

CROATIA

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CROATIAN MARITIME LAW: BACKGROUND AND RECENT DEVELOPMENTS IN LEGISLATION, CASE LAW AND BIBLIOGRAPHY

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I. GENERAL OVERVIEW

As this is the first contribution to the *Anuario de Derecho Marítimo* concerning the Croatian Maritime Law, the emphasis will be placed on providing a general overview of the domestic maritime legislation, relevant international conventions and instruments ratified by the Republic of Croatia, judicial and administrative system relevant for the maritime affairs, a short *exposé* of recent jurisprudence, and, relevant and recent bibliography. A special introductory segment will provide basic information regarding the Croatian maritime industry, maritime education and maritime community.

1. Geography and Infrastructure

a) Maritime Ports, Shipyards and Public Services

Republic of Croatia has six major seaports open for domestic and international trade: Rijeka, Zadar, Šibenik, Split, Ploče and Dubrovnik¹. Major domestic shipping companies are members of the national Association of Ship Operators "*Mare Nostrum*"², consisting of (according to the latest Association figures) 162 vessels in total (out of which 139 are flying the Croatian flag), with 1.942.812 GT. Croatian flag is listed on the Paris MoU White List³.

¹ Links and more information are available at:

http://www.pravo.unizg.hr/POP/department_for_maritime_and_transport_law/relevant_domestic_links.

² See: *supra* note 1, for available links.

³ 2009 Report of the Paris MoU Committee, Dublin, May 2010.

According to the Association of Croatian Marina' data, Croatia has around 50 marinas, with 16.913 berthing places, and around 14.431 permanent berthed vessels (yachts and smaller crafts)⁴.

Republic of Croatia has seven major shipyards, members of the Croatian Shipbuilding Corporation, and represent a major portion of the national industrial sector (according to the named Association's data: 2,5% in employment, 1,4% in BDP, and, 12-15% in export). Shipbuilding industry is undergoing a (painfull) process of privatization and reconstruction.

Croatian Register of Shipping⁵ is a classification society, organized as a public institution and governed by the Croatian Registry of Shipping Act⁶.

b) Inland Waterways and Port Facilities

The inland navigable waterways (rivers Danube, Drava, Sava, Kupa and Neretva) total 918 kilometers in length with an average allowed cargo capacity from 150 to 400 tons of goods carried (an exception being the sections of Danube and Drava up to Osijek with the capacity of 1,500 tons), with four major river port facilities, namely: Osijek, Vukovar (bulk and packaged cargo), Slavonski Brod, Sisak (liquid cargo) and Ploče (a part of a seaport).

2. Maritime Education and Community

The courses of Maritime Law and Maritime Sciences are taught at a number of Law faculties and Maritime schools⁷, both at the undergraduate and graduate levels, with a number of specialized institutions focusing on maritime law and law of the sea studies (Adriatic Institute, Croatian Academy of Sciences and Arts), marine environment studies (Institute of Oceanography and Fisheries, Croatian Hydrographic Institute), and marine technology studies (Shipping Institute)⁸.

Alongside the Croatian Maritime Law Association, a number of associations are active in the field of maritime affairs, including the Seafarers' Union of Croatia, the Association of Sea Captains of Northern Adriatic, the Association of Croatian Seafarers, the Croatian Maritime Pilots Association, the Association of Ship Brokers and Agents of Croatia and the Marine Engineers' Association Split⁹, the Association of Small Ship Operators of Northern Adriatic, and the Independent Croatian Passenger Vessels Seafarers' Union.

⁴ The data refers to the 2010 statistics prepared by the Croatian Bureau of Statistics, see: *supra note 1*, for available links.

⁵ Recently amended in accordance with the Directive 94/57/EC as amended by Directives 98/58/EC and Directive 2001/105/EC.

⁶ *Official Gazette*, No. 81/96. In accordance with the ISPS Code and Directive 94/57/EC as amended by the Directive 98/58/EC and Directive 2001/105/EC.

⁷ Zagreb Faculty of Law, University of Zagreb; Rijeka Faculty of Law, University of Rijeka (including the Institute for Maritime and Transport Law); Split Faculty of Law, University of Split; Osijek Faculty of Law, University of Osijek; Faculty of Maritime Studies, University of Rijeka; Faculty of Maritime Studies, University of Split (including the Centre of Marine Studies); Maritime School Split; Maritime School Zadar, Maritime School Bakar; University of Dubrovnik See: *supra note 1*, for available links.

⁸ See: *supra note 1*, for available links.

⁹ See: *supra note 1*, for available links.

