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IL DIRITTO MARITTIMO
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QUADERNI

CURRENT ISSUES IN MARITIME AND TRANSPORT LAW

BONOMO EDITORE

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Editors
Stefano Zunarelli - Massimiliano Musi

ASLA
Associazione Studi Legali Associati

BONOMO EDITORE

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Current Issues in Maritime and Transport Law

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II

The Legal Regime of Nautical Tourism Ports in Croatia* (1)

Abstract

The growing interest for nautical tourism along the Croatian coast should be recognised as a foundation for economic development and as a branch of economy which could attract foreign and domestic investments. Parliament has declared Croatia's strategic orientation towards the nautical tourism but inappropriate legal framework obstructs the achievement of these strategic goals. In this article author gives an overview of the Croatian Maritime Domain and Sea Ports Act regarding legal status and regime of nautical ports and detects major problems arising from it.

Nautical tourism ports have legal status of maritime domain and therefore are, together with their infrastructure and superstructure, *res extra commercium*. The author raises the question of adequacy of such non-ownership regime over the buildings constructed and used on the basis of concession. Open issues regarding transformation of social ownership on maritime domain, acquired proprietary rights, registration of maritime domain and their influence on the status of nautical tourism ports are analysed. Additionally, the author is pointing out that existing legal framework prevents the concessionaires of obtaining compensation for the increased value of the maritime domain after the expiry of concession. Such business environment is very disincentive to investments of existing concessionaires as well as for potential investors.

Author offers *de lege ferenda* proposals aiming to reconcile the seemingly opposing interests of the stakeholders involved – investors and the state.

* This article has been submitted to double blind peer review.

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mation and privatisation. – 4.2. Exclusion of ports from the regime of maritime domain. – 4.3. Non-valorisation of legitimate investments after the termination of concession. – 4.4. Boundaries of maritime domain and its entry into land register. – 5. Conclusion. – Bibliography.

1. *Introduction*

Croatia is one of the leading European nautical destinations. However, statistics show us that 70% of our income from nautical tourism comes from berths and only 30% from auxiliary services [1]. In order to increase the incomes from auxiliary services new investments are necessary. The quality and quantity of those services should be improved in existing ports of nautical tourism, and the constructions of new, modern and luxury nautical ports should be encouraged. The main premise to attract the investments is well organised, transparent legal system with stable laws. Unfortunately, exactly due to the lack of the necessary legal certainty the number of investments is reduced in Croatia in general. The lack of legal certainty is especially highlighted in the matter of legal regime of maritime domain, and hence in the matter related to the nautical tourism ports as its part. The existence of the problem has been acknowledged and consequently Croatia's strategic orientation towards nautical tourism has been declared by Croatian parliament [2]. Despite of this long-awaited declaration no serious measures have been undertaken in order to improve the current situation. The legal framework for legal regime of nautical ports is regulated by several acts, by-laws and autonomous regulations adopted by the concessionaires, and many of them are not in accordance with each other. In the first part of this paper analysis of the statutory provisions regarding (non)proprietary legal regime of ports for nautical tourism will be provided. Afterwards the current situation will be scrutinised, pointing out the number of outstanding issues regarding the applicability of prescribed legal regime on existing ports of nautical tourism. Furthermore, reference will be made to the provisions which make the investment climate highly unfavourable.

[1] Nautical Tourism, Capacity and Turnover of Ports, 2014, Croatian Bureau of Statistics, First Release, No. 4.3.4., Zagreb, 2015.

[2] Nautical Tourism Development Strategy of the Republic of Croatia, 2009-2019, Ministry of the Sea, Transport and Infrastructure and Ministry of Tourism, Zagreb, 2008.

2. *Legal regime of nautical tourism ports*

Nautical tourism port is, according to regulations in force in Republic of Croatia, a special purpose port that serves for the reception and berthing of vessels, equipped to provide services to the port users and vessels. It forms a unified complex in a business, constructional and functional sense [3]. As any other port, it contains marine space and land area directly connected to the sea, together with constructed and non-constructed quays, breakwaters, equipment plants and other objects intended for mooring, anchoring and protection of yachts and boats, as well as for other economic activities related to such activities in business, transport or technological terms. This analysis focuses on the legal regime of the land area, proprietary regime of buildings built on it and possible models of its usage. Since all ports are part of maritime domain, prior to the presentation of specifics of the legal regime of nautical tourism ports, legal regime of maritime domain has to be analysed.

