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CHALLENGES OF LEGAL REGULATION OF SEA KAYAKING IN THE REPUBLIC OF CROATIA****

Summary: *The paper deals with the analysis of the existing legal framework of the status of sea kayaks in the Republic of Croatia, the definition and the position of a kayak as a vessel in the domestic navigation safety system, and its goal is to present the regulation and give a critical review thereof. The types of kayaks are presented with respect to their purpose and construction, the univocity of the term in domestic legislation is questioned, and the solutions of the French model, which individualises these vessels with regard to the mentioned features, will be presented comparatively. The paper also presents kayaking as a sport and economic activity, as well as the necessary education of kayakers for the needs of active and adventure tourism.*

The paper analyses the international and national legal framework of navigation safety. The results of a survey of legal regulation of sea kayaking in the Republic of Croatia are also presented. The authors conclude that sea kayaking in the Republic of Croatia has not been properly regulated and that the existing legislation needs to be changed.

Keywords: *sea kayak, legal regulation of sea kayaking, navigation safety*

1. INTRODUCTION

Sea kayaking is in the broadest sense a tourism and recreational or a sporting and competitive activity, it is a type of expeditious venture or simply unclassified navigation in terms of the practicality of motion in a certain environment – after all, this is how *sea kayaking* emerged

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(from the need for hunting in cold waters).¹ In a strictly technical sense, it is about the use of a vessel with certain characteristics in order to achieve optimal results in a given environment, which is why today a *sea kayak* in the narrower sense is considered a vessel with which it is possible to move, i.e., to travel by sea for a longer period of time and covering longer distances.

The lengths of today's *sea kayaks* reach up to 5.5 metres, and they are most often made of polyethylene or composites.² In terms of structural characteristics, sea kayaks can be used as: 1) sporting goods designed for competitions (an open cockpit and the narrower design for faster motion (the so-called *sit-on-top kayaks*)), 2) sporting goods for coastal recreation (an open cockpit with larger width for better stability (short-trip and fishing kayaks)), and 3) vessels for long-distance sea travel (a closed cockpit (the so-called *sit-in kayaks*)). Differentiation of the so-called sit-in kayaks is also important for the legal regulation of kayaks, which will be discussed in the paper. In the paper, the term *sea kayak* refers to long-distance travel sea kayaks.

The paper analyses the status of sea kayaks in the Republic of Croatia and the boundaries within which they are allowed to navigate. Since this is not stated in the regulations, does this mean that a kayak is allowed to move all the way to the outer limit of the territorial sea? Are there statutory differences in terms of seaworthiness between different types of kayaks (as it is formally and legally regulated in France) and kayaker competences, i.e., under what conditions a certain type of kayak can be considered a seaworthy vessel? In the Republic of Croatia, kayaks are not subject to the technical rules for the statutory certification, which is why they are not explicitly classified in any of the prescribed navigation areas. The right to navigation and its scope will be clarified through the analysis of *de lege lata* regulations on navigation safety, the provision of services in tourism and sports. Possible *de lege ferenda* solutions will be proposed.

2. LEGAL REGULATION OF SEA KAYAKS IN THE REPUBLIC OF CROATIA

The Maritime Code under the term maritime craft, according to Art. 5(1)(29), means “a craft intended for navigation at sea (waterborne craft) or craft permanently moored or anchored at sea (a floating facility), i.e., a structure entirely or partially embedded into the seabed or positioned onto the seabed (a fixed offshore facility).” According to Art. 5(1)(27) of the Maritime Code, waterborne craft is a maritime craft intended for navigation at sea, which can be a ship, warship, submarine, yacht or boat³. The Maritime Code⁴ neither defines kayaks nor classifies them as waterborne craft. Since the Maritime Code does not classify kayaks as waterborne crafts, Art. 5(1)(27), and therefore not in maritime crafts, thus ignoring the fact

1 Gordon Brown, *Sea kayak* (Pesda Press 2006).

2 *Ibid.* 11–12.

3 *Ibid.* On the terminology and nomenclature of maritime crafts (objects), see Vesna Skorupan Wolf, ‘Koncept stvarne nadležnosti sudova u plovibnenim sporovima (analiza *de lege lata*)’ (2018) 39(2) Zbornik Pravnog fakulteta Sveučilišta u Rijeci, 955–958.; The Croatian Maritime Law Association response to the CMI Questionnaire on vessel nomenclature (April 14, 2016), <<https://comitemaritime.org/wp-content/uploads/2018/05/Croatia-MLA-Replies-to-the-Ship-Nomenclature-Questionnaire.pdf>> accessed 24 February 2023; Dragan Bolanča and Petra Amižić Jelovčić, *Pomorsko pravo* (Sveučilište u Splitu, Pravni fakultet Split 2023), 126–127; Aleka Mandaraka-Shepard, *Modern maritime law and risk management* (second edition, Informa London 2009) 13–19.

4 Maritime Code [Pomorski zakonik] (Official Gazette, 181/2004, 76/2007, 146/2008, 61/2011, 56/2013, 26/2015, 17/2019) (HR).

of the existence of objects whose purpose is navigation, the question arises as to which rules apply to them if they are not considered vessels according to the Maritime Code. It is not easy to answer the question because of the existing legal gaps, and this issue has not been discussed in the professional or scientific literature. The position of kayaks, when we talk about the areas in which they were allowed to navigate, was to some extent regulated by the previous versions of the Ordinance on Safety of Maritime Navigation in the Internal Sea Waters and the Territorial Sea of the Republic of Croatia and on the Manner and Conditions of Maritime Traffic Supervision and Management⁵ and Ordinance on boats and yachts,⁶ however, in the currently valid versions, these provisions are no longer present.

Where do the *de lege lata* provisions mention kayaking? Kayaks are mentioned in the Maritime Code only in Art. 5(1)(7), which stipulates that the term boat does not encompass vessels belonging to another maritime craft for the purpose of collecting, salvaging or doing work, vessels intended exclusively for competitions, canoes, kayaks, gondolas and pedalos, and windsurfing boards and surfboards (the same as in Art. 1(2) of the Ordinance on boats, boats and yachts).⁷ Furthermore, the Ordinance on boats, boats and yachts stipulates in its Art 9(2) (2) that the design and construction provisions of the Ordinance shall not apply to kayaks, canoes, gondolas, pedalos and similar vessels propelled by human power. The provisions of the Ordinance are derived from Directive 2013/53/EU, which refers to the requirements for the design, manufacture and free movement within the Union of certain types of vessels and components thereof. Although the Directive exempts kayaks from the scope of the provisions on the design and construction requirements laid down in Annex I, Part A,⁸ there is no obstacle to any other ordinance to contain provisions on the technical characteristics of kayaks and to classify them into special navigation zones. For example, this was done by France with the Order relating to ship safety and pollution prevention (hereinafter referred to as “the Order”⁹), more specifically, by supplementing the Order (Division 245: on technical rules for ships and recreational craft excluded from the CE marking with a hull length of less than or equal to 24 metres)¹⁰, or by amending the Order (Amendments to Division 240: on safety rules for the navigation of vessels with a hull length of less than or equal to 24 metres).¹¹

5 This Ordinance from 2013 (Official Gazette, 79/2013) (HR) prescribed in Art. 48(6) that: “Vessels under oars, windsurfing boards, surfboards, canoes, kayaks, gondolas, and pedal boats may navigate at the distance of less than 50 m from the coast”.

