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## **MANAGING MARITIME DOMAIN IN CROATIA – PROBLEMS OF IMPLEMENTING THE NEW CONCESSIONS ACT**

*The paper aims at giving a clear and systematic presentation of the new Concessions Act, with the emphasis on the maritime domain concessions. The basic changes of the Act refer to a different regulation of the concession granting procedure, which further significantly reflects on the efficiency of the concession awarding process. Certain provisions slow down the decision-making process and extend the competent jurisdiction to a number of ministries, and giving the Ministry of Finances a higher competence in the concession award system.*

*The authors analyse the reasons for passing the Act in view of the fact that the compliance of national acts and regulations with their EU counterparts should not be done hastily. Legal regulations adopted in such a way question the efficiency of the concession system by prolonging the procedure period as the main factor of evaluation and of the efficient managing of the maritime domain and decrease the importance of decentralising the public administration.*

*The public administration in Croatia is characterised by an authoritative management and conventional information flow. Because of the significance that the sea and coastal resources have for an efficient and sustainable economic development, such type of management, with permanent modifications of the law,*

*often impede the progress. It is, therefore, necessary to phase in a team work and apply information technologies into the operations of the public administration. In order to make the procedures simpler and more efficient, the multi-level hierarchy in decision-making should be replaced by a decision-making process at an operational level. The authors have proposed concrete measures to be applied in the procedure of granting concessions by introducing quality criteria (level of successfulness), which also includes business communications. The emphasis has been given to the introduction of the Decision-making Support System process, as a solution for increasing the functionality in managing the maritime domain and for using the Geographic Information Systems (GIS).*

**Key words:** *Concessions Act, maritime domain, public administration, efficient managing, Decision-making Support System, Geographic Information System*

## 1. INTRODUCTION

The Republic of Croatia, via its negotiators, holds negotiations with the European Commission aimed at the soon accession to the association. One of the major objectives of the negotiations is the legal harmonisation of Croatian regulations with the regulations in force in the European Union. Precisely, because of that, the legislation is extremely important and new regulations and laws are being passed in precipitancy,<sup>1</sup> that are often aimed at satisfying the need to comply them to the EU law rather than to observe the real circumstances and the need to regulate the relationships that are present in the Croatian society.

Managing sea and coastal resources, especially the maritime domain as the strategic resource of Croatia, is not efficient, due to frequent changes in legal norms. A network of regulations, numerous hierarchic levels in making decisions on the concessions, a long procedure and indirect financial gains, indicate the absence of a clear strategy development vision. Few managers in public administration use modern techniques, decision-making methods and information systems in their researches and maritime domain evaluation. This paper is, therefore, a contribution to recognising the importance and significance of the maritime domain for the economic development of Croatia.

<sup>1</sup> When Great Britain accessed the European Union, "*aquis communautaire*" ("*zajednička stečevina*" – translation Uroš Dujšin, in: *Ekonomске i političke posljedice predstojećeg proširenja Europske unije*), was 30,000 pages, as emphasized by Drobnjak V. in "Pregovori o članstvu Republike Hrvatske u EU – tko, kako, zašto ..." at a panel of the Law School in Zagreb, no.107., and according to the same author it grew to about 80,000 pages, and the growing tendency continues and reached 100,000 pages, according to Smerdel B. in "Europeizacija pravničke struke" at a panel of the Law School in Zagreb no.100.

## 2. THE CONCESSIONS ACT (ZOK/08) – CONCEPT AND CONTENT DEFINITIONS

The adoption of the new Concessions Act (ZOK/08), has amended the former Concessions Act, from 1992, which did not provide a definition on what a concession is, but only determined what can be obtained through a concession.<sup>2</sup> The concession granted right to perform economic exploitation of public goods and goods of interest of the Republic of Croatia and gave the possibility to construct objects necessary for performing the activities. According to the 2008 Concession Act, a concession is defined as a contractual legal relation between a concedent (concession granter) and a concessionaire (authorised holder of the concession).

Besides the economic exploitation of general or other goods, concessions for public works and public services have been introduced. Such works and services are considered public since they are in the domain of public administration and not in the domain of private physical and legal persons, which means that the latter cannot be concession granters. The problems might arise when a distinction has to be made between a concession, a public-private partnership, public procurement, etc.

Basically, a concession is an approval (permit) given to a subject by public authority, which, after a regulated procedure, grants the right to perform a certain activity that cannot or should not be performed without the permission, and their relationship is specified in the form of a written contract.