II. LEGISLATION

The following sections provide a general insight into the Croatian maritime legislation, with a focus on particular subjects that often arise in practical disputes and situations. Due to the projected length of the contribution, many aspects will only be mentioned, including instances where an appropriate international instrument has been ratified and fully incorporated into the domestic regulation and where no further explanation is required.

1. Basic Domestic Legislation

a) Maritime Related

The elementary source of domestic legislation in the field of maritime law is the Croatian Maritime Code (MC)¹⁰ (Official Gazette [OG]¹¹, No. 181/04, 76/07, 146/08, 61/11), consisted of 12 Chapters and 1032 Articles, and containing provisions on: maritime zones; safety of navigation; nationality and registration of vessels; maritime property rights; ship operators; maritime contracts and charterparties; maritime accidents and tort liability; forced execution, judicial sale, maritime liens and interim measures; applicable law and jurisdiction of domestic courts; and, maritime offences.

Other relevant maritime related acts/statutes include the Maritime Property and Seaports Act (OG, No. 158/03, 100/04, 141/06, 38/09, 123/11), the Harbor Master's Offices Act (OG, No. 124/97), and the Regulation concerning the Places of Refuge (OG, No. 3/08)¹². The relevant domestic act concerning the inland navigation is the Inland Navigation and Inland Ports Act (OG, No. 109/07, 132/07).

b) General Legislation

Apart from the specialized legislation as enumerated above, a number of general statutes are regularly applied in the maritime field: the Civil Procedure Act (OG, No. 53/1991, 91/1992, 112/1999, 129/2000, 88/2001, 117/2003, 88/2005, 2/2007, 96/2008, 84/2008, 123/2008, 57/2011), the Forced Execution Act (OG, No. 57/1996, 29/1999, 42/2000, 173/2003, 194/2003, 151/2004, 88/2005, 121/2005, 67/2008, 139/2010, 154/2011), the Obligations Act (OG, No. 35/2005, 41/2008, 125/2011), the Ownership and Other Real Rights Act (OG, No. 91/1996, 68/1998, 137/1999, 22/2000, 73/2000, 114/2001, 79/2006, 141/2006, 146/2008, 38/2009, 153/2009, 90/2010), the Conflicts of Laws Act (OG, No. 53/1991, 65/2009), and the Environment Protection Act (OG, No. 110/07)¹³.

¹⁰ Croatian: "Pomorski zakonik".

¹¹ Croatian: "Narodne novine".

¹² Also relevant for the marine environment protection and safety of navigation: Intervention Plan for Sudden Pollution of the Sea (OG, No. 92/08) and Rules on the Inspection in the Field of Safety of Navigation (OG, No. 39/11).

¹³ Regarding the protection of environment, it is also worth mentioning the Carriage of Dangerous Goods Act (OG, No. 79/07), with special rules concerning the inland navigation as present in the Regulation concerning the Method of Carriage of Dangerous Goods in Inland Waters Transportation (OG, No. 106/08) whereas concerning the maritime navigation, also of relevance are the Regulation concerning the Protection of the Marine Environment in the Protected Ecological-Fishing Zone of Republic of Croatia (OG, No. 47/08) and Regulation concerning the Method of Carriage of Dangerous Goods in Maritime Transportation (OG, No. 79/96,

2. Judicial and Administrative Systems

a) Judicial Systems

All cases involving commercial matters (maritime law matters included, with the exception of disputes concerning the rights of passengers carried by sea [that are conducted in front of the Municipal Courts in first instance, and County Courts in appeal]) are conducted in front of the Commercial Courts as courts of first instance, the High Commercial Court of Croatia (VTS) as a court of appeal, with a possibility of further appeal before the Supreme Court of Croatia (VSRH), and a special appeal before the Constitutional Court of Croatia (relevant act: the Courts Act [OG, No. 150/2005, 16/2007, 113/2008, 153/2009, 34/2010, 116/2010, 27/2011, 57/2011, 130/2011]), including all cases concerning the rights of seafarers and seafarer labor-related disputes¹⁴.

The general characteristics of proceedings in front of Commercial Courts of interest for maritime related disputes include: (a) allowed claims *in personam*, (b) allowed interlocutory injunctions, (c) more expediting procedure when compared to the proceedings in front of the Municipal Courts, (d) no precedent law rule (although lower courts tend to accept the higher instance rationale and opinions), (d) court fees are based on a sliding scale basis depending on the value of the claim, (e) legal costs depend on the degree of success, and, (f) for *ex-parte* matters each party bears its own costs.

Regarding the issue of the recognition of foreign judicial and arbitral awards, Republic of Croatia is a party to the 1958 New York Convention¹⁵.

b) Administration

The principal public body in charge of all transport related sectors and policy (maritime transport included) is the Ministry of Maritime Affairs, Transport and Infrastructure¹⁶.