6 According to Article 5(2) of the Ordinance on boats and yachts (Official Gazette, 27/2005) (HR) a kayak was not allowed to move more than 500 meters away from the coast of the mainland or the island.

7 Ordinance on boats, boats and yachts (Pravilnik o brodicama, čamcima i jahtama) (Official Gazette, 13/2020, 52/2020) (HR). Since there is no difference between the terms “brodica” (boat) and “čamac” (also boat) in the English translation, in this paper we will use the term “inland waterway boat” for “čamac” in order to emphasise the difference between these two terms and avoid additional complications in relation to terminology. The title of the “Pravilnik o brodicama, čamcima i jahtama” remains the “Ordinance on boats, boats and yachts” in the English translation.

8 Essential design and construction requirements are listed in Annex I and relate to: 1. general requirements (watercraft identification, watercraft builder’s plate, protection from falling overboard and means of re-boarding, visibility from the main steering position, owner’s manual), 2. integrity and structural requirements, 3. handling characteristics, and 4. installation requirements.

9 Order of 23 November 1987 relating to ship safety and pollution prevention (F) available at: <<https://www.legifrance.gouv.fr/loda/id/LEGISCTA000031120210>> accessed 6 May 2022.

10 Order of 5 June 2015 amending the Order of 23 November 1987 relating to ship safety (divisions 241 and 245 of the appended regulations) (F) available at: <<https://www.legifrance.gouv.fr/loda/id/LEGIARTI000031119760/2015-09-02/>> accessed 6 May 2022.

11 Order of 6 May 2019 replacing the Order of 23 November 1987 relating to ship safety (Division 240) (F), available at: <<https://www.legifrance.gouv.fr/loda/id/LEGIARTI000038464389/2019-05-13/>> accessed 6 May 2022.

According to the current Ordinance on boats, boats and yachts¹², a kayak seems to correspond to the broader concept of an inland waterway boat because the Ordinance clearly distinguishes the concept of an inland waterway boat with the total power of its propulsion engines greater than 5 kW from a rowing boat (Art. 4(1)(7, 9 and 10)), without explicitly excluding kayaks, as was done in the definition of a boat. However, the following should be emphasised here - unlike a boat, which is a waterborne craft intended for navigation at sea (Art. 4(1)(2) of the Ordinance) and inland waterway navigation as well (Art. 37(7) of the Ordinance), an inland waterway boat is a waterborne vessel intended exclusively for inland waterway navigation (Art. 4(1)(9) of the Ordinance). Furthermore, in its Art. 5(1)(10), the Inland Waterway Navigation and Ports Act¹³ expressly states that the term an inland waterway boat does not include a canoe, kayak, gondola and pedalo. Thus, just as the Maritime Code stipulates that a boat does not include a canoe, kayak, gondola and pedalo, so does the Inland Waterway Navigation and Ports Act for an inland waterway boat.

Although kayaks are excluded from the definition of waterborne craft, the fact that many kayaks are sailing on the sea certainly raises the question of the area in which they are allowed to navigate. One of the issues is the maximum allowable distance from the coast or refuge. Namely, by the Ordinance on boats and yachts of 2005, the motion of kayaks was limited to a distance of up to 500 metres from the mainland coast or the island coast,¹⁴ but this solution was abandoned, and the said provision was deleted by the amendments to the Ordinance on boats, boats and yachts of 2020 (hereinafter referred to as “the Ordinance”). According to the results of the survey, which was conducted in 2022 among experienced sea kayakers (all 34 respondents are experienced sea kayakers, ten of whom have a specialised licence to guide kayak tours or are instructors), 67.6 % of them paddle on a distance greater than 500 metres from the coast or refuge.¹⁵

Based on the above, it can be said that kayaks are human-powered vessels that are not entered in the registers. Although it might seem that they can be subsumed under the definition of recreational craft,¹⁶ but according to the Croatian Ordinance on boats, boats and yachts, as well as the aforementioned Directive, a kayak is not recreational craft. Namely, in its Art. 9(1) (1), the Ordinance prescribes that in relation to the design and construction it shall apply to recreational craft and partially completed recreational craft, and we have already mentioned that it shall not apply to kayaks.

It has already been stated that a kayak does not need to be registered in the Register of Ships.¹⁷ In this context, we shall also mention the provision of Art. 11(2) of the Inland Waterway

12 Ordinance on boats, boats and yachts (Pravilnik o brodicama, čamcima i jahtama) (Official Gazette, 13/2020, 52/2020) (HR).

13 Inland Waterway Navigation and Ports Act [Zakon o plovidbi i lukama unutarnjih voda] (Official Gazette 144/2021) (HR).

14 Art. 5(2) of the Ordinance on boats and yachts (Official Gazette, 27/2005) (HR) stipulated that “other waterborne craft not entered in the register or boat ledger (e.g. a kayak, canoe, gondola, pedalo, windsurfing board, etc.) must not move more than 500 metres away from the mainland or island coast”. It was expressly stated here that kayaks are not entered in registers or boat ledgers.

15 Survey, <<https://docs.google.com/forms/d144EX1ESo-5mgY1acbuqiyudarcck-l62upkzytdkt1s/viewanalytics>>.

16 Pursuant to Art. 4(1)(51), “recreational craft is any boat of any type intended for sports and leisure purposes of hull length from 2.5m to 24m, measured according to the harmonised standard, regardless of the means of propulsion.”

17 Ordinance on Safety of Maritime Navigation in the Internal Sea Waters and the Territorial Sea of the Republic of Croatia and on the Manner and Conditions of Maritime Traffic Supervision and Management (Pravilnik o sigurnosti pomorske plovidbe u unutarnjim morskim vodama i teritorijalnom moru Republike Hrvatske te načinu i uvjetima obavljanja nadzora i upravljanja pomorskim prometom) (Official Gazette, 79/2013, 140/2014, 57/2015) (HR).

