This state property is inalienable and third persons can't have any rights over that property, except in ways and boundaries defined by a special law. Competent administrative bodies authorised to protect those assets and to use any legal mean in administrative and judicial proceedings to protect that property and possession [10].

The most important regulation for the maritime domain is the Navigation Code from 1942 (*Codice della navigazione*), together with the Rules of Implementation of the Navigation Code (maritime navigation) from 1952 (*Regolamento per l'esecuzione della navigazione marittima*). According to the Article 28 of this Code, part of maritime domain are: a) seashore, beaches, ports, moorings; b) lagoons, river estuaries that join the sea and c) canals that can be used for the use of maritime domain.

For ports, as *lex specialis*, is applied the Act on the Reform of the Legislation in Port Systems from 1994 (*Riordino della legislazione in materia portuale*). This Act regulates, *inter alia*, the classification of ports (Article 4), administration of port systems (Article 6), authorizations

of Port Authorities (Article 6), port activities (Article 16), port concessions (Article 18) etc. Port Authorities: (a) implement the business policy, plan, coordinate, promote and carry out the control of port operations, and control other commercial and industrial activities in ports, with authority to regulate the schedule and the safety of navigation; (b) ordinarily and extraordinary maintain the port area and maintain the sea floor; (c) secure and control the supply of services of general interest to port users, other than services. Port Authorities are regarded as legal entities and under public law they have administrative autonomy, as well as a fiscal and financial independence within the limits set by the law [7].

Since 2016, the management of Italian port system is under jurisdiction of 15 Port Authorities (*Autorità di Sistema portuale*). This new management system provides that 15 Port Authorities will coordinate the work of 57 ports of national interest. Port Authorities have a strategic role in solving, planning and coordination of a port system in their area. Regions can demand for additional ports of regional interest to be included under Port Authorities.

For nautical ports is very important the Set of Rules on the Procedure of Concession Granting of Maritime Domain for the Realisation of Constructions for Nautical Navigation from 1997 (*Regolamento recante disciplina del procedimento di concessione di beni del demanio marittimo per la realizzazione di strutture dedicate alla nautica da diporto*). This Set of Rules regulates the structure of areas for the nautical tourism: a) nautical port, b) multipurpose port and c) moorings. In this context, the Recreational Craft Code from 2005 (*Codice della nautica da diporto*) takes into consideration the special nature of rules that regulate yachting in relation to the general maritime law [12].

Italy doesn't have a general Concessions Act (*lex generalis*). For this reason, the issue of concession granting on maritime domain is regulated by the Article 36 of the Navigation Code. Minister of transport and navigation is competent for concessions longer than 15 years. For a concession for a period between 4 and 15 years, that requires works and devices that are hard to separate from maritime domain, is competent the area administrator, while for shorter concessions that don't require such works and devices is competent a port manager. According to the Article 37 of the Navigation Code in case of different applications for concession, a preference will be given to the application that guarantees more the development of maritime domain and suits better the public interests. According to the Article 18 of the Act on the Reform of the Legislation in Port Systems from 1994 the duration of a concession and of related concession fee, also proportionate to the quantity of port traffic, are decided by a decision of minister of traffic in collaboration with the minister of finances.

The administration of the maritime domain for tourist-recreational goals (entertainment) depends on where is situated the maritime domain. Regions and municipalities are competent for administration of maritime, lake, and

fluvial areas outside of ports, while port authorities are competent for administration in port areas. Port authorities can not perform port activities themselves. Instead, they are obliged to grant a concession. Concession lasts up to 6 years.

As far as concessions on maritime domain for the construction of recreational facilities are concerned, they are granted in following ways: a) by the act of the area administrator, when the concession is not longer than 15 years; b) by the act of the head of General Authority for Maritime Domain and Ports of Ministry of Transport and Navigation, for concessions longer than 15 years. Thanks to the above mentioned regulation from 1998 (just 11 Articles) the state directly helped the development of nautical tourism in Italy. Benevolo and Spinelli [3] believe that simplifying and reducing the administrative procedure for the construction of port infrastructure in nautical ports provided more berths, the expansion of existing ports and, finally, the construction of new nautical ports.

4.2 Spain

Spanish coast is one of the longest in Europe (7880 km). Port system, that is owned by the State, has 46 ports of state interest (*Puertos del Estado*) administrated by 28 port authorities (*Autoridades portuarias*). The governmental Agency *Puertos del Estado* manages and controls their efficiency, investments and coordination. The management/administration of different kinds of ports, usually fishing and nautical ports that have low commercial activity, is transferred to the Autonomous Communities [11].

According to the Article 132 of Spanish Constitution from 1978, State-Owned Assets are established by law. The Coastal Law (*LEY 22/1988, de 28 de julio, de Costas*) defines that maritime domain (*dominio public maritimo-terrestre*) is a public good owned by that state, and it is made of: a) sea and river shore; b) territorial waters and continental waters together with the seabed and c) natural resources of economic area and continental platform. The maritime domain is inalienable from the state ownership. In this way was eliminated the privatisation of a maritime domain that previously existed. Private owners' rights were transformed *ex lege* in state ownership rights on the maritime domain. In exchange for ownership rights, concessions for 30 years period were granted [11]. Besides this so-called primary concession that was granted without tender, all other concessions are granted by tenders for a maximum period of 30 years. Act amendments of the Coastal Law from 2014 give the possibility to extend the concession period up to 75 years, in exchange for investments.