According to the MC provisions, the flag of Republic of Croatia is a sign of the vessel's domestic nationality, thus giving Republic of Croatia rights and obligations concerning the supervision of all administrative, commercial and technical issues concerning the vessel, in accordance with the 1993/2000 ISM Code¹⁷.

3. Relevant Ratified International Conventions and Instruments

Croatian maritime law legislation and jurisprudence place a great emphasis on the continuous efforts of the general maritime community to harmonize relevant maritime legislation and practice, in order to foster both the domestic and international trade and

76/02). Additionally, it is worth mentioning the Subregional Plan of Interventions (OG/IA, No. 7/08) concerning the protection of the Adriatic Sea from pollution.

¹⁴ *Per ex*: VSRH Gr 92/1998, 25 June 1998 and VTS Pž-274/98, 17 February 1998.

¹⁵ For more on the issue, see: Filipović, V., "Croatia – Conflict of Maritime Laws", in: Tetley, W., "International Conflict of Laws: Common, Civil and Maritime", Blais, International Shipping Publications, Montreal, 1994

¹⁶ Official website: <http://www.mppi.hr/default.aspx?id=777> (in English).

¹⁷ For the ratification of the 1974 SOLAS Convention, see: *infra*.

commerce. This is to be made visible through the current review in instances where relevant international conventions are incorporated into the national legislation, and where the court practice follows the general trends as established by other relevant maritime courts and arbitrations.

Concerning the matters related to the commercial exploitation of ships, seafarers, safety of navigation and safety of life at sea, the Republic of Croatia is a party to the 1924 Hague Convention (OG/International Agreements [IA], No. 1/92), with the 1968 Visby and 1979 SDR Protocols (OG/IA, No. 3/95), the 1974 Athens Convention, with the 1976 and 1990 Protocols (OG/IA, No. 3/95)¹⁸, the 1976 LLMC Convention (OG, No. 2/92) and the 1996 Protocol (OG/IA, No. 12/05), the 1952 Arrest Convention (OG/IA, No. 1/92), the 1989 Salvage Convention (OG/IA, No. 9/98), the 1910 Collision Convention (OG/IA, No. 1/92), the 1952 Collision/Civil Jurisdiction Convention (OG/IA, No. 1/92), the 1952 Collision/Penal Jurisdiction Convention (OG/IA, No. 1/92), the MARPOL 73/78¹⁹ Convention (OG/International Agreements²⁰ [IA], No. 1/92), the 1974 SOLAS Convention (OG/IA, No. 1/92), with the 1978 (OG/IA, No. 1/92) and 1988 Protocols (OG/IA, No. 13/99), the 1979 SAR Convention (OG/IA, No. 14/96), the 1972 COLREG Convention (OG/IA, No. 1/92), the 1966 LOADLINE Convention (OG/IA, No. 1/92) with the 1988 Protocol (OG/IA, No. 13/99), the 1969 TONNAGE Convention (OG/IA, No. 1/92), the 1972 CSC Convention (OG/IA, NO. 1/92), the 1978 STCW Convention (OG/IA, No. 1/92)²¹, and the 2006 Maritime Labour Convention (OG/IA, No. 11/09).

Maritime zones are regulated in accordance with the 1982 UNCLOS regulations²².

Regarding the inland navigation relevant international instruments, Republic of Croatia has ratified the 2000 CMNI Convention (OG/IA, No. 10/04)²³.

Main ratified international instruments concerning the protection of the marine environment include the 1976 Barcelona Convention (OG/IA, No. 12/93)²⁴, the 1992 CLC Convention and the 1992 IOPC Fund Convention (OG/IA, No. 2/97), with the 2003 Protocol (OG/IA, No. 12/05)²⁵, and the 2001 Bunker Convention (OG/IA, No. 9/06).

¹⁸ For recent development concerning the plans of the Government to ratify the 2002 Protocol, see: *infra*.

¹⁹ With additional Annexes (noting the Law on Gradual Exclusion from Navigation of Tankers without Double Plating (OG, No. 48/04), according to which most one-plated tankers cannot enter Croatian waters anymore).

²⁰ Croatian: "NN/MU" ("Narodne novine – međunarodni ugovori").

²¹ Including a number of ILO Conventions (OG/IA, No. 2/94, 8/03, 11/03). The latest 2010 amendments will be in force in Croatia starting from the 1 January 2012. Convention No. 185 is in force in Republic of Croatia since the 6 March 2012.

²² OG/IA, No. 9/00. It is noteworthy to mention that Republic of Croatia is also a party to the 1958 Open Sea Convention, the 1958 Territorial Sea and Contiguous Zone Convention, the 1958 Epicontinental Shelf Convention, and the 1969 Intervention Convention.