Navigation and Ports Act, in the chapter dealing with the safety of navigation, which stipulates that “inland waterway vessels that are not registered in the register of ships or have been deleted therefrom shall not navigate on inland waterways, unless they are exempt from the obligation to register”. Based on this provision and taking into account the definition of the terms inland waterway craft¹⁸ and vessel¹⁹ in the Inland Waterway Navigation and Ports Act, which includes “any other inland waterway vessel capable of navigation”, it could be concluded that kayaks can be included in the definition of inland waterway (i.e., rivers, canals and lakes) vessels, which are intended for navigation on inland waterways. But here we go back to the beginning: what about kayaks that are used and navigate at sea, which are not defined by the Maritime Code and cannot even be included in the broadest definition of a maritime craft pursuant to the Maritime Code?²⁰

It is important to define a ship/vessel. “Defining a ship is important in many areas of shipping law (including marine insurance) in order to determine whether the provisions of various statutes, which are intended to apply to ships, are applicable to structures other than those which are obviously a ship. A decision whether a particular structure is a ship or not will determine the basis of liability.”²¹ For example Mandaraka-Shepard states that for the purposes of the English Merchant Shipping Act “When an object has the shape of vessel and is used in navigation in navigable waters ... it will be a ship.”²²

The problem of the scope of application of the provisions laid down by the Maritime Code to structures has already been highlighted in the literature.²³ Namely, pursuant to Art. 2(1) of the Maritime Code, unless otherwise specified, its provisions pertaining to ships shall also apply to other maritime craft, with the exception of warships. However, there are deviations from this general rule in some Maritime Code provisions, in some parts, the application of the Maritime Code is narrowed, while in others it is extended to, e.g. “vessels and structures capable of navigation” or “all vessels, regardless of their size and purpose they are used for”, and as Tuhtan Grgić rightly concludes, the significance of these provisions is not entirely clear.²⁴ The problems of understanding the terms *ship* and *vessel* also exist in comparative law²⁵ and at the international level, which does not contribute to “finding a uniform solution”²⁶ and also leads to legal uncertainty.

18 Pursuant to Art. 5(1)(37) of the Inland Waterway Navigation and Ports Act, “inland waterway craft is a craft intended for navigation on inland waterways (vessel) or a raft permanently moored or anchored on inland waters that is not intended for navigation (floating structure of inland navigation)”.

19 According to Art. 5(1)(40) of the Inland Waterway Navigation and Ports Act, “vessel is an inland waterway craft intended for navigation on inland waterways, and it can be a ship, a floating establishment, a warship, an inland waterway boat or a scaffold and any other inland waterway vessel capable of navigation”.

20 According to Art. 5(1)(31) of the Maritime Code, “a maritime craft is a craft intended for navigation at sea (waterborne craft) or craft permanently moored or anchored at sea (a floating facility), i.e., a structure entirely or partially embedded into the seabed or positioned onto the seabed (a fixed offshore facility)”.

21 Aleka Mandaraka-Shepard (n 3), 14.

22 *Ibid.* 18.

23 Iva Tuhtan Grgić, ‘Polje primjene imovinskopravnih odredbi Pomorskog zakonika s obzirom na objekte’ (3rd International scientific conference on maritime law “Modern challenges of marine navigation”, Split, Croatia, 2021) 333–379.

24 *Ibid.* 334.

25 Aleka Mandaraka-Shepard (n 3) 13–19.

26 *Ibid.* 359; Comité Maritime International (CMI), Ship Nomenclature <<https://comitemaritime.org/work/ship-nomenclature/>> accessed 23 February 2023.

Is it possible to extend the application of the Maritime Code according to Art. 2(1) on kayaks? Unlike the Inland Waterway Navigation and Ports Act, the Maritime Code does not define the term vessel, but in the part that regulates salvage (Art. 761(2)) it states that a ship in the sense of that part of the Code means any ship, boat, yacht, vessel and structure capable of navigation, so we can say that the provisions related to rescue include kayaks as well. When it comes to collisions, according to Art. 748 of the Maritime Code provisions on ship collisions apply to every waterborne craft irrespective of its purpose, and a hydroplane at sea. As we have already said, according to the Maritime Code, a kayak is not a waterborne craft, but we would apply the provisions on collisions to a kayak as well (see chapter 3.2). Given the structural characteristics of a kayak, i.e., that it is a smaller vessel in a visual and safety sense and technically largely unsuitable for motion on the open sea (often due to structural characteristics, and certainly due to the fact that it is a human-powered vessel), a sea kayak is not adequately regulated by international conventions related to maritime traffic (with the exception of the general application of the International Convention for the Unification of Certain Rules of Law with respect to Collisions between Vessels of 1910²⁷ and the International Convention on International Rules for Preventing Collisions at Sea (COLREG) of 1972²⁸). Since the International Convention for the Safety of Life at Sea (SOLAS)²⁹ applies to ships entitled to fly the flag of States the Governments of which are Contracting Governments (Art. 2), and Chapter V "Safety of navigation", which is given in the Annex, states: "Unless expressly provided otherwise, this chapter shall apply to all ships." All ships are defined in Chapter V, regulation 2, point (3) as: "any ship, vessel or craft irrespective of type and purpose", so the provisions of Chapter V would also apply to kayaks.

By virtue of Directive 2013/53/EU of the European Parliament and of the Council of 20 November 2013 on recreational craft and personal watercraft³⁰, the European Union explicitly excludes canoes and kayaks designed to be propelled solely by human power, gondolas and pedalos from the scope of the design and construction provisions (Article 2(2)(a)(ii)) and thus the regulation of those aspects of kayaks is left to the Member States. However, the aforementioned regulation has not taken place in the Republic of Croatia.

3. SEAWORTHINESS AS AN ELEMENT OF NAVIGATION SAFETY

Seaworthiness is considered to be one of the fundamental concepts of navigation safety. In the legal sense, seaworthiness requires compliance with technical requirements with respect to the construction of the vessel, safety equipment on-board, the functionality of safe-

27 Convention for the Unification of Certain Rules of Law with respect to Collisions between Vessels of 1910, available at: <<http://www.admiraltylawguide.com/conven/collisions1910.html>> accessed 23 February 2023.

28 Convention on the International Regulations for Preventing Collisions at Sea of 1972 (COLREG Convention), available at: <<https://www.ecolregs.com/index.php?Itemid=505,&lang=hr>> accessed 3 May 2022.

29 International Convention for the Safety of Life at Sea (SOLAS) of 1974 available at: <[https://www.imo.org/en/About/Conventions/Pages/International-Convention-for-the-Safety-of-Life-at-Sea-\(SO LAS\),-1974.aspx](https://www.imo.org/en/About/Conventions/Pages/International-Convention-for-the-Safety-of-Life-at-Sea-(SO%20LAS),-1974.aspx)> accessed 3 May 2022, and SOLAS, Consolidated Edition, 2012, <[http://www.mar.ist.utl.pt/mventura/Projecto-Navios-1/IMO-Conventions%20\(copies\)/SOLAS.pdf](http://www.mar.ist.utl.pt/mventura/Projecto-Navios-1/IMO-Conventions%20(copies)/SOLAS.pdf)> accessed 3 February 2023.