2.1. *Legal regime of maritime domain*

Due to significance and importance of the sea and its coast to the Republic of Croatia, constitutional provision of the Art. 52 [4] provides that sea, seashore and islands (among numerous other assets) are of interest to the Republic of Croatia, and therefore shall enjoy its special protection. Constitution does not

[3] Art. 40 and 42 of the Maritime Domain and Seaports Act, Official Gazette of the Republic of Croatia, no. 158/2003, 100/2004, 141/2006, 38/2009, 123/2001, 56/2016 (MDSPA); Art. 10/1/2 of the Ordinance on Classification of the Seaports Open for Public Traffic and Special Purpose Ports (Official Gazette of the Republic of Croatia, 110/04). Besides the MDSPA, brought by the Ministry of Maritime Affairs, Transport and Infrastructure the legal framework of nautical tourism ports was also regulated by the Ministry of Tourism, in the part concerning tourism services in nautical tourism ports. The Ordinance on Classification and Categorisation of Nautical Ports (Official Gazette of the Republic of Croatia, No. 142/1999, 47/2000, 121/2000, 45/2001 and 108/2001) determines different categories of nautical tourism ports by type of objects and services rendered. The Art. 2 the Ordinance also contains the definition of nautical tourism ports, as follows: nautical port is functional and business unit where natural or legal person operates and provides touristic services in nautical tourism and other services in function of tourist consumption. Unfortunately, the work of those two ministries was not harmonised, and as a consequence there are different terms, definitions, divisions and classifications made by those to bodies. On the basis of those acts, the by-laws were passed making this piece of legal system even less transparent.

[4] Constitution of the Republic of Croatia, Official Gazette of the Republic of Croatia, no. 56/1990, 135/1997, 113/2000, 28/2001, 76/2010, 5/2014 (Constitution).

provide for a special legal regime for those assets, but it states that manner in which they will be used and exploited will be regulated by law.

Act on Ownership and other Real Rights [5], as a general law on proprietary regime prescribes that the sea and the seashore are common goods and they do not have capacity of being subject matter of the right of ownership and other real rights (Art. 3/2 of the AORR). It means that they are *res extra commertium* [6]. In addition, it is provided that the Republic of Croatia takes care, administers and is responsible for common goods, unless a particular piece of legislation provides otherwise. It is to be noted that the term "seashore" and its scope are not defined by AORR [7]. However, since AORR is *lex generalis,* it will be applied only in the cases when *lex specialis* does not provide special regulation.

Lex specialis regarding legal regime of maritime domain and ports is MDSPA. According to the Art. 3 of the MDSPA maritime domain includes internal sea waters and territorial sea, their seabed and subsoil, and a part of land that is by its nature intended for general use or has been proclaimed as such as well as anything that is permanently attached to such part of a land on the surface or underneath it. It is explicitly prescribed that ports are part of maritime domain. Maritime domain is confirmed to be a common good of interest to the Republic of Croatia; it is under its special protection and used under the conditions and in the way regulated by MDSPA. It is also stated that the right of ownership or any other property right cannot be acquired on maritime domain on any basis (Art. 5/2 of the MDSPA).

From the point of view of non-proprietary legal regime it is interesting to set out the particularity of land marinas [8]. Land marina is defined as a part of a

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[5] Official Gazette of the Republic of Croatia, 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, 143/2012, 152/2014 (AORR).

[6] For the very thorough historical analysis of problems of ownership and other property rights on the maritime domain and the literature on the subject matter see: D. BOLANČA, *Problem stvarnih prava na pomorskom dobru (bitne novine hrvatskog pomorskog zakonodavstva)*, in *Poredbeno pomorsko pravo*, 2015, pp. 237-538.

[7] On the differentiation of the terms "seashore" and "maritime domain" see: V. SERŠIĆ, J. NAKIĆ, *Pravni problemi morske obale (u svjetlu hrvatskog i europskog prava)*, in *Poredbeno pomorsko pravo*, 2015, pp. 361-363.