²³ Other important international instruments concerning the inland navigation, ratified by Republic of Croatia, are: the ADN (OG, No. 13/08, 4/09), the AGN (OG/IA, no. 16/98), river Danube related instruments (OG, No. 18/98, 13/98; OG/IA 02/96), and, river Sava related instruments (OG/IA, No. 14/03, 06/04, 02/05, 05/05).

²⁴ With the Dumping Protocol 1976, Co-operation Protocol 1976, Land-Based Sources Protocol 1980 and Special Areas Protocol 1982, and 1995 Protocol (OG/IA, No. 17/98) – still not in force.

²⁵ Republic of Croatia is also a party to the following international instruments: the 1954 OILPOL, the 1996 Intervention Convention, the 1972 London Dumping Convention, the 1990 OPRC Convention, and the 1992 Rio de Janeiro Convention (OG/IA, No. 3/95). It is of interest to mention that the Croatian maritime law regulation incorporates the provisions of the 2001 International Convention for the Control of Harmful Anti-fouling System on Ships (OG/IA, No. 10/06) and 2004 International Convention for the Control and Management of Ships' Ballast Water and Sediments (OG/IA, No. 3/10).

4. Registration of Vessels

Croatian Register of Ships (Registry) is responsible for registration of vessels or issuance of temporary certifications of registry. Compulsory registration is stipulated for vessels entirely owned by a physical or legal person domiciled or seated in Republic of Croatia. Voluntary registration is available for vessels entirely or partially owned by a physical or legal person domiciled abroad, or residing/established in Croatia, Ministry approved registration, or a yacht predominantly stationed in the Croatian sea²⁶. Double nationality of vessels is not permitted. Vessels under construction may be entered into the Registry. Registry is divided into the following sections²⁷: (a) merchant vessels, (b) fishing vessels, (c) public-service vessels, and (d) vessels under construction; and consists of the: (a) Main Book (one folio per vessel – sheets (A – identity and basic technical information about the vessel, B – identity of the owner, and, C – real rights, demise charter, time charter for the whole ship, pre-emption, restrictions), and, (b) Collection of Needs (documents). Information in the Registry is classified as public records, and falls under the general principle of good faith (the information in the Registry is considered valid). Registration is governed under the administrative procedure rules, and conducted by respective harbor master's offices. Contract of vessel construction and vessel sale²⁸/purchase or acquisition of ownership contracts must be prepared in a written form and conducted through the Registry, with the following exceptions: (a) notice of abandonment, (b) compensation, (c) inheritance, (d) maturity or public judicial sale; (e) sunken ships and a failure to raise (10 years), and, (f) booty or war prize at sea.

5. Judicial Sale of Vessels

Based on an executory document, usually a final court/arbitral award, a court/arbitral settlement or a similar document, the forced execution of a sale of vessel²⁹ is commenced through a writ of execution. After the sale of the vessels, the MC stipulates the following list of priorities concerning the allocation of funds derived from the sale: (a) costs associated with the sale, (b) maritime liens, (c) possessory liens, (d) ship mortgages, (e) other claims, (f) residue paid to the owner.

6. Arrest of Vessels

²⁶ Relevant provision include: Small Crafts and Yachts Ordinance (OG, No. 27/05, 18/09, 3/08, 80/07, 57/06, 56/10); Regulation concerning the conditions on entrance and residence of foreign yachts and small craft intended to be used for sports and leisure in the internal sea and territorial sea of Republic of Croatia, (OG, No. 40/06), and relevant regulations concerning the entry fees (for foreign yachts and small crafts - OG, No. 2/05; and, for vessels – OG, No. 41/05, 24/06).

²⁷ In accordance with the relevant regulations (OG, No. 65/95, 57/04; and, No. 9/05).

²⁸ Including appurtenances (but for a notice in the registry).

²⁹ For more on the issue, see: Ivković, Đ. / Stanković, P. / Stanković, G., "Croatia", Maritime Law Handbook: Arrest, Registration, Mortgages and Enforced Sales of Vessels, Kluwer Law International, The Hague, Suppl. 28 (November 2006).

The arrest of vessels³⁰ is primarily governed by the MC and the Forced Execution Act. In order to succeed in a motion for arrest, raised before or during the pre-judgment trial or during the forced execution proceedings, it is necessary to show a valid claim and a danger that in the absence of the arrest, the enforcement of a particular claim will likely be hampered. The arrest proceedings are usually *ex-parte*. During the arrest, the respondent is responsible for the costs of maintenance of the ship and crew, whilst the applicant may be called upon by the court to contribute to this funding, with an additional burden of supplying the funds required for the custody of the vessel. The "*sister-ship*" arrest concept is anticipated by the MC, although the court practice denies the possibility of arresting other vessels from the same charterer³¹. Claims regarding the title to/ownership of the vessel are subject to the domestic legislation, and not the provisions of the 1952 Arrest Convention. The claims subject to arrest will be permissible provided that there a reciprocity connection between the Republic of Croatia and the ship's flag country exists.