30 Directive 2013/53/EU of the European Parliament and of the Council of 20 November 2013 on recreational craft and personal watercraft and repealing Directive 94/25/EC (2013) OJ L 354.

ty equipment on-board and the competence (qualifications) of the crew members, i.e., the ones managing the vessel.³¹ Seaworthiness is often discussed in the literature, so Marin states that it refers to the ability of a ship and its crew to face marine risks.³² Marin states that the seaworthiness of a ship is theoretically divided into: a) general seaworthiness (refers to the general condition of the ship), and b) special seaworthiness (additionally required to complete a specific (contracted) voyage.³³ In addition, he points out that in order for the ship to be seaworthy, it must meet the requirements prescribed by the provisions of maritime property and maritime administrative law, especially the requirements related to the safety of navigation. These are, for example, the provisions of the International Convention for the Safety of Life at Sea (SOLAS).³⁴ Bolanča explains in more detail that it is about: a) absolute (general, general technical) seaworthiness of the ship, which includes nautical safety elements (related to the hull, machinery, equipment), and b) relative (special, the ability to receive and preserve cargo, seaworthiness in a broader sense) seaworthiness that allows a ship to transport and preserve cargo in good condition.³⁵ Pursuant to Croatian regulations, a ship is seaworthy if it complies with the provisions of the Maritime Code, the regulations adopted based on the Maritime Code and the Technical Rules for the Statutory Certification of Maritime Craft (pursuant to Art. 77(9) of the Maritime Code, the adoption of Technical Rules is entrusted to the minister responsible for maritime affairs).

In addition to the above, a vessel shall be maintained in good condition suitable for safe navigation. Periodic regular and additional vessel inspections are foreseen for that particular purpose. Structural characteristics of the vessel declared by the manufacturer, but not legally regulated and confirmed by the competent authority or organisation, would only represent practical seaworthiness.

Kayaks are excluded from the provisions referring to the registration of vessels³⁶ and are not subject to the statutory certification rules, and Croatian legislation does not distinguish between the types of kayaks and their purpose. Nevertheless, the authors considered it necessary to clarify the concept of seaworthiness, bearing in mind the proposals of *de lege ferenda* solutions. As for a subjective element, i.e. a kayaker, what matters are their 1) skills (physical coordination skills and safety-related theoretical knowledge (navigation rules, rescue techniques, knowledge of rules and regulations, assessment of weather conditions, etc.), and 2) physical fitness (age, physical readiness, sun, waves, rain and wind tolerance, etc.). Both of these components are important for the stability of the vessel itself in certain conditions.

31 Ahmad Hussam Kassem, 'The Legal Aspects of Seaworthiness: Current Law and Development' (doctoral thesis, Swansea University 2006), 25.

32 Jasenko Marin, 'Odgovornost prijevoznika za plovidbenu sposobnost broda' (2008) 58(1-2) Zbornik Pravnog fakulteta u Zagrebu, 490.

33 *Ibid.* 491.

34 *Ibid.*

35 Dragan Bolanča, 'Sposobnost broda za plovidbu u pomorskom prijevozu stvari' (1994) 41(1-2) Naše more, 61. See also Drago Pavić, *Pomorsko imovinsko pravo* (Književni krug, Split 2006), 127; Dragan Bolanča and Petra Amižić Jelovčić (n 3) 345-347.

36 According to Art. 50 of the Law on Inland and Maritime Navigation of the Federation of Bosnia and Herzegovina Kayaks are not subject to establishing the seaworthiness, but must be registered by the sports association. <<https://www.fbihvlada.gov.ba/bosanski/zakoni/2005/zakoni/42hrv.htm>> accessed 23 March 2024. Also according to Art. 217 of the Maritime Code of the Republic of Slovenia, kayaks do not have to be registered in the boat register. <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO2868> accessed 23 March 2024.

While the problem of legal non-identification and non-regulation of kayaks spills over into the issue of navigation safety and possible searches for accident victims, the Act on the Provision of Tourism Services, prescribing the rules for provisions of active and adventure tourism services, prescribes the conditions for the provision of these services (see Art. 92 and 93 of Act on the Provision of Tourism Services), which apply to kayaker as a guide (leaders the groups of kayakers) and thus cause a discrepancy in relation to the mentioned subjective abilities for navigation and those related to the vessel itself.

3.1. SAFE NAVIGATION RULES FOR KAYAKING IN THE REPUBLIC OF CROATIA

It is indisputable that in practice kayaks are used for navigation, which is what they are designed and intended for. A kayak is a small human-powered vessel, for which the distance from the coast or refuge represents a particular problem in terms of safe navigation, so smaller navigation zones are generally prescribed for such types of vessels compared to larger or motorised vessels. As a small vessel, a kayak is relatively invisible at sea, and from their perspective, a kayaker will have a harder time noticing hydrologic change, i.e. hazards, or an oncoming inland waterway boat, boat or other smaller vessel than, for example, a member of a ship's crew. Some authors state that "ever-changing weather and sea conditions constitute environmental hazards that paddlers constantly must pay attention to and act upon to stay safe."³⁷ All of this will impact the specific and practical seaworthiness of the kayak to navigate parts of sea lanes with increased shipping traffic. Starting from Art. 5(30) of the Maritime Code, according to which maritime navigation is navigation carried out in the sea and on the rivers of the Adriatic river system up to the limit navigable from the side of the sea, as well as the purpose of kayaks, it is indisputable that kayaks participate in maritime navigation and that in practice they behave as waterborne craft.

Although the legislator has not regulated kayak navigation areas in detail, certain rules of motion could be read from the Ordinance on the Safety of Maritime Navigation in the Internal Sea Waters and the Territorial Sea of the Republic of Croatia and on the Manner and Conditions of Maritime Traffic Supervision and Management.³⁸ In Part III "Safety of Navigation" in the said Ordinance, Article 45 stipulates that waterborne craft of less than 24 metres in length, regardless of the type of propulsion, shall, "during navigation, entering and leaving the port, as well as in the area of port entrances in the radius of one nautical mile calculated from the port entrance, and in narrow channels of internal waters, unless otherwise specified by special regulations for certain parts of internal waters, keep out of the way of larger waterborne craft. In these areas, waterborne craft entering the port, river or narrow channel must not obstruct the manoeuvring of the waterborne craft leaving the port, river or narrow channel". The Ordinance did not provide a definition of waterborne craft, but if we consider

37 Eivind Aadland, Odd Lennart Vikenea, Peter Varleya, and Vegard Fusche Moe, 'Situation awareness in sea kayaking: towards a practical Checklist' (2017) 3, *Journal of Adventure Education and Outdoor Learning*, 203.