[8] Pursuant to the Law on Providing Services in Tourism (Official Gazette of the Republic of Croatia, no. 68/2007, 88/2010, 30/2014, 89/2014, 152/2014) and the Art. 5. of the Ordinance on Classification and Categorisation of Nautical Ports (Official Gazette of the Republic of Croatia, no. 72/2008) there are following types of nautical ports: anchorage, repository, land marinas and marinas.

land fenced and equipped for rendering services of storage and keeping of vessels as well as of transporting a vessel into the water or from water to the land marina. Very often those land marinas are dislocated from nautical port and from the sea as well. The question is should those land marinas be in the status of maritime domain and consequently *extra commertium*? It seems that pure fact that the part of the land is used for storage of vessels cannot be the argument strong enough to subject such parcel under the regime of maritime domain.

Since maritime domain has legal status of *res communes omnium* and is not subject to property rights, MDSPA prescribes that it may be used and economically exploited only on the basis of granted concession [9]. The usage of the maritime domain by means of concession is indirectly prescribed by the AORR as well. However, there is a difference between regimes provided by those two acts, concerning the legal status of buildings and other structures built on a common good – maritime domain.

2.2. *Legal regime of buildings built on maritime domain*

One of the fundamental principles of the Croatian property law is *superficies solo cedit*. There are only a few exceptions to it. One of them refers to buildings and other structures permanently connected to the common good [10]. According to the Art. 9/4 of the AORR buildings and other structures may be legally separated from the common good by a concession based on law authorising its holder to own such a building or another structure thereon. By permitting this separation, while the concession lasts, the principle of *superficies solo cedit* becomes only rebuttable presumption.

Art. 5 of the MDSPA, on the other hand, prescribes that buildings and other structures on maritime domain which are permanently connected with the maritime domain "shall be considered" as belonging to the maritime domain. It is also stated that the right of ownership or any other property right cannot be acquired on maritime domain on any basis. The question raised by the doctrine was whether the provision of the Art. 5 of the MDSPA represents the *presumptio iuris et de iure* regarding the principle of *superficies solo cedit*, or it corresponds to the

[9] Art. 6/5 and 7/1 of the MDSPA.

[10] Simonetti deems that those provisions could be applied not only to the seashore but also on floating buildings and structures in waters, lakes and sea if they are permanently connected to the seabed or seashore. P. SIMONETTI, *Prava na nekretninama (1945. -2007.)*, Rijeka, 2009, p. 76.

provision of the Art. 9/4 of the AORR [11]. In the Croatian doctrine and jurisprudence prevails the opinion that buildings and other structures built on the maritime domain cannot be legally separated from maritime domain, and consequently property rights on those buildings cannot be acquired not even during the concession period [12]. Arguments against the possibility of such legal separation are based on the assertion that MDSPA is *lex specialis* and *lex posterior* and therefore cannot be interpreted in a line with AORR. Namely, those authors deem that if the legislator wanted such exemption of *superficies solo cedit* principle on the maritime domain he should have had stipulated it [13] [14]. Rare are the authors who find that there is still possible to interpret the MDSPA in a line with AORR since the MDSPA does not contain the express ban of such separation

[11] Question whether the principle *superficies solo cedit* refers to the maritime domain was controversial in discussions on legal regime of maritime domain even before MDSPA was brought, when the matter was regulated by Maritime Code (MC of 1994) and Maritime and Water Domain, Ports and Harbours Act (MWDPHA of 1974). See: S. FRKOVIĆ, *Prikaz otvorenih pitanja u odnosu na pomorsko dobro*, in *Uloga i ovlasti državnog pravobraniteljstva glede određenih nekretnina u vlasništvu Republike Hrvatske i općih dobara uz osvrt na neke obveznopravne odnose*, Zagreb, 2000, pp. 7-8.

[12] Supreme Court of Republic of Croatia, Pž-2594/07-5 of June 19th 2007.