7. Maritime Liens and Mortgages

a) Liens

The Republic of Croatia adopted a civil law approach to maritime liens, referred to as "privileges" – a substantive right upon maritime property – allowing the creditor to subject a vessel to a judicial sale with a right of precedence before the non-lien creditors. Such right is available only against a specific vessel, including the appurtenances and accessories, and enforceable through an *in personam* claim - a hypothecary action against the owner - usually accompanied by the arrest of vessel (foreign vessels predominantly [according to the domestic court practice]).

Possessory liens are available for shipbuilders, ship-repairers and wreck removers, allowing the right of (a) detention and (b) power of (judicial) sale (as previously stated, collectable after all other privileges have been satisfied, but before mortgages and other claims).

The order of liens is as follows: (a) crew members' wages (including transportation and social security costs), (b) costs of accidents resulting in death and/or bodily injuries, (c) salvage costs, (d) port calls' costs, (e) costs arising out of tort liability for damages (excluding costs related to cargo, container and passengers' luggage carriage). If more liens of the same class are placed forward, the order is attributed in accordance with the following rules: (a) first in line is the last voyage, with an exception of crew members' wages always being first in line (the Croatian legislator tends to adopt a strong protective stance towards the rights of seafarers), (b) if more claims are placed forward in the same voyage, then the principle of *pari passu* is adhered to, with an exception of salvage, general average and necessities.

b) Mortgages

³⁰ For more on the issue, see: *supra* note 29.

³¹ *Per ex*: VTS Pž-2544/93, as reported in: Stanković, P. / Stanković, G., "*Croatia*", International Encyclopedia of Law: Transport Law, Kluwer Law International, The Hague, Suppl. 10 (June 2000).

The MC effectively incorporated the provisions of the 1993 International Convention on Maritime Liens and Mortgages (although the Convention has not been ratified by Republic of Croatia). Croatian law adopts the civil law approach, using the term "*vessel hypothec*" – a non-possessory, non-title transferring proprietary right – according to which the creditor has a right to demand a judicial sale in order to satisfy his claim. In addition, the Croatian legislator has adopted an Anglo-American concept of possession and commercial exploitation until the claim is satisfied: if parties so agree (or based on a judicial decision), such a concept can be applied over: (a) a vessel and her appurtenances, (b) a share of vessel, (c) a number of vessels, and, (d) another mortgage (also applicable to vessel accessories and insurance money).

The MC stipulates an exclusive method of foreclosure commenced by a hypothecary action demanding an execution of a mortgage right (if however, mortgage includes an executory clause, no litigation is necessary³²). It is also necessary to mention that a vessel cannot be deleted from the Registry if under a mortgage, unless agreed upon by the creditor.

8. General Liability and Limitation of Liability

According to the elementary principle of the MC, the ship operator³³ is a person liable for the obligations arising out of navigation and exploitation of the vessel. The general limitation of liability is set in accordance and compliance with the 1976 LLMC and 1996 Protocol regulations (and limitation amounts), applicable to both contract and tort damages. Exceptionally, no limitation is available regarding the claims coming from the crewmembers (another instance of favoring seafarers). Loss of the right of limitation is construed through an intentional or reckless ("*dolus eventualis*") behavior (for legal persons – "*alter ego*"/"*designated person*" concept of personal liability of members of the governing bodies or other relevant bodies of the legal entity)³⁴. Special limitation regimes exist for carriage of cargo, carriage of passengers, and oil and bunker pollution (see: *infra*).

9. Charter Parties

According to the MC, the contracts related to the maritime transportation are divided into two main sections: (a) maritime contracts, and, (b) demise charters. Maritime contracts are further divided into the: (1) contracts of carriage of goods, (2) contracts of carriage of passengers and their luggage, (3) towage contracts, (4) other, non-typical maritime contracts. Contracts of carriage can be concluded as: (a) charter (time, voyage) parties (object: specified ship or cargo hold – used in tramp trade), and, (b) contracts of carriage (object: transport service – used in liner trade).

³² *Per ex*: VTS PŽ-3006/95, 3 October 1995.

³³ Croatian: "brodar", defined in the MC as a physical person or a legal entity in possession of the ship, who undertakes a maritime enterprise, and who is a presumed operator of the ship (based on the French concept of "*armateur*"); can be a: shipowner, charterer, operator, ship manager, salvor, liability insurer and carrier.