38 Ordinance on Safety of Maritime Navigation in the Internal Sea Waters and the Territorial Sea of the Republic of Croatia and on the Manner and Conditions of Maritime Traffic Supervision and Management (Pravilnik o sigurnosti pomorske plovidbe u unutarnjim morskim vodama i teritorijalnom moru Republike Hrvatske te načinu i uvjetima obavljanja nadzora i upravljanja pomorskim prometom) (Official Gazette, 79/2013, 140/2014, 57/2015) (HR).

that the rules on navigation safety should apply to all vessels, we are of the opinion that this provision also applies to kayaks. Furthermore, the concept of a boat has not been defined either, and pursuant to Art. 48(3), “Any boat with no mechanical propulsion may navigate indefinitely within the distance of up to 50 m from the coast”. In the versions from 2013 (Official Gazette, No. 79/2013) and 2014 (Official Gazette, No. 140/2014), the text of the Ordinance contained a provision in Art. 48(6) that read: “Vessels under oars, windsurfing boards, surfboards, canoes, kayaks, gondolas, and pedal boats may navigate at the distance of less than 50 m from the coast”. It remains unclear why the legislator deleted this provision and whether the changes introduced in 2015 (Official Gazette, No. 57/2015) also encompass kayaks by the term boats with no mechanical propulsion.

In the Republic of Croatia, navigation announcements of kayak to the competent harbour master’s office are good safety-friendly practice, but unfortunately an exception that is made mostly only by the organisers of sports events when they submit a request for navigation approval, and sometimes also by specialised travel agencies and heads of educational programmes when it comes to field classes. Namely, they are obliged to do so pursuant to Art. 54c(1) of the Maritime Code, which prescribes that sports and other activities can be performed on a navigable waterway only with prior approval issued by the competent harbour master’s office and with the conditions and measures for safe navigation defined by that approval. This is where the problem of inconsistency between the safety standards of the harbour master’s office and the competence of the programme manager may arise. When it comes to active and adventure tourism, the standards of the Act on the Provision of Tourism Services are applied to persons qualified to work in these cases (see *infra* 4).

The Harbour Master’s Offices Act³⁹ gives a list of navigation safety tasks. One of the tasks is “to determine the seaworthiness of maritime craft and inland waterway vessels to the extent determined by maritime and navigation rules and regulations.”⁴⁰ Therefore, seaworthiness cannot be determined based on regulations that are neither maritime nor navigational. Given that the seaworthiness of a kayak is not legally regulated, there are no standards for the vessel, so it cannot be defined by the harbour master’s office. As for kayakers, there are rules, but within the framework of active and adventure tourism activities, i.e. pursuant to the Act on the Provision of Tourism Services, but these are not regulations in the field of maritime affairs and navigation.

3.2. KAYAK ACCIDENTS AND RESCUES

Pursuant to its Article 748, provisions of the Maritime Code on collisions refer to “waterborne craft irrespective of its purpose, and a hydroplane“. We agree with the opinion stated in the literature that the provisions on ship collisions should be applied “to all vessels in the technical sense of the word, regardless of the legal qualification of an individual vessel”.⁴¹ Thuhtan Grgić states that the collision rules “should also be applied to vessels that belong to another

39 Harbour Master’s Offices Act [Zakon o lučkim kapetanijama] (Official Gazette 118/2018) (HR).

40 Harbour Master’s Offices Act [Zakon o lučkim kapetanijama] (Official Gazette 118/2018) (HR), Art. 4(1)(11).

41 Iva Tuhtan Grgić (n 23) 357.

maritime craft for the purpose of collecting, salvaging or doing, as well as to vessels intended exclusively for competitions (which are excluded from the definition of the term boat, Art. 5(1)(7) of the Maritime Code), to fast vessels (which includes hydrofoils and hovercrafts), jet-skis and all autonomous watercraft.”⁴² For “objects which are often present at sea today and which, due to the speed they develop, can participate in an accident at sea (for example, windsurfing boards, boards with a parachute – kiteboarding, etc.)” she states that “it seems that the collision provisions would not apply”, and that the rules of civil law (Civil Obligations Act) would be applied to questions of liability of users of such facilities for collisions with waterborne craft.⁴³

When it comes to international sources, the COLREG convention⁴⁴ also applies to kayaks. Namely, pursuant to Rule 3, the word “vessel” includes every description of watercraft, including non-displacement craft, Wing-in-Ground (WIG) craft and seaplanes, used or capable of being used as a means of transportation on water. In addition to the general rules, there are specific rules for smaller vessels: Rule 9 Narrow Channels, Rule 10 Traffic Separation Schemes, Rule 25 Sailing Vessels underway and Vessels under Oars, Rule 33 Equipment for Sound Signals, Rule 34 Manoeuvring and Warning Signals, Rule 35 Sound Signals in Restricted Visibility, Regulation 36 Signals to Attract Attention, Rule 37 and Annex IV: Distress Signals.⁴⁵

The Republic of Croatia is a party to the 1979 International Convention on Maritime Search and Rescue^{46,47} and the 1989 International Convention on Salvage^{48,49}, while the national normative framework consists of the Maritime Code, the Harbour Master’s Offices Act,⁵⁰ and the National Plan for Search and Rescue of Human Lives at Sea. The National Centre for Navigation Safety, the National Maritime Search and Rescue Coordination Centre (headquartered in Rijeka), the National Centre for Maritime Traffic Monitoring, the National RIS Centre,⁵¹ harbour master’s management and harbour master’s offices⁵² are responsible for search and rescue operations.

42 *Ibid.* 358.

43 *Ibid.*

44 Convention on the International Regulations for Preventing Collisions at Sea of 1972 (COLREG Convention), available at: <<https://www.ecolregs.com/index.php?Itemid=505,&lang=hr>> accessed 3 May 2022.

About the COLREG convention see Ivo Grabovac, *Suvremeno hrvatsko pomorsko pravo i Pomorski zakonik* (Književni krug, Split 2005), 35; Jesús A. García Maza, Reyes Poo Argüelles, ‘COLREGs and their application in collision avoidance algorithms: A critical analysis’ (2022) 261 *Ocean Engineering*, 112029.

45 Dražen Jašić, Goran Belamarić, Ana Gundić, *Međunarodna pravila o izbjegavanju sudara na moru* (Sveučilište u Zadru, Zadar 2012), 31.

46 International Convention on Maritime Search and Rescue, 1979 (Official Gazette, International Agreements 14/1996) (HR).

47 About International Convention on Maritime Search and Rescue see: Dragan Bolanča and Petra Amižić Jelovčić (n 3) 87–88; Branka Milošević Pujo and Emanuel Jurčević, ‘Traganje i spašavanje na moru’ (2006) 53(1–2) *Naše more* 34–38; Ivo Grabovac (n 44) 41; Drago Pavić (n 35) 358–360; Rick Button, ‘International Law and Search and Rescue’ (2017) 70(1).