[13] Some authors even argue that cited norm explicitly excludes the possibility of acquiring property rights on the buildings built on maritime domain. L. RAK, B. RUKAVINA, O. JELČIĆ, *Uvođenje općeg stvarnopravnog režima na objektima lučke suprastrukture izgrađenim na temelju ugovora o koncesiji*, in *Poredbeno pomorsko pravo*, 2015, p. 396; D. BOLANČA, *Pomorsko dobro u svjetlu novog Zakona o pomorskom dobru i morskim lukama*, in *Pravo i porezi*, XIII, no. 2, 2004, p. 35; D. DAMJANOVIĆ, *Novine u imovinskopravnim odnosima u vezi s izmjenama Pomorskog zakonika*, in *Nekretnine u pravnom prometu*, Zagreb, 2003, str. 152; S. FRKOVIĆ, *Stečena prava na pomorskom dobru*, in *Nekretnine kao objekti imovinskih prava*, Zagreb, 2004, p. 147, S. FRKOVIĆ, *Objekti na pomorskom dobru*, in *Nekretnine kao objekti imovinskih prava*, Zagreb, 2007, p. 95. Before the enactment of the MDSPA the matter of maritime domain was regulated in the MC of 1994. In the Art. 65 it was prescribed that the concessionaire may, by consent of the concession grantor, establish a hypothec on the facilities that he has built on the maritime domain, under conditions referred to in the concession agreement. Since only the owner may establish a hypothec it was considered that legal separation of buildings and maritime domain was possible. Number of critics were addressed at the provisions as unclear, contradictory and inapplicable. For example: M. DIKA, *Pomorsko dobro i prisilno ostvarenje tražbine*, in V. Hlača (edited by), *Pomorsko dobro – društveni aspekti upotrebe i korištenja*, Rijeka, 2006, pp. 59-50; V. FILIPOVIĆ, *Stvarna prava na pomorskom dobru*, in V. Hlača (edited by), *Pomorsko dobro – društveni aspekti upotrebe i korištenja*, Rijeka, 2006, pp. 35-43. The provision of the Art. 65 of the MC of 1994 was applied in practice but it was interpreted very strictly. Hypothecs could have been established only on the buildings built by the concessionaire authorised to construct such facilities. See: Supreme Court of Republic of Croatia, Pž-2594/07-5 of June 19th 2007.

[14] Even though based on the provisions of Maritime Code (1994) the reasoning of the Supreme Court of the Republic of Croatia in the case law Gzz-131/03 of July, 2nd 2003 and Pž-1507/02-3 of May 31st 2006 are also in the line with this interpretation.

[15]. Some authors stress that the basis for the legal separation is not the real right, but a concession, adding that by permitting such separation real right would not be acquired on the maritime domain [16]. Such theoretical claim is supported by the wording in the Art. 5 of the MDSPA, since the phrase "shall be considered" is commonly used to express the rebuttable presumption. In addition, the provisions of MDSPA should be interpreted in relation to the *ratio* of permitting such exception in the AORR in the first place, i.e. by teleological interpretation. The reasoning was that ownership on the buildings and structures should facilitate investments since it would enable the investors to use those buildings as real security for loans [17]. However, the discussion is only of theoretical significance. From the potential investor's point of view the polemic should be observed in the wider context, in connection to provisions regarding possibility of establishment of hypothec and its enforcement. Allowing legal separation of the buildings from maritime domain itself is not sufficient for concessionaire's creditworthiness. There are several sever obstacles for establishment and enforcement of the hypothec. First of all, even if a concessionaire is the owner of the building built on the maritime domain, the question is whether he may establish the hypothec without the authorisation of the concession grantor? In addition, the question of transferability of the ownership without the concession in the process of enforcement should be raised. Since the legal basis for the separation of the building from the maritime domain is exactly the concession, what would separate the building from the concession? [18]. Even if it would be possible to transfer the ownership without the concession such solution would not be acceptable for the creditors, because the debtor would in that case continue to use building even after the transfer of ownership, and creditor's position wouldn't change. In case of transferability of buildings only together with the concession the Art. 35 of the MDSPA would be challenging. It prescribes that the concession can be fully transferred within the same scope and under the same condition under which it has been granted, only with the consent of the concessant. That means

[15] P. SIMONETTI, *op. cit.*, p. 76; T. JOSIPOVIĆ, *Posebna pravna uređenja koncesija na nekretninama*, in *Nekretnine kao objekti imovinskih prava*, Zagreb, 2004, p. 102; I. TUHTAN GRGIĆ, *Pravo vlasništva na objektima izgrađenima na pomorskom dobru*, in Ž. Panjković (edited by), *Zbornik radova Pomorsko dobro u fokusu znanosti i pragme*, Rijeka, 2005, p. 140.

[16] P. SIMONETTI, *op. cit.*, pp. 668-669.

[17] Impossibility of acquiring hypothec on the building and structures built on the maritime domain is often being blamed as one of the reasons for the lack of investments in Croatian ports. L. RAK, B. RUKAVINA, O. JELČIĆ, *op. cit.*, p. 398.