Legal system of maritime domain is defined by the Law on State Ports and Merchant Navy (*LEY de Puertos del Estado y de la Marina Mercante*). According to the Article 2 of this Law, a seaport is a coastal area, sea shore and facilities on the sea or river shore and meet the physical, natu-

ral or artificial and organisational conditions necessary for the port traffic and are entitled by the competent administration to develop those activities. Those activities can be, either commercial or non - commercial. Those ports that are intended exclusively or primarily for sport or recreational boats are not considered commercial [4].

Nautical ports are under the exclusive jurisdiction of autonomous legislations [13]. So, for example, Autonomous Community of Catalonia has its own Law on Catalonia's Ports (*Ley 5/1988, de 17 de abril, de puertos de Catalunya*). *Ports de la Generalitat* is a public body that, along with the nautical ports, administrates all other ports on Catalonia's coast, except for big ports of state interest (Barcelona and Tarragona). Autonomous community (concession and direct administration), port authorities (concession and direct administration), and corporations and nautical clubs, are competent for the administration of nautical ports [5].

For each commercial use of maritime domain it is necessary to acquire the authorisation of competent public authorities. For the use of maritime domain for a period up to 3 years, the authorisation is granted (*autorización administrativa*), and for a period longer than 3 years a concession is granted. Prior to concession granting procedure, it is obligatory to consult the municipality.

4.3 France

Public maritime domain (*Domaine Public Maritime*) is the unique public good in France. The state is its only owner, and it is responsible for it. General Authority for Infrastructure, Transports and Sea manages the maritime domain on the national level. On local level, prefect administrates the maritime domain. Three ways of administration on territorial unit level are known (communities, departments and regions): a) direct administration of legal person governed by public law, b) concession for use of maritime domain and c) authorisation for temporary occupation of maritime domain. Each way of management of maritime domain includes environmental protection, continuity of service, maintaining order on maritime domain, etc.

General Public Property Code from 25 June 1994 (*Code general de la proprieta des personnes publique*) makes a difference between natural maritime domain and artificial public good. Ports are undeniably artificial public good and are divided in three kinds of ports: (a) commercial ports, (b) fishing ports and nautical ports (ports for leisure and recreation). New General Public Property Code entered into force on 1 June 2006 (*Code general de la propriete des personnes publiques*), that explicitly prescribes that maritime domain is state property.

The French system therefore seems to be strongly oriented towards the environmental protection of State-owned maritime property and, at the same time, tends to favour the general use of its assets over other uses. This

interpretation is reinforced by the reading of two principles. The first is that the surface area of the beach must be free from any movable structure for a period not exceeding six months, as defined in the concession. The second refers to the possibility that the granting authority has the faculty to decide which facilities are authorised on beaches according to layout and attendance, as well as the level of services offered in the areas around the concession [2].

Still, according to the Article R-5314-30 of Transport Code (*Code des Transports, Version consolidée au 15 février 2019.*), a concession for marina is granted for a 50-year period if the goal of concession is the exploitation or construction of port infrastructure or superstructure. Other types or concessions can't be granted for periods longer than 35 years (*Les concessions d'établissement ou d'exploitation d'infrastructures ou de superstructures portuaires ne peuvent être consenties pour une durée supérieure à cinquante ans. Les autres concessions, conventions et autorisations d'occupation de toute nature du domain public ne peuvent être consenties pour une durée supérieure à trentecinq ans.*)

5 Conclusion

The work hypothesis that the Croatian system of management of maritime domain and ports is inconsistent and consequently economically ineffective has been confirmed. The fact that the period of establishing maritime domain boundaries is unduly long, and the fact that the quality of adopted acts is questionable due to different and arbitrary interpretations, greatly contribute to the chaos in maritime domain. If the boundaries of maritime domain are not determined and registered in Land Registry, it is impossible to have an efficient system of concession granting. It is also important to highlight that revenues of concessions (concession fees) are mostly the state budget revenues. In other words, it is clear that the system and model of management, containing a quality and an omnipresent supervisory function, as well as the development stimulating function, has not been developed yet in Croatia [15].

The research also shows that Croatia does not have the strategy for management of maritime domain. The strategy should focus on the potential of maritime domain and its contribution to the sustainable economic development, creation of employment and promotion of innovation and sustainable development. At the same time, the strategy would be the base for the reform of the existing MDSA or for the completely new law on maritime domain and seaports.

In respect of the size of national territory covered by maritime domain and its importance for the general Croatian economy, especially for tourism, we believe that is undeniable that this issue should be regulated as follows: the newly established Public Institution should manage the maritime domain and it should have branches on regional level. Thereby the management system of mari-

time domain would finally be consistent, managed from one place and under administration of experts.

We think that HA solved well the question of monitoring of maritime domain.

The research also shows that maritime domain in comparative laws (Italy, Spain and France) is inalienably state-owned, unlike in Croatia where the maritime domain is in non-owner system (lat. *res extra commercium*). In all observed countries, like in Croatia, the concession is the only legal way to use the maritime domain for commercial purpose. As far as the management of the port system is concerned, every country has its specific model of port management and generally of maritime domain management based on longtime tradition.

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