48 International Convention on Salvage of 1989 (Official Gazette, International Agreements, No. 9/1998).

49 About International Convention on Salvage, see: Ivo Grabovac, ‘Kako uračunati “posebnu naknadu” u Međunarodnoj konvenciji o spašavanju, 1989.’ (1997) 153–154 *Poredbeno pomorsko pravo* 1–12; Predrag Stanković, ‘Nova Međunarodna konvencija o spašavanju na moru’ (1989) 31(122–124) *Uporedno pomorsko pravo* 291–300; Michael Kerr, ‘The International ‘Convention on Salvage 1989 – how it came to be’ (1990) 39(3) *International and Comparative Law Quarterly* 530–556.

50 Harbour Master’s Offices Act [Zakon o lučkim kapetanijama] (Official Gazette 118/2018) (HR).

51 *Ibid.* Art. 16.

52 *Ibid.* Art. 17.

Article 760 of the Maritime Code stipulates that the provisions provided for in Title II of Part 8 shall apply to the rescue of persons, ships, goods on board and any other property that is in danger at sea, and the definition of a ship is given and expanded by Article 761(1)(2) that reads: “ship is any ship, boat, yacht, waterborne craft or another craft capable of navigation”. But, neither waterborne craft nor craft capable of navigation is defined. However, it can be said that these terms would also include kayaks.

According to data provided by the National Maritime Search and Rescue Coordination Centre in Rijeka, only eight and ten kayakers were rescued in 2019 and in 2020, respectively.⁵³ The relatively small number of rescued kayakers is the result of good business practices of specialised agencies that mostly organise this kind of navigation. The statistical data in this case are probably affected by the fact that in the case of minor accidents, the closest small motorised vessels are most often alerted by visual signals, and such actions are not a burden on the system and are rarely reported. Unfortunately, however, kayaking accidents can be serious and life-threatening.

4. KAYAKING AS AN ACTIVE AND ADVENTURE TOURISM ACTIVITY

In our system, kayakers and their competences should be viewed through the different roles they play, hence we distinguish between a kayaker as a competitor (amateur or professional sports), a recreational kayaker, a kayaker as a guest in an organised kayaking tour (a group led by an authorised person), a kayaker as a guide⁵⁴ (leads the group), a kayaker as an instructor⁵⁵ (provides instruction under certain conditions (instructors differ in their competence levels with respect to technical knowledge and degrees of difficulty of weather conditions)), and a kayaker as a coach.⁵⁶

Kayaking is a recent sport, although the types of boats used in these sports date back to ancient times.⁵⁷ The provisions of Art. 54(c) of the Maritime Code apply to sea kayaking as a sporting activity⁵⁸ in the context of organising competitions (see *supra* 3.1).

53 Republic of Croatia, Ministry of the Sea, Transport and Infrastructure, A1-MRCC SAR: Statistički podaci SAR akcija iz razdoblja 1. 1. 2020. do 31. 12. 2020. <https://mmpi.gov.hr/userdocsimages/dokumenti/MORE/USP/tis/tis%20Statistike/MMPI%20SAR%201.I-31.XII-20%20STATISTIKA%2015-2_21.pdf>.

54 Act on the Provision of Tourism Services [Zakon o pružanju usluga u turizmu] (Official Gazette 130/2017, 25/2019, 98/2019, 42/2020, 70/2021) (HR), Art. 93(1)(6) and 93(5).

55 Sports Act (Zakon o sportu) (Official Gazette, 71/2006, 124/2010, 124/2011, 86/2012, 94/2013, 85/2015, 19/2016) (HR), Art. 10.

56 *Ibid.*, Art. 9.

57 Učilište Ambitio, Stručni priručnik za program osposobljavanja za poslove instruktora rekreativnog kajak-kanua, Zagreb, 2019. <<https://zgturizam.uciliste-ambitio.hr/wp-content/uploads/2020/01/Stru%C4%8Dni-priru%C4%8Dnik-za-program-osposobljavanja-za-poslove-instruktora-rekreativnog-kajak-kanua.pdf>>, 61.

58 At the session of the Council of the Croatian Olympic Committee held on 7 December 2017 and upon the proposal of the Croatian Canoe Association, “38.11 Sea Kayak/ICF” was included in the nomenclature of sports under “38 Kayak-Canoe”, Croatian Olympic Committee, Documents: Council and Assembly Minutes, Zapisnik Hrvatskog olimpijskog odbora, No. 79/18, Zagreb, <<https://www.hoo.hr/dokumenti/4>> accessed 3 May 2022.

Sea kayaking can also be seen as an active and adventure tourism activity. Pursuant to Article 4 of the Act on the Provision of Tourism Services, tourism services are as follows: services provided by a travel agency, tourist guide, tour escort, entertainment organiser, travel agency representative, tourism services in other forms of tourist offer, and rental of recreational and sports equipment to tourists. As laid down in Art. 92(1), “tourism services of active and adventure tourism shall mean the activities on land, water and air, outdoors or in an undeveloped natural environment or in specially developed and equipped areas which, due to their particular characteristics, involve the risk of injury and the consequences thereof for their users.” Tourism services can be provided by companies, cooperatives, individual traders registered for the provision of tourism services who meet the requirements for the provision of such services, public institutions that manage the protected areas, farmers who carry out agricultural activities on an agricultural holding, persons with fishing licences, persons with aquaculture permits, owners of hunting rights and forest owners in the forests they own or possess, and natural persons, i.e. citizens (see articles 5 and 92 of the Act on the Provision of Tourism Services).

The list of activities that are considered active and adventure tourism services within the meaning of the Act on the Provision of Tourism Services is compiled by the Croatian Chamber of Economy within the framework of the Adventure Tourism Association (Article 92(3)). The Adventure Tourism Association of the Croatian Chamber of Economy considers “sea kayaking” and “river kayaking” as adventure and active tourism services.⁵⁹ When carried out by tourism service providers in accordance with the Act on the Provision of Tourism Services, the activities on the list “are not considered sports, and the implementation of these activities shall not include any of the sporting activities specified” in the Sports Act.⁶⁰

According to the results of the conducted research, 58.8% of respondents do not know what equipment they should take according to current regulations. Autonomous rules adopted indirectly by Croatian legislation by virtue of the Act on the Provision of Tourism Services refer to the professional standards of various international or foreign professional associations and form an indispensable part of the broader concept of navigation safety. It can also be said that in practice, a standard applied at the national level has been established through a relatively long activity of a guide in adventure tourism. This is confirmed by the results of the conducted research in relation to the question of the minimum safety standards when planning kayaking routes on which at no time they are more than 500 metres away from refuge: 91.2 % of respondents wear life jackets, 94.1 % have mobile phones, 88.2 % bring a rope, 88.2 % wear sun protection (a T-shirt, a cap, sunglasses), 85.3 % carry a spare oar, 85.3 % have a cockpit drain, 64.7 % a whistle, 55.9 % night navigation lights, and almost 80 % of respondents use the same source of information about hydro-meteorological conditions when planning. If we add to this the fact that there are only 10 respondents with a licence/certificate approved by the current standards of the Croatian Chamber of Economy – Tourism Sector in accordance with the Act on the Provision of Tourism Services, it should be concluded that

59 The Croatian Chamber of Economy, Turističke usluge aktivnog i pustolovnog turizma – popis aktivnosti i potrebnih uvjerenja ili certifikata, <<https://www.hgk.hr/odjel-turizam/turisticke-usluge-aktivnog-i-pustolovnog-turizma-popis-aktivnosti>> accessed 1 March 2023.