[18] Some authors stress that buildings and other structures, legally separated from the maritime domain on the basis of concession, are not part of concession but separate real estates. P. SIMONETTI, *op. cit.*, p. 77.

that the enforcement of the hypothec (if established) would be subject to discretionary rating of the concession grantor to approve the transfer on the third party.

Finally, it should be noted that in the Croatian doctrine many authors advocate that the cited provisions of the MDSPA should be changed in order to allow the legal separation of building and other structures built on maritime domain [19]. These authors welcome such proposals and intervention in the legislation. However, it should be stressed that the interventions should be done thoroughly, providing a complete system of proprietary rights on buildings built on maritime domain as integral part of the MDSPA [20]. The other possibility is to exclude the option of the real securities on maritime domain. In such case other instruments of securing the investors interest should be used. According to the current Croatian law the only form of security on maritime domain is a pledge over concession right, regulated in a mode which is rather restrictive and repulsive for potential investors [21], and quite incomplete from legislative technique point of view [22]. Another very effective alternative could be the acquisition of the controlling stake package [23].

3. *Particularities of nautical tourism ports as special purpose ports*

Ports are part of maritime domain, and hence are subject to legal regime prescribed for maritime domain in general. Due to their specifics and economic importance they are also subject to MDSPA's provisions on ports and harbours

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[19] L. RAK, B. RUKAVINA, O. JELČIĆ, *op. cit.*, pp. 396-399. Similar opinion had been expressed even before the MDSPA entered into force. For example: J. MARIN, *Koncesija i pravo vlasništva na objektima izgrađenim na pomorskom dobru*, in *Pravo u gospodarstvu*, 1998, vol. 37, pp. 246-257.

[20] Some authors suggest that hypothec on the buildings should be modelled along the lines of the classical hypothec. P. SIMONETTI, *Stvarna prava na pomorskom dobru i na zgradama koje su na njemu izgrađene*, in V. Hlača (edited by), *Pomorsko dobro – društveni aspekti upotrebe i korištenja*, Rijeka, 2006, pp. 149-150. However, it should be noted that number of problems may raise during the legal separation of buildings from maritime domain. For very comprehensive analysis of potential problems see: L. RAK, B. RUKAVINA, O. JELČIĆ, *op. cit.*, pp. 399-407.

[21] For the critical review of the current regulation see: Z. TASIĆ, *Založno pravo na koncesiji na pomorskom dobru*, in *Poredbeno pomorsko pravo*, 2009, pp. 193-201.

[22] G. STANKOVIĆ, *Raspolaganje koncesijom na pomorskom dobru: prijenos, potkoncesija, zalaganje*, in Ž. Panjković (edited by), *Zbornik radova Pomorsko dobro u fokusu znanosti i pragme*, Rijeka, 2005, pp. 37-53.

[23] M. DIKA, *op. cit.*, pp. 51-52.

and order on the maritime domain and ports, as well as provisions contained in the Maritime Code [24].

Ports are classified by their purpose and by their importance. According to the main classification, specified in the Art. 40 of the MDSPA, ports may be either open for public traffic or special purpose port [25]. Seaports which, under the same conditions, may be used by everybody in accordance with their purpose and within the limits of available capacity are ports open for public traffic [26]. On the other hand, special purpose port are seaports, which are of particular use or economic use of private persons (nautical tourism ports, industrial ports, ship-building ports, fishing ports) or governmental body (navy ports) (Art. 42 of the MDSPA). The importance of this division is in the fact that those two types of ports have different management regimes, and in some cases they render same services. In ports open for public traffic port management is apart from its economic use, while in the special purpose ports both management function and the economical exploitation of the port carries out the concessionaire [27].

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[24] Official Gazette of the Republic of Croatia, no. 181/2004, 76/2007, 146/2008, 61/2011, 56/2013, 26/2015 (MC of 2004).

[25] Current division of ports is criticised by the part of the legal doctrine, which considers that such division does not fulfil its purpose, especially in the light of fulfilling four fundamental market freedoms of the European Union, and proposes *de lege ferenda* new and more appropriate port classification on public service ports, private service ports and private ports or on public ports and private ports. See: G. VOJKOVIĆ, *Nova podjela luka na javne luke i privatne luke na hrvatskim unutarnjim vodama kao primjer razvoja za morske luke*, presentation on the Scientific conference "Prijedlog Zakona o pomorskom dobru i morskim lukama i druga aktualna pitanja pomorskog i prometnog prava"; G. VOJKOVIĆ, N. GRUBIŠIĆ, L. VOJKOVIĆ, *Ribarske luke u Republici Hrvatskoj – javne ili privatne luke*, in *Pomorski zbornik*, Rijeka, 2013, 47-48, pp. 205-213.

[26] The legal doctrine payed greater attention to the ports open for public traffic because of their greater economic importance. For example: L. RAK, I. VIO, *Port Regulation in Croatia de lege ferenda*, in M. Musi (edited by), *New Challenges in Maritime Law: de Lege Lata et de Lege Ferenda*, Bologna, 2015, pp. 425-443; D. BOLANČA, *Pravni status morskih luka kao pomorskog dobra u Republici Hrvatskoj*, Split, 2003; D. BOLANČA, G. STANKOVIĆ, *The Legal Status of the Croatian Seaports of Rijeka and Split with Particular Reference to Ports of Koper and Trieste*, in I. Knežević (edited by), *Second Paneuropean Shipping Conference*, Split, 2001, pp. 75-90; number of articles in the Conference proceedings *Pravni problem instituta pomorskog dobra u Republici Hrvatskoj s posebnim osvrtom na luke otvorene za javni promet*, Split, 1998.

[27] In the part of the Croatian doctrine the opinion was held that these ports are managed by the state directly. D. BOLANČA, *Pravni*, *cit.*, p. 101. Some authors point out that such division, and two different management regimes are unwarranted and that the same regime should be applied for all ports. M. MEŠTROVIĆ, *Usporedni prikaz sustava upravljanja lukama otvorenim za javni promet i lukama za posebne namjene u hrvatskom zakonodavstvu*, in *Pravni problemi instituta pomorskog dobra u Republici Hrvatskoj s posebnim osvrtom na luke otvorene za javni promet*, Split, 1998, pp. 49-57.

For the purpose of managing, building and using of ports open for public traffic, port authorities, non-profit legal persons, are established (Art. 48 of the MDSPA) either by the Government of the Republic of Croatia or by the county assembly. There are number of activities entrusted to the port authorities [28]. For the realisation of those activities ports may use the assets allocated from the budget of the founder and revenues prescribed in the Art. 61 of the MDSPA. The economical use of port open for public traffic is performed by concessionaires, whose only obligation is to render the services in accordance with the concession contract (and pay the concession fee). The position of the concessionaire in the special purpose port is more demanding. Even though number of the activities run in the special purpose ports, according to their contents and concrete elements, correspond to the activities carried out by port authorities in the ports open for public traffic, those activities have to be carried out by the concessionaire. Those differences may be rather significant in cases where ports open for public traffic appear in the role of competitors to nautical tourism ports.

Special provisions regulating the matter of the special purpose ports are contained in only three articles (Art. 80-82 of the MDSPA), prescribing merely some specifics of concession granting and none of them is specially devoted to nautical tourism ports. In addition, one of the three articles is used to prescribe the appropriate, subsidiary, application of general provisions on concessions on maritime domain.

Apart from division on ports open for public traffic and special purpose ports, there are two further subdivisions of special purpose ports. They may be opened for international traffic or for national traffic (Art. 40/1 of the MDSPA). According to their importance for Croatia, special purpose ports are divided into ports of national importance and ports of regional relevance. The importance of the port is evaluated only on the basis on the number of berths. The number of

[28] Activities of port authority shall include: 1. taking care of building, maintenance, management, protection and upgrading of maritime domain that represents dock area, 2. building and maintenance of port infrastructure, financed from the budget of port authority's founder, 3. expert control over building, maintenance, management and protection of dock area (port infrastructure and superstructure), 4. ensuring permanent and undisturbed port traffic, technical and technological integrity and safety of navigation, 5. ensuring provision of services of general interest, or those for which other economic subjects have no interest, 6. coordination and supervision of the operation of the concessionaires that perform economic activity in dock area, 7. deciding on establishing and managing of a free zone in port area, in accordance with free-zone regulations, 8. other activities specified by law. (Art. 50 MDSPA).

berths as exclusive criteria for the assessment of the port as of the state importance or of the regional importance might seem reasonable at first glance, but it is actually quite unfair. Namely, the size of the vessels that may be berthed in a port of nautical tourism as well as the quality and quantity of auxiliary services should be additional criteria. Depending on the economic importance of ports the concessions will be awarded by the different state authority and for the different period of time (Art. 80