The public procurement is a legally regulated procedure through which public administrations<sup>3</sup> have to procure goods and services so that the expenditure of public financial means is transparent and the market competition is open to all interested parties.

A public-private partnership is a relationship between the public administration and private subjects<sup>4</sup> with the aim to realise a project that, by its nature, is in the competence of the public sector, but, for various interests (almost exclusively financial) of both private and public partners, they joined and shared the task. All the three concepts have a joint link: one of the subjects is always a public authority body. When business relationships do not include public authority, private persons dispose of their own means and take the risk of a loss or a profit. On the other hand, public authority bodies have access to the means given by a community or by individuals (through taxes, contributions and other levies), which have been assigned to them with the primary

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<sup>2</sup> More in Article 1 of the Concessions Act 89/92

<sup>3</sup> Public authority bodies are listed in the Public Authority Bodies List for 2008, "Official Gazette", no. 13/08.

<sup>4</sup> *Private persons* refer to national or foreign legal and physical persons that may be present in a project as contractors or provider of services because they are especially qualified and registered for that.

aim to satisfy the public needs.<sup>5</sup> Therefore, the use and spending of these have to be transparent at any time. The economical and purposeful exploitation of public goods are principles without which there would be no progress of the whole society.

### **3. PROCEDURES FOR AWARDING CONCESSIONS PURSUANT TO THE 2008 CONCESSIONS ACT**

The new 2008 Concessions Act regulates the procedure of granting a concession in a new manner. Two Chapters and about one third of the Articles relate to this issue: Chapter II, Preparatory Actions for the Award of Concessions (Articles 9 – 16) and Chapter III, Procedure of the Award of Concessions (Articles 16 – 25).

#### **3.1. Preparatory actions for the Award of Concessions**

Pursuant to the 2008 Concessions Act, preparatory actions are performed by the concession grantor. These are the preparatory actions:

- Estimating the value of the concession,
- Preparing the concession justification study,
- Appointing the expert commission,
- Preparing the tender documentation, and
- Other actions (for instance, for concessions on the maritime domain, positive legislations that regulate this issue).

A new provision in the 2008 Concessions Act is that the concession grantor has to produce a study on the justification of granting a concession. As for the maritime domain concessions, this means that such studies have to be included in the Plan for managing a maritime domain. Particular consideration in the study will be given to public interest, impacts to the environment, protection of the natural and cultural wealth, financial effects to the budget and conformity with economic development plans of the concession grantor. A question may be raised about what public interest means, and maritime domain could be an example for determining public interest in conformity with development plans of local government bodies about granting concessions in their territory. Another question will arise then: Will the concessionaire be required to participate in the study? If the answer is positive, who will finance the study? If the concession grantor finances the study then the means will have to be included in their budget, which can reduce the planned rhythm of

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<sup>5</sup> Đulabić, V.: Socijalne službe u konceptu službi od općeg interesa, Revija za socijalnu politiku, Vol. 14, No.2, p. 138, Zagreb 2007.

granting concessions because of the limited means. Furthermore, when considering the protection of the natural and cultural heritage it should be included in the concession both in the tender documentation and in the concession contract.

Moreover, the 2008 Concessions Act expressly states the concessionaire's obligation to appoint an expert commission for the concessions from the ranks of eminent experts in law, economy, technical and other relevant fields, depending on the object of the concession. The number of members in the expert commission must not exceed 7 members. The members of the expert commission must not have direct or indirect personal interests in any of the activities that could lead to a conflict between those personal interests and their duties as members of the expert commission. The concession grantor will be obliged to notify the ministry competent for finances on the intention of establishing the expert commission and the Ministry may appoint its representative to the expert commission within ten days from the day of notification. The tasks of the expert commission for concessions are the following:

- Assisting the concession grantor in the preparation of the necessary analyses and/or justification studies for the award of the concession, in the preparation and drawing up of conditions and tender documents, the rules and conditions for the evaluation of tenderers and the received tenders, and tender selection criteria. However, an especially important issue is what precisely the assistance consists of and to what extent the assistance will be given to the concession grantor that conducts the concessions award procedure.
- Analysing the concession project proposal to determine whether the project is a public-private partnership project.
- Reviewing and evaluating tenders received. Does this mean that the expert commission will work independently from the concession grantor's body or will their work be considered as a preparatory activity for the evaluating procedure?
- Formulating the proposal of the decision on the selection of the most advantageous tenderer for the award of the concession or a proposal of the decision on the cancellation of the concession award procedure, as well as an exposition thereof. It is not clear what the tasks of the body responsible for implementing the concession procedure established by the concession grantor are?
- Notifying the competent state attorney's office on the intention of awarding a concession for the exploitation of common or other goods. It has to be explained who will perform the technical part of the tasks for the expert commission? The commission does not have its premises and a technical department and it is necessary to determine who will do the preparatory work: one of the concession grantor's body or the expert commission needs to organise its own office?