60 *Ibid.*

these are indeed the professional standards, which may be useful to the legislator for writing standards in future.

Article 93 of the Act on the Provision of Tourism Services lays down the conditions for the provision of active and adventure tourism services. The Expert Committee of the Croatian Chamber of Commerce is responsible for determining which licence or certificate is considered suitable for performing individual active and adventure tourism activities, as well as special conditions for performing individual active or adventure tourism activities and for the organisation of events that involve such activities. The list of appropriate licences or certificates and the conditions for performing individual active or adventure tourism activities and for organising events that involve such activities are published on the websites of the Croatian Chamber of Economy and the Ministry of Tourism and Sports. This list also includes approvals for the implementation of individual professional education programmes in the field of active or adventure tourism. The certification procedure is carried out in accordance with the autonomous rules of the respective professional associations, the Sports Act and the Adult Education Act.

The question arises as to the type of responsibility of the kayak guide who is authorised by this certificate to lead a group of kayakers, because the limits of their specific competences (technical knowledge of kayaking and the harnessing of wind, waves, currents of certain strength, and guidance and assessment in view of the above) are unknown, which threatens the doctrine of seaworthiness and justifies the need to standardise requirements for kayakers. These shortcomings have also been noticed by the Croatian Chamber of Economy, which recommends that managers and organisers of active and adventure tourism services, along with a licence/certificate, should also complete other education and training programmes that will provide a minimum level of knowledge and skills related to safe group management, prevention, meteorology, cartography, orientation, spotting danger in nature, rescue, the provision of assistance, etc. that will be technically upgraded with appropriate licences/certificates specific to a particular activity of domestic and foreign organisations, associations, chambers, and unions.⁶¹

5. THE FRENCH MODEL AND *DE LEGE FERENDA*

In France, a navigation safety system has been established for kayaks, *stand up paddleboards* and other human-powered vessels, but with a fundamental division into the so-called “*beach gear*” and “human-powered vessels, excluding *beach gear*”. For this purpose, Art. 1.02(2)(1) in Division 240 defines the so-called *beach machines*, which include vessels and human-powered vessels with a maximum length of 3.5 metres, so that any other vessel or craft of greater length would be included under the term “vessels, excluding *beach gear*”, but in the same point, the competent ministry clearly distinguishes *sea kayaks* from other vessels and craft when it refers to the application of the provisions of Division 245 on stability, watertightness and buoyancy of kayaks (“*boats or devices propelled mainly by human energy that do not meet the conditions of watertightness, stability and buoyancy of article 245-4.03, with a hull length greater than or equal*

⁶¹ *Ibid.*

to 3.50 m”), and finally lays the foundation for the concept of *seaworthiness* of a modern sea kayak. Article 4.03 of Division 245 on stability, watertightness and buoyancy defines *sit-in* kayaks precisely when it establishes the exception of wearing a *spraydeck* on classic self-draining models (*sit-on-top*; open deck) to prevent water from entering the cockpit. The provision also requires the existence of at least one air-filled chamber of degree 2 of watertightness (according to EN ISO 12216), which would maintain the highest point of the vessel at least 2 centimetres above the water level, despite the fully submerged cockpit, i.e. the deck.⁶²

	Navigation zones and related armament and safety equipment			
	Up to 300 metres from a refuge	To 2 miles from a refuge	From 2 miles to 6 miles from a refuge	From 6 miles from a refuge
Beach gear	No equipment required	Navigation reserved for supervised practice Art. 240-2.08 Specific basic equipment Art. 240-2.8	Navigation prohibited	Navigation prohibited
Human-powered vessels, excluding beach gear	No equipment required	Specific basic equipment Art. 240-2.10	Specific costal equipment Art. 240-2.10 Paddleboarding prohibited	Navigation prohibited

Figure 1. Presentation of the distinction between *beach gear* and sea kayaks and the application of safety equipment rules by zones, La Fédération Française de canoë-kayak, Guide du kayak en mer, 2015 <<https://www.ffck.org/nos-sites/reglementation/prevention/#1456151205796-5e57d623-e211>> accessed 6 March 2023 and Order of 6 May 2019 replacing the Order of 23 November 1987 relating to ship safety (Division 240) (F), available at: <<https://www.legifrance.gouv.fr/loda/id/LEGIARTI000038464389/2019-05-13/>> accessed 6 May 2022

Article 240-2.10 establishes navigation zones for beach gear and human-powered vessels, excluding *beach gear*, and mandatory safety equipment, as shown in the Figure 1.⁶³

1. Up to 300 metres from the refuge: beach gear and other vessels (without safety equipment, but only daytime navigation).
2. **Basique** zone (from 300 metres to 2 nautical miles): *beach gear* – only when the competent sports association organises a sports event; sea kayaks (and other *seaworthy* vessels) – in addition to a life jacket providing a minimum buoyancy of 50 N, a tow rope, a device that can be used for cockpit re-entry after capsized (e.g. *paddle float*), a waterproof flashlight with a minimum operating time of 6 hours or a torch, *sit-in kay-*

⁶² Order of 5 June 2015 amending the Order of 23 November 1987 relating to ship safety (divisions 241 and 245 of the appended regulations) (F) available at: <<https://www.legifrance.gouv.fr/loda/id/LEGIARTI000031119760/2015-09-02/>> accessed 6 May 2022.

⁶³ Order of 6 May 2019 replacing the Order of 23 November 1987 relating to ship safety (Division 240) (F), available at: <<https://www.legifrance.gouv.fr/loda/id/LEGIARTI000038464389/2019-05-13/>> accessed 6 May 2022.

aks – an adequate pump (or other device) for draining water from the cockpit (manual), mandatory parts for attaching the lower limbs and pelvis to the kayak.

3. *Côtière* (from 2 to 6 nautical miles): all of the above listed for *Basique* plus three rocket parachute flares or hand-held flares, a magnetic compass or a GPS unit, official nautical charts, COLREGs rules and a minimum of two kayakers (vessels) or one, only if the kayaker is a member of a recognised organisation that provides and coordinates these activities and has a waterproof VHF radio. Otherwise, one of the two kayakers must have a VHF radio.