³⁴ For a procedure outline, see: *supra* note 31, at 72 *et seq.*

Whereas the carriage of goods contract is essentially left for the parties to stipulate, a number of MC regulations concerning this contractual relationship are mandatory³⁵. Thus, voyage charter parties (for more than one voyage) and time charter parties for the whole ship must be made in a written form. The contract will terminate if the fulfillment of obligations is deemed impossible due to *force majeure*. The ship operator has a mandatory duty to ensure ship and cargo worthiness. The norms referring to the liability of the carrier (see: *below*) are mandatory, with enumerated exceptions³⁶.

The carrier is liable for any damage, shortage or loss of cargo received for carriage from the time of receiving the cargo to the time of the delivery (Article 547 MC), with an additional possibility of contractual parties to extend the period of liability to the time before the loading and after discharge (different from the Hague-Visby). Carrier's liability is presumed (presumed fault), but he can avail the liability if he can prove that the said damage occurred due to causes not preventable or avoidable through the exercise of due care (Article 549 MC). Carrier will also avail liability (a) if the damage has occurred out of navigational error of the crew (Article 550/2 MC), (b) if the damage has occurred due to fire on board³⁷ (Article 551 MC), and, (c) if the damage on cargo has resulted out of unseaworthiness, provided that he has performed with due care (Article 552 MC). The MC also recognizes the institute of excepted perils (as *per* Hague-Visby), where the carrier, together with proving the existence of one of the named perils, must prove the causal connection between the excepted peril and the damage caused (the consignee can, however, invoke the carrier's liability by proving that the damage has occurred due to personal fault of the carrier or his servant [commercial activity] - proven fault). The limitation figures equal those as set in the Hague-Visby rules. All claims arising out of the contracts of carriage of goods have a one-year time-bar limit.

10. Seafarers

According to the MC, the members of the crew are appointed by the operator, and regarding vessels under the Croatian flag, the Master must be a Croatian national, except for the foreign-owned yachts (in which case, a representative of public authority is the highest Croatian ranking officer). The labor contract is subject to the law of the vessel's flag (relevant domestic act: Labor Act [OG, No. 149/2009, 61/2011]), and should adhere to the 1978 STCW provisions and domestic subordinate regulation on the matter. The Master is the ship operator's representative (authorized to enter into salvage agreements, legal transactions, contracts for the use of the ship [except for the time charter for the whole ship], and entitled to take actions and proceedings), with a principal duty to take ensure that the vessel is operational and performing the main activities.

³⁵ In terms of the hierarchy of legal norms, the order is the following: (a) the general *ius cogens* and public morale norms, (b) contractual stipulations (including standard terms and contract forms, and the practice between the contractual parties), (c) port customs (Usages), (d) trade (maritime) customs, (e) MC and Obligations Act *ius dispositivum*, (f) court/arbitration practice, (g) legal science.

³⁶ Exceptions being: (a) damage, shortage or loss of cargo before loading and after discharge, (b) damage due to delay of delivery, (c) carriage of live animals, and, (d) cargo transported on the deck (with the shipper's consent).

³⁷ Unless it is proven that the fire has resulted out of his personal act of omission – burden of proof on the cargo interest.

Two collective agreements regulate the status of Croatian seafarers: The National Collective Agreement for Croatian Seafarers On Board Ships in the International Shipping Trade (Seafarer's Union of Croatia, Croatian Shipowner's Association [OG, No. 59/08]) and the National Collective Agreement for Croatian Seafarers on Board Passenger Ships and Ferries.

Vicarious liability of the employer for the damage suffered by the third person through an act or omission of crew members is regulated by the Obligations. A right of direct action against the employer is allowed if the damage was done intentionally. A crew member is liable for the damage done to the employer according to the Labor Act regulations.

11. Carriage of Passengers and Their Luggage at Sea

In short, without referring to all the clauses of the Athens regime as incorporated by the Croatian law, the MC regulates the liability of a carrier, actual carrier and their servants (carrier and actual carrier are responsible for the actions of servants when these actions were performed as part of their regular duties and tasks). The guiding liability principle is that of the proven fault – exceptionally, a presumed fault, provided that the following accidents occur: (a) shipwreck, (b) collision, (c) running aground, (d) explosion, (e) fire, and, (f) defect of the ship. Exemption or exclusion of liability is provided in instances where damage has occurred due to the passenger's fault or irregular behavior.

All claims arising out of contracts of carriage of passengers and their luggage have a two-year time-bar limit.