- Other tasks required by the concession award procedure. The concession expert commission comprises experts of various fields. If they are regularly employed, the question is when the commission will work and where, who will organise the logistics and finally who will pay and how, or the legislator assumed that the commission members will volunteer.
- When analyzing the project proposal of the concession, the expert commission has to apply the criteria stipulated in a public tender.

If the concession grantor, pursuant to special regulation, is entitled to determine the price or confirm the price this must be stated in the tender documentation. All interested parties will be allowed to inspect the documentation or purchase the documentation. The concession grantor will determine in advance the fee for the access to or purchase of the documents, which will be the revenue of the concession grantor's budget. The data on the persons interested in the concession are a secret.

The type and the value of the guarantee will be determined in compliance with special regulations, and the expert commission will propose the type and the amount of the value. The concession grantor will determine the amount of the guarantee in the absolute value, which, except in justified cases, may not exceed 5% of the estimated concession value. The guarantee will be returned immediately if the tender is not being considered for the award of the concession, and all issues of the guarantee for the performance of public works will be governed by the provisions of the regulations governing public procurement.<sup>6</sup>

### 3.2. The procedure of awarding a concession

The procedure of awarding the concession starts on the day of the publication of the notice of intent to award a concession in the Official Gazette, and terminates once the Decision on the selection of the most advantageous tenderer or the Decision on the cancellation of the concession award procedure becomes final. The final Decision in an administrative procedure is such a decision to which there is no legal remedy, i.e. there is no appeal (an appeal in the General Administrative Procedure Act is the only regular legal remedy). The final decision may be the first-instance decision or the second-instance decision. The legal consequences of a final aspect of the decision are that it is not possible to contest the final decision by a regular legal remedy (appeal). The legitimacy of the final decision may be contested or controlled only at the Administrative court of the Republic of Croatia by initiating an administrative suit against a particular administrative document (decision).<sup>7</sup> However, the fi-

<sup>6</sup> About one of various guarantees more in Slakoper, Z.: Bankarske garancije prema odredbama novog Zakonu o obveznim odnosima (u poredbenopravnom kontekstu)", Zbornik Pravnog fakulteta Sveučilišta u Rijeci, V. 27, no. 1, 2006, pp. 171. – 209.

<sup>7</sup> An administrative dispute is initiated in compliance to the Administrative Procedure Act, "Official Gazette", no. 53/91, 9/92 and 77/92.

nal decision may be cancelled, annulled or changed by submitting extraordinary legal remedies stipulated by the General Administrative Procedure Act (ZUP).<sup>8</sup>

It is therefore important to indicate problematic situations that may occur in the procedure of awarding a concession; below is the description of a possible situation.

- *Possible situation* – the concession award procedure has been made and the Decision on the selection of the concessionaire has been passed. An appeal to such decision was submitted and then rejected at the second instance body, at which point the Decision on the selection of the concessionaire has become final. Then the concession grantor enters into a Concession Contract with the concessionaire and the concessionaire commences exercising their rights and obligations arising from the concession. Meanwhile, one of the extraordinary legal remedies was submitted (regardless of the fact whether it was done by a dissatisfied party or by the attorney of the state in the line of duty or by other body at their right of supervision). It may be assumed that such an extraordinary legal remedy has been adopted and consequently the contested decision (in this case the Decision on the selection of the concessionaire) is declared null and void. In this case there are two documents: the annulled Decision on the selection of the concessionaire and the Concession Contract that is in force. The Concession Contract is governed by the norms of the civil law, so the question is whether the concession will terminate after the Decision has been annulled or after the Concession Contract has ceased to be in effect? In addition, what will happen with the rights and obligations arising from the concession that has already been exercised? There is also a probability of damage claim for, for instance, lost profit or refund of investments. Thus, it may be expected that dissatisfied tenderers in the concession awarding procedure will often search for any means in order to obtain the concession, even by applying the negative principles.

A new Administrative Procedure Act is being prepared and will have a different regulation of regular and extraordinary legal remedies, and a new category of administrative contracts, not present in Croatian legislation so far, will be introduced. Until its promulgation and enforcement, an additional attention of the competent bodies in the procedure of concessions will be necessary. According to the 2008 Concessions Act, in the procedure of awarding the concession for public works certain issues may be settled by special laws, in conformity with the principles stated in the Article 17 of the 2008 Concessions Act. The principles are:

- free movement of goods,
- freedom of establishment,

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<sup>8</sup> The General Administrative Procedure Act, "Official Gazette", no. 53/91 and 103/96.

- freedom to provide services,
- efficiency,
- fundamental principles of the Constitution of the Republic of Croatia,
- the principles of the Treaty establishing the European Community, such as the principle of competition, equal treatment, non-discrimination, mutual recognition, proportionality and the principle of transparency.

According to the 2008 Concessions Act, the concession grantor has the obligation to announce its intent to award a concession by a notice. The notice of intent to award a concession contains basic information and may contain other information in accordance with special regulations and it will be published in the "Official Gazette": After that, the notice may be published in other mass media or on the web site of the concession grantor, quoting the date of publication in the "Official Gazette". The criteria for the selection of the most advantageous tender may be:

- the most advantageous tender from the economic aspect (selecting the tender that is not the highest), and
- the highest fee offered for the concession.

In the case of the most advantageous tender from the economic aspect the criteria are: quality, amount of the fee, price, technical achievement, functional and ecological characteristics, operational costs, economical aspect, servicing after delivery and technical assistance, date and term of delivery or date of completion of works. When the most advantageous offer is selected on the basis of the most advantageous tender from the economic aspect, the concession grantor must specify in the tender documents and in the notice on the intent to award a concession the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender or it will rank the criteria in descending order of importance.

In the 2008 Concessions Act, there is a provision that stipulates that the concession grantor is required to determine, define and apply the criteria, stipulated by a special regulation, which indicates to a long-term sustainability of the tenderer during the period of the concession. The provision is rather vague as its expression is indistinct and ambiguous: "long-term sustainability of the tenderer during the period of the concession". Even if the expression was not vague, there is still the question how the requested requirement can be qualitatively and quantitatively evaluated taking into consideration the stated principles of the concessions award procedure.

The decision on the selection is issued by the concession grantor, after which they have to send it, together with a copy of the minutes of the examination and the evaluation of the tenders, to each tenderer by registered mail with a return receipt. Upon expiry of the standstill period the Concession contract may be signed, provided that the procedure of legal protection was not instituted by an appeal. If the appeal was filed the Concession contract may be signed when the Decision becomes final, i.e. if the appeal is dismissed or re-



jected. It has already been discussed what may happen by instituting extraordinary legal remedies, which the legislative body has failed to notice or prejudiced, which, from the legal aspect, is disputable.

The time limit for issuing the Decision on the selection of the most advantageous tenderer, if not specified otherwise in the tender documentation, is 30 days upon the expiry of the date for the submission of tenders. At the request of the Concession grantor, the tenderer may extend the validity of their tender, and if the Decision on the selection is not delivered within the stipulated period, the tenderer is entitled to appeal on grounds of non-compliance with statutory terms. The question that arises here is what the sanctions for the Concession grantor are if the stipulated period has not been observed?

The decision on the cancellation of the concession award procedure may be issued by the Concession grantor in the following cases:

- if circumstances become known which, had they been known before the commencement of the concession award procedure, would have resulted in the non-publication of the notice of intent to award a concession or in the publication of a substantially different notice,
- if no tender has been submitted,
- if after the rejection of tenders in the concession award procedure no acceptable tender remains,
- if the selection cannot be made based on the most advantageous tenderer criteria, and
- in other cases laid down by special regulations.

A new concession award procedure may be initiated after the Decision on the cancellation becomes final.

#### **4. CONCESSION CONTRACT AND LEGAL PROTECTION**

After issuing the Decision on the selection of the most advantageous tenderer, the Concession contract will be signed. The Concession grantor must offer to the most advantageous tenderer the contract for signature within 10 days upon the Decision on the selection has become final. This term can be extended only exceptionally, and if the concession refers to the public-private partnership, the time limit is determined in accordance to the respective regulations. Prior to signing the concession contract, the concessionaire must supply the necessary guarantees and/or security instruments for the payment of the concession fee and the compensation for potential damages incurred due to the non-fulfilment of obligations under the concession contract (debentures, bank guarantees, personal guarantees, bills of exchange, etc.). Guarantees and security instruments will be stored with the Concession grantor.

The Concession contract specifies the rights and obligations of the Concession grantor and the concessionaire in compliance with the provisions of

the 2008 Concessions Act and special regulations (i.e. sector's regulations, as specified by the proposer of the law). The Obligatory Relations Act will govern matters that have not been regulated by the 2008 Concessions Act.<sup>9</sup> In case of a concession that forms a part of the public-private partnership project the matters will be governed by the regulations that apply to the public-private partnership.

According to the 2009 Concessions Act, the concessionaire must pay a fee for the concession in the amount as stipulated in the Concession contract "unless the payment of the concession fee is not economically justified". It is not clear what this statement assumes; namely, has the concession been already compensated (for instance, the construction of an object) or does it refer to something else, as for example, to previous concessions for the special use of the maritime domain that required rather symbolic fees? The concession fee may be a set constant amount or a variable amount, or both variable and constant amount may be applied, depending on the special characteristic of each individual concession. The amount of the fee is determined by the type of activity, the period of concession, business risk and expected profit, level of equipment and the surface area of the general or public good. The Contract may contain the provision stipulating the adjustment of the fee during the period of the concession. A question that may follow is why the amount of the fee would not be determined by the market, at least with the concessions for the economic exploitation of the general or public good?

According to the 2008 Concessions Act, the duration of the concession must be determined in such a manner so as not to restrict the competition more than necessary in order to ensure the amortisation of the concessionaire's investment and a reasonable return on the investment, taking into account the risk related to the exploitation of the concession. The question which arises here is what the reasonable return on the investment means. Each tenderer participating in the concession award tender has, among other issues, a clear goal to gain as much profit with as little investments (capital) possible. The invested capital has only one objective: to increase as much as possible in as shorter time as possible and it is logical to conclude that the expression "reasonable return on the investment" is not an economic issue and can not be precisely measured. The time limit may not be extended, except in the case the concessionaire cannot carry out the activity under the concession for the reasons not attributable to the concessionaire. The time limit for the economic exploitation of the common good or other goods may be extended without undertaking a new concession award procedure if such an extension is required by the interests of the Republic of Croatia, but only for the period of 50% of the initially determined duration of the concession. The interests of the Republic of Croatia are determined by the Croatian Parliament.

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<sup>9</sup> Obligatory Relations Act, "Official Gazette", no. 35/05 and 41/08.

In case of the concession for public works, the Concession grantor may, without a new concession award procedure, award to the concessionaire who performs such works additional works which have not been included in the initial project of concession or in the basic Concession contract, and which, due to unforeseen circumstances, have become necessary for the execution of works as described in it.

Disputes arising from the Concessions contract, including indemnification, will be settled before the general competence courts (municipal and county courts) by applying the Civil Procedure Act. In such proceedings, there is the right to appeal to a second-instance court. It can logically be concluded that it is necessary and important to introduce administrative contracts into the Croatian legal system, which are specific in relation to standard contracts of the civil law, and Concession contracts are the exact example of such contracts.<sup>10</sup>

The legal protection in the concession award procedure will be instituted in accordance with the regulations governing public procurement. This means that legal protection can be administrative and judicial.

**Administrative protection** can be *administrative control and administrative supervision*. Administrative control is done at the Government commission for the control of public purchase procedure by using the appeal as a devolutive legal medium. Administrative supervision may be done at the Bureau for public purchase of the Republic of Croatia by submitting an appeal or an initiative for supervision at the Government bureau in the domain of their competence for using budget means and for legality of financial transactions and at a body of budget control in the domain of using budget means.

**Judicial protection** may be realised through an administrative suit, indemnification suit, through criminal or offence suits and through a constitutional appeal.<sup>11</sup>

For disputes arising from the Concession contract, the concession grantor and the concessionaire may agree on the arbitration, and if the arbitration has not been agreed, the competent body will be the commercial court according to the registered office of the concession grantor.

## 5. THE CONCESSIONS POLICY

The concessions policy is a separate chapter in the 2008 Concessions Act and it may be considered as a very distinctive and it has not yet existed in the positive legislation of the Republic of Croatia.

<sup>10</sup> About administrative contracts more in Đerđa, D.: Posebnosti upravnih ugovora, Hrvatska pravna revija, no. 10, Volume VIII, Inženjerski biro d.d., October 2008, pp. 56. – 70.

<sup>11</sup> More in Matešić, G.: “Novosti u postupku pravne zaštite u javnoj nabavi”, Aktualnosti hrvatskog zakonodavstva i pravne prakse, Almanac 15/08, Organizator, Zagreb 2008., pp. 431. – 457.

The 2008 Concessions Act has defined the concessions policy as all measures and activities aimed at establishing and maintaining an efficient system for the award of concessions and organisation and keeping of the Concessions Register. The main body for implementing the concessions policy is the Ministry of Finances that may independently initiate the control procedure within the scope of its activities, over a concessionaire that fails to carry out the obligations under the Concessions Contract. Furthermore, concession grantors are obliged to observe and act upon the requirements of the Ministry of Finances and participate in the control of the concessionaires. If the concession grantors do not cooperate or comply with the measures and recommendations of the Ministry of Finances it may request an administrative and inspection control in accordance with the scope of the regulations governing the tasks of the body competent for state administration. In addition, the Ministry of Finances may implement other measures with the purpose of preventing and coordinating all activities in the field of concessions for the duration of the concession contract. The intention to establish order in the field of concessions is positive, but, thus articulated role of the Ministry of Finances that, despite its significance, it is just a part of the executive authority, seems to be overstated. If it is known that in the Republic of Croatia there is the separation of powers into the legislative, executive and judicial branches and that local self-government is the fourth segment of the authority that has the function to coordinate and partially control the said authorities, then giving such a function to a ministry is in some way awkward. Namely, it is known that the largest number of the concessions are awarded by the local self-government.<sup>12</sup> It is also important to say that the Republic of Croatia has ratified the European Charter on Local Self-government according to which the units of self-government are considered as the basis of each democratic system and which intercedes in establishing the principles of democracy and decentralisation of the power that is declared in the preamble of the Charter.<sup>13</sup> It is logical to conclude that the decentralisation will not subsist.

Before passing this law, the Ministry of Finances has adopted regulations which stipulate the organisation of the Register of Concessions. The aim of the Concessions Register is to monitor and control the payment of concession fees, and the purpose is to have public and transparent information on concessions. However, some data, like the amount of the concession fee and the state of debt cannot be publicised as they are considered as trade secret.

It may be concluded that it is of special importance for the Ministry of Finances that this Chapter of the 2008 Concessions Act is fully observed. How-

<sup>12</sup> *Article 4 of the Constitution of the Republic of Croatia*, "Official Gazette" no. 56/90, 35/97 and 8/98 – consolidated text, 113/00, 124/00 - consolidated text, 28/01, 41/01 - consolidated text and 55/01.

<sup>13</sup> "Scope of local self-government, Article 4 of the European Charter on Self-Government, "Official Gazette", international agreements, no. 14/97.

ever, in the course of time it will become clear what such concentration of power in one ministry means for the system of concessions, because of the complex procedure of awarding concessions and because of non-transparent access to the Concessions Register.

## **6. INTERDEPENDENCE OF EFFICIENT MANAGEMENT OF SEA AND COASTAL RESOURCES AND THE CONCEPT OF CONCESSIONS**

The public administration has specific features and organisational forms which follow the development of all societies. It is, therefore, necessary to consider the design of a new model of the public administration functioning, especially in managing natural and other resources. The realisation of the model has to be oriented towards the needs of the society based on lawful and timely solutions, real situation and conditions.

### **6.1. Possibilities and limitations of public administration in the implementation of the new Concessions Act**

The function of managing and decision-making for the concept of concessions is very important, but due to an excessive number of hierarchical levels in the Republic of Croatia, it is not efficient. The traditional approach is predominating, which means that information are kept at higher levels and certain competences are not always clearly set. Formalism is given advantage to in relation to the essence, and there is a great power of individuals.

The state of efficiency in the Croatian public administration may be qualitatively described as an operational bureaucratic system in which everything seems complicated, while the implementation of modern information technologies is not adequately developed, there is an inadequate system of human resources management and expertise and professional standards are superseded by political criteria. It can be logically concluded that changes are necessary and that special attention has to be given to competences of human potential. Namely, human potential includes realisation in education which, combined with experience and orientation to high technologies, allows the implementation of modern methods and working techniques.

Efficiency in managing the maritime domain in public administration depends on the skills and competences of the managers and employees and on understanding the system of public administration and the surroundings. The concept of concessions requires that the management is the exponent of communication processes and that they stimulate the use of information technologies. The following is expected from the management:

- To leave traditional approach in the way that administration becomes an intelligent organisation based on intellectual capital<sup>14</sup>, which would then stimulate the development and define particular goals:
  - Economic – systematic valorisation of sea and coastal resources on the principles of sustainable development aimed at an efficient management of the maritime domain,
  - Social – increase the standard of living of the population in the coastal area, observing the principles of spatial organisation and the needs of the people who live and work in the area,
  - Ecological – sustainable development of sea and coastal resources, but it is necessary to exploit them rationally and protect them in all elements and phases of exploitation and stimulate the development observing the holistic approach; this assumes that the volume and rate of production and consuming activities need to be, on long-term basis, coordinated with the volume and rate of processes occurring in the marine and coastal environment.
- To aspire to an efficient management of sea and coastal resources as a special goal by implementing a functional and organisational model based on a modern decision-making theory and practically pertinent models and on modern information systems.

Contrary to the new Concessions Act which extends the period for passing the decision on awarding the concession for the economic exploitation of the maritime domain, an efficient decision-making assumes making an optimal decision. By applying rational decision-making methods, using clear procedures and observed causes and effects, it is possible to make an optimum decision that will be the result of the shortest time possible.<sup>15</sup> Too long problem solving in the decision-making process may cause a number of adverse effects to the system as a whole, in particular to the decreased revenue, unreasonable managing and slowed down growth and development.

In some segments of the public administration at the regional level positive changes in managing may be observed, which are beneficial both to the employees and to the citizens. This is of a particular importance because of the significance and the volume of the maritime domain administered by the Republic of Croatia. The maritime domain has the significance of highly valuable resource and it is necessary to administer it in the manner as to produce comprehensively beneficial effects, as a result of team work and efficient management.<sup>16</sup>

<sup>14</sup> Kovačić, M.; Gržetić, Z.; Seršić, V.: Role and Importance of Public Administration Management with the Purpose of Integral Management of Maritime Estate. // 27<sup>th</sup> International Conference on Organizational Science Development. "Knowledge for Sustainable Development" 27 (2008.); Portorož, 1197-1202.

<sup>15</sup> Brajdić, I.: Modeli odlučivanja, Sveučilište u Rijeci, Hotelijerski fakultet u Opatiji, 1998.

<sup>16</sup> Kovačić, M.; Gržetić, Z.; Seršić, V.: Role and Importance of Public Administration Management with the Purpose of Integral Management of Maritime Estate. // 27<sup>th</sup> International Conference on Organizational Science Development. "Knowledge for Sustainable Development" 27 (2008.); Portorož, 1197-1202.

## **6.2. Implementation of modern methods in the decision-making process and of the information system for the purpose of an efficient managing of the maritime domain**

Concessions could be and should be one of the factors of the economic growth and development of the Republic of Croatia, which, for various reasons, they have not been so far. Managing resources which are part of the coastal area by implementing concession system assumes their sustainable exploitation; hence, there is an increasing need for introducing the Decision-making Support System (SPO), as a solution for increasing functionality of all subsystems at an operational level (middle management) which are a part of this complex issue.<sup>17</sup> This thesis can be supported by the following facts: the trend towards decentralisation in managing resources to counties/cities, a great number of current and possible users of the resources, various levels of political system, increasing amount of information with different level of reliability, especially for this area, the need for an optimum system of financing, etc. Previous experiences of the researchers have proved that the processes of evaluating the resources in complex systems (ranking, compromised solutions, system of priorities for a particular activity) belong to the area of a multi-criteria decision-making. Namely, the experience shows that a systematic analysis of complex systems like the coastal area, or a similar area, can be characterised as poorly structured problems, and it is necessary to implement the methodology of a multi-criteria decision-making that is the basic methodology in solving problems. Spatial orientation, natural and other resources assume the use of the model of the Geographic Information System in the process managing. It is, therefore, reasonable to consider the need to connect the system that deals with space with the methodology of a multi-criteria analysis. Furthermore, a very dynamic environment requires a development of a system that will be open and capable to accept quick changes of physical and other data, and can easily be adjusted to the changes of the management policy. On the basis of previous scientific researches in this field it is expected that such an approach by using an adequate methodology will contribute to an objective process of evaluating resources and to their efficient managing. The system has to be applied to problems of evaluating and/or selecting coastal resources, and to determine various priorities, from the concept of sustainable development to specific choices like priorities in the town-planning processes, protection of the coastal sea and other man-made resources of the coastal areas. Researches and results in the field of the "System of support to decision-making process" based on GIS and multi-criteria analysis, i.e. the implementation of the appropriate methodology, are of vital importance for managing natural and man-made resources of the coastal area.