Considering the issues of *de lege ferenda* solutions, the French model should serve as an example for the Croatian legal regulation of kayakers.

It is necessary to distinguish: a) sit-on-top kayakers (amateur/recreational) from b) sit-in kayakers (professional/expeditionary/touring). These basically two types of kayakers are described in the introduction of the paper, but the French model also knows their subtypes. At the same time, the kayak should definitely be included in the definition of maritime, respectively waterborne craft. It is necessary to define wider navigation areas for a sit-in type of kayak that is designed for navigation in difficult weather conditions and whose movement requires more practical experience, but less physical energy, and which is really used to travel by sea. We suggest that this type of kayak can navigate in IIIc navigation areas (up to 1 Nm from the mainland coast or the island coast as stated in Art. 37(1) of the Ordinance on boats, boats and yachts) or to III b (up to 3 Nm from the mainland coast or the island coast as stated in Art. 37(1) of the Ordinance on boats, boats and yachts) depending on the result of the technical test of the individual model (stability, partitioning, strength, etc.). It is also necessary to prescribe the use of mandatory safety equipment: radio station, pump, buoy, torch, light, map, compass, GPS, escort of at least one kayaker. For sit-in kayakers, we suggest registration if their purpose is aimed at navigating outside the zone for unregistered objects, i.e. recreational kayakers (outside the zone of 500 meters from a place of refuge). The use of registered kayakers would necessarily require the competence of the kayaker himself, where it would be advisable to use the rules of the Euro Paddle Pass and the corresponding levels of certification of autonomous organizations, even for non-commercial purposes, i.e. personal navigation.

If a kayak were to be used, which with its technical characteristics, can meet the certification requirements for navigation in navigation areas III, but within a zone of 500 meters from a place of refuge, in our opinion, the registration of such a kayak would not be necessary. The provisions of the Maritime Code and accompanying legislation would accordingly apply only to registered kayakers, whose status would be closest to the concept of a boat. Rescue and collision provisions would apply to both types of kayakers. Given that the domestic coast is specifically indented, and there are no major tidal differences (which would make planning and travel difficult), excluding these vessels from maritime traffic and legal regulation is really not practical.

6. CONCLUSION

A kayak and kayaking have not been adequately regulated in Croatian legislation. We do not have a positive definition of kayakers in the current legislation. Both the Maritime Code and

the Inland Waterway Navigation and Ports Act mention kayaks when they lay down that the term boat, *inter alia*, does not include kayaks. Sea kayaks could not be subsumed under the broadest term of maritime craft in the Maritime Code. In addition, a kayak is excluded from the scope of application of the provisions on entry in the register of ships, it is not subject to the rules on the statutory certification of maritime craft. In Croatian legislation, there is no distinction between the types of kayaks and their purpose. Furthermore, it is not regulated in which area kayaks can move, nor what equipment they should contain.

Shortcomings related to a legal distinction of kayaks with regard to type and purpose, as well as kayaking skill levels of kayakers, cause legal ambiguities in the field of navigation safety. Namely, without clear legal rules regulating kayaks, it is impossible to establish navigation safety standards that would fulfil their purpose. Kayak seaworthiness would include adequate vessel design, necessary safety equipment, and a certified kayaker who would navigate the kayak. In order for a kayak to be considered seaworthy for certain navigation, apart from its seaworthiness as a vessel, it should also be individualised, tested and recorded in some way. The need for entry in the register, in terms of vessel registration, practically exists only for more serious professional/*touring* models of sea kayaks, i.e., in the case when the kayaker really intends to use them for navigation further away from a place of refuge. This kind of use would be possible if the vessel met the conditions of the technical characteristics prescribed for certain navigation and if it was used in such conditions by a competent kayaker, with appropriate safety equipment that does not make an integral part of the kayak (a pump/bailer, a spraydeck, a life jacket/PFD, a flashlight, a spare oar, a rope, a compass, a nautical chart/a GPS unit, and a VHF radio).

Tourism contributes significantly to the Croatian economy. Therefore, it is necessary to pay more attention to active tourism and take advantage of all the positive aspects by which this type of tourist offer can contribute to the improvement and development of the overall tourism and economy. Sea kayaking is an adventure and active tourism service. In addition to the fact that it is an activity that is environmentally acceptable and that has great potential for Croatian tourism, sea kayaking is also an activity that is part of maritime traffic on a daily basis and should be regulated as such.

The problem of observing sea kayaking exclusively through the prism of sport is twofold; on the one hand, it limits the concept of seaworthiness to the technical characteristics of sporting goods designed specifically for sporting purposes (e.g. performance given by the type of competition) independent of the environment and the kayaker, and on the other hand, it ignores the fact of daily navigation of these vessels at sea, thus becoming part of the traffic.

A solution close to good practice and autonomous sources is found in the example of French regulation, primarily because it made a distinction between vessels whose objective differences in terms of their characteristics impose certain parameters of navigation safety. As for Croatian regulation *de lege ferenda*, it is necessary to define kayaks, and it would be useful to establish standards for kayakers with regard to the aforementioned categories and to draw a clear line between the legal area of sports and, for example, services in tourism. In Chapter 6, the authors explained more about the division of kayaks (into recreational/amateur and professional/expedition), registration (only for professional/expedition), the equipment they should have and the areas in which they are allowed to navigate. When making changes and amending regulations that would refer to kayaks and sea kayaking, it is certainly necessary to

consult the kayakers themselves, the authorities issuing kayak guide licences, their instructors and guides.

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IZAZOVI PRAVNE NEREGULIRANOSTI MORSKOG KAJAKAŠTVA U REPUBLICI HRVATSKOJ

Sažetak

Rad se bavi analizom postojećeg pravnog okvira statusa kajaka na moru u Republici Hrvatskoj, definiranjem te položajem kajaka kao plovila u domaćem sustavu sigurnosti plovidbe, a cilj je prikazati regulativu te se kritički osvrnuti na nju. Prikazat će se vrste kajaka s obzirom na namjenu i konstrukciju te će se problematizirati jednoznačnost pojma u domaćem zakonodavstvu: uz to, komparativno će se prikazati rješenja francuskog modela koji individualizira ta plovila s obzirom na spomenute značajke. U radu će se problematizirati i kajakaštvo kao sportska i gospodarska aktivnost, a bit će prezentirana i potrebna edukacija kajakaša, kad je posrijedi i aktivni i pustolovni turizam.

U radu se analizira međunarodni i nacionalni pravni okvir sigurnosti plovidbe. Također, prikazuju se i rezultati provedene ankete o pravnoj regulaciji morskog kajakaštva u Republici Hrvatskoj. Autori zaključuju da morsko kajakaštvo u Republici Hrvatskoj nije odgovarajuće regulirano te da treba mijenjati postojeće zakonodavstvo.

Ključne riječi: morskiajak, pravna regulacija morskog kajakaštva, sigurnost plovidbe



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