12. Other Sections

a) Pilotage, Towage, Salvage, Wrecks

The general provisions regarding the pilotage, towage, salvage and wreck removal offer nothing particularly exceptional when compared to other standard national maritime codifications, with one novelty contained in Article 823b MC worth mentioning. Although the Nairobi Wrecks Convention is still not in force, the MC contains the following provisions regarding the obligatory insurance (or an appropriate guarantee) related to the potential costs of wreck removal (and associated costs), for vessels entered into the Registry: the amount of the above mentioned insurance/guarantee shall be 1 million SDR for vessels under 2.000 GT; 1 million SDR plus (a) 400 SDR per tonne from 2.001 to 30.000 GT, (b) 300 SDR per tonne from 30.001 to 70.000 GT, and, (c) 200 SDR per tonne above 70.000 GT.

b) General Average, Marine Insurance

Regarding the institute of general average, it is worth mentioning that, according to the Croatian law, the 1994 York-Antwerp can be applied as maritime customs.

The marine insurance³⁸ is extensively regulated within the MC, according to the following order: (a) Common Provisions, (b) Hull Insurance, (c) Cargo Insurance, (d) Freight Insurance, (e) Liability Insurance, and, (f) Other Insurances.

c) Collisions

As far as the MC rules regarding collisions at sea³⁹ are concerned, apart from stating that the general liability standard is a proved fault, it should be mentioned that the 1987 Lisbon CMI Rules can also be applied as a maritime custom.

III. Recent Developments

The Croatian legislator is preparing a set of novelties and changes regarding the MC⁴⁰, having in mind an incorporation and/or adherence to the following set of norms: the Regulation 3577/92/EZ on sea cabotage⁴¹, Directive 2009/20/EZ on compulsory insurance based on the LLMC regime (1976/1996), Directive 2005/35 on vessel-source pollution (as amended by the Directive 2009/123), Directive 2009/13/EZ concerning the 2006 Maritime Labour Convention, Directive 2009/21 concerning the vessels' flag, Directive 2009/18 concerning the investigation of transport-related accidents (with plans to establish two independent services: (a) VTMISS⁴² service for supervision and administration of maritime transport [in accordance with the Directive no 1406/2002 concerning the establishment of EMSA], and, (b) Agency responsible for transport-related accidents investigation).

A major novelty is the decision of the Croatian Government to ratify the 2002 Protocol to the Athens Convention, having in mind the Regulation 392/2009 concerning the liability in connection to the carriage of passengers by sea.

Other recent developments include the upcoming arbitral proceedings in Hague, concerning the maritime dispute over maritime borders between the Republic of Slovenia and Republic of Croatia, the preparation of a Regulation Concerning the Use of Armed Guards On-Board Croatian Flagged Vessels, recent plans of the Croatian Government to privatize a number of shipyards (currently in progress), and infrastructural projects in seaports Rijeka and Ploče, aimed at enlarging the TEU capacity and logistical support.

IV. Jurisprudence

1. Causation

³⁸ Predominantly influenced by the English 1906 MIA. Majority of vessels are covered by the Institute Clauses and P&I Clubs, and the domestic marine insurance contracts resemble the named counterparts.

³⁹ And the adjacent Regulation regarding the Avoidance of Collisions at Sea (OG, No. NN 17/96, 181/04).

⁴⁰ The 6th Session of the Croatian Government, 2 February 2012, available at: <http://vlada.hr/en>.

⁴¹ It is important to mention that, according to the negotiated terms with the EU, the coastal line carriage between Croatian ports is reserved for Croatian ship operators until 2017, whereas the circular tourist-cruises between Croatian ports are reserved for Croatian ship operators until 2015.

⁴² The River Information System (RIS) and Automatic System of Identification (AIS) have already been established.

High Commercial Court - Pž-5724/05-3, 21 May 2008: The concept of the cause of loss – immediate cause – preceding causes – improper operation of a vessel – predominant contribution to the loss occurrence

In case P-1880/05, held in front of the Commercial Court in Zagreb, the claimant, father of the deceased, claimed an amount of 230.000,00 kn⁴³ for non-material damages (anguish due to the loss of son), and 0,06 kn for material damages (cost of funeral proceedings and burial place), alleging respondent's tort liability for causing damage/death due to an indirect collision of vessels. Captain, in charge of the respondent's vessel, was proclaimed guilty in a separate criminal proceeding, where it was found that he, due to lack of proper care, failed to carry out standard entry proceedings into the harbor, causing steering-up of the water behind the vessel, which in turn provoked an indirect collision with the deceased's boat, that, in turn, capsized, pushing the deceased over-board, into the working area of the respondent vessel's engines. The Commercial Court decided in favor of the claimant⁴⁴. The respondent appealed to the High Commercial Court, claiming that the liability of the captain is not equal to the liability of the ship operator, and that more persons (port authority, deceased) were involved in causing the damage. Respondent additionally claimed that his vessel did not contribute to the cause of damage. Finally, respondent claimed that the time-bar limitation for submitting the claim has expired.