<sup>17</sup> Knezić, S., i Mladineo N., et al. (1997) Study: Model vrednovanja pomorskog dobra Splitsko-Dalmatinske županije.

## 7. CONCLUSION

The importance of managing natural systems and natural wealth can be observed in the increased awareness of the dangers that threaten to destroy the natural and human environment. Coastal and marine areas are naturally more susceptible than other areas, while at the same time are junctions of various, often highly risky, activities. In that sense, the system of concessions has a development and protection role for the local community, region and the whole country. However, such a system needs to be transparent, and the procedure of awarding concessions has to be efficient. Decisions will have to be made within a reasonable period, without unnecessary administration and hierarchical levels. The public administration needs to stimulate the development and concessions, as legal and economic instruments, can largely contribute to it and have to be considered from that aspect, and not only as means for satisfying the requirements of complying the legal regulations with the corresponding EU regulations.

Concessions could also be one of the factors of the economic growth and development of the Republic of Croatia, which, for various reasons, they have not been so far. Resources like water, sea, forests, agricultural land, ores, gas, oil etc. have not been evaluated in the Republic of Croatia and the method of their exploitation has not been determined. It is, therefore, proposed to implement the methodology of their evaluation which can be used in the process of a permanent and sustainable management of the resources at the level of a city, but also at higher administrative levels. There the Decision-making Support System based on GIS and the multi-criteria analysis can be applied for determining various priorities, from the concept of sustainable development to particular choices like priorities in establishing certain activities along the coast in view of a broader range of various interests and requirements. In this way, it will be possible to realise an organised and functional decision-making system, applicable in practice and efficient at all levels.

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### *Sažetak*

## **UPRAVLJANJE POMORSKIM DOBROM U HRVATSKOJ – PROBLEMATIKA IMPLEMENTACIJE NOVOG ZAKONA O KONCESIJAMA**

*U radu se pregledno i sustavno daje prikaz novog Zakona o koncesijama, s naglaskom na koncesije na pomorskom dobru. Temeljne novine Zakona odnose se na drugačiju regulaciju postupka davanja koncesija što se bitno odražava i na učinkovitost postupka koncesioniranja. Pojedine odredbe Zakona usporavaju postupak odlučivanja te proširuju nadležnost na više ministarstava, pri čemu se Ministarstvu financija daju veće ovlasti u sustavu koncesioniranja.*

*Autori analiziraju razloge donošenja Zakona u kontekstu činjenice, da usklađivanje nacionalnih zakona i propisa s onima u EU, ne smije biti ishitreno. Tako*

*usvojena zakonska rješenja dovode u pitanje učinkovitost sustava koncesioniranja, vremenskim produljenjem trajanja postupka kao bitnim činiteljem vrednovanja i učinkovitog upravljanja pomorskim dobrom i umanjuju značaj decentralizacije javne uprave.*

*Javnu upravu u Hrvatskoj karakterizira autoritativno vođenje i tradicionalni tijek kolanja informacija. Zbog značaja morskog i obalnog resursa za učinkoviti i održivi gospodarski razvoj takav oblik upravljanja, uz stalne promjene zakona, često otežava napredak. Slijedom toga u poslovanje javne uprave uz primjenu informacijskih tehnologija, postepeno treba uvoditi timski rad. Višerazinsku hijerarhiju u odlučivanju radi jednostavnosti i učinkovitosti u postupanju treba zamijeniti odlučivanjem na operativnoj razini. Autori predlažu konkretne mjere u postupku odlučivanja o davanju koncesije, uvođenjem kriterija kvalitete (razina uspješnosti), što uključuje i poslovno komuniciranje. Naglasak je na uvođenju Sustava za podršku odlučivanju (SPO), kao rješenja za povećanje funkcionalnosti u procesu gospodarenja i upravljanja pomorskim dobrom, te korištenje Geografskih informacijskih sustava (GIS).*

***Ključne riječi:** Zakon o koncesijama, pomorsko dobro, javna uprava, učinkovito upravljanje, Sustav za podršku odlučivanju, Geografski informacijski sustav*

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