The High Commercial Court found that the first instance court correctly decided on the respondent's liability for the indirect collision (respondent's vessel failed to observe the regulations regarding the safety of navigation [failure to adjust the speed within the harbor area with other near-by vessels; failure to adhere to the common safety measures and proceedings]; respondent vessel's defective maneuver caused damage to other vessel), thus re-confirming the causal connection between the respondent vessel's conduct and the damage suffered by the other vessel. In this sense, the cause of damage is not only the cause directly preceding the harmful event, but also other causes occurring before (a cause that served as a "trigger" for the occurrence of the line of causation leading to the harmful event; a cause predominantly creating damage; a cause characteristic for the particular type of damage that is suffered). The respondent vessel's defective maneuver was categorized as a "trigger" cause, thus predominantly causing the suffered harm. The High Commercial Court additionally dismissed all other mentioned points of appeal.

2. Towage

High Commercial Court – Pž-6633/04, 3 July 2007: Contract of towage – time-bar limitation – towage remuneration – other claims arising out of towage operations

The claimant, owner of the barque that sank during the towage operation, claimed compensation for damages from the towage operator. The respondent, who performed the towage operation, claimed that the barque was in bad shape before the commencement of the towage operation, but that the owner demanded that the operation is to be performed. Respondent additionally claimed that the time-bar limitation has expired (one-year period). Claimant responded by stating that his claim, a compensation for damages, is a claim

⁴³ Croatian: "kuna" – Croatian currency, exchange rate 1 EUR = 7,49 kn, Croatian National Bank, www.hnb.hr.

⁴⁴ Although reducing the awarded amount to 220.000,00 kn.

subject to a different time-bar period (three years), not being subjected to the towage-related time-bar period of one year.

The first instance Commercial Court accepted the respondent's objection of the time-bar limitation, stating that the towage contract is a typical maritime contract of exploitation of vessels, and that all claims arising out of such contract, including the towage remuneration and compensation for damages arising out of the contract bad performance, are a subject to the same time-bar period.

The claimant appealed, stating that only the towage remuneration claim is a subject to the one year time-bar, whereas other claims, such as is the claim of compensation, are subjected to the three year time-bar period.

The High Commercial Court affirmed the decision of the first instance court, stating that all towage related claims are subject to the one year limitation, from the day when the towage ended (except for the towage remuneration claim, where the limitation period begins from the day when it was due).

3. Maritime Agent

Supreme Court of Republic of Croatia – Revt 66/06-2, 8 March 2007: contract of employment of a vessel – on behalf of both contracting parties – due care

The claimant, operator of the vessel that was arrested in Algiers by the consignee due to deficit of the delivered cargo, demanded a compensation for damages from the respondent. Respondent, who was the charterer, agent of the claimant, and also an agent of the shipper (who was also the owner of the cargo), delivered to the consignee a clean bill of lading, instead of a dirty bill of lading with a remark that less cargo has been loaded to the vessel than originally agreed upon (the Master of the vessel refused to load the full amount of the cargo [wood], as it was packed, for the sake of the stability of the vessel).

The first instance Commercial Court rejected the claim by stating that the agent cannot be held liable for the damages arising out of the arrest of the vessel, but possibly, the shipper could be. The claimant appealed, but the second instance court, the High Commercial Court, affirmed the decision of the first instance court.

The claimant further appealed. The Supreme Court allowed the appeal, abolished the first and second instance decisions, and directed the case to the first instance court for a new hearing.

According to the Supreme Court, a maritime agent can, under the provisions of the MC, and provided both contractual parties agree, arrange and contract for a maritime contract of exploitation of vessel in the name of both contractual parties, being under a strict obligation to take due care concerning the interests of both parties, and take actions and measure required for a successful completion of the task that was assigned to him. Lower courts, according to the Supreme Court, failed to decide whether the agent created damage to the claimant through the issuance of a clean bill of lading, and, whether it was possible to load all cargo on the vessel (with a different method of packing and loading), and whether the agent failed to ensure that this is done.

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2. Journals

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- Collected Papers of the Split Faculty of Law
- Collected Papers of the Zagreb Faculty of Law
- Collected Papers of the Rijeka Faculty of Law
- Scientific Journal of Maritime Research
- Annals of Maritime Studies
- "Our Sea", Journal of Marine Science and Technology

⁴⁵ See: *supra* note 1, for available links, with available full-source articles (if in Croatian, an English summary is present).

A Short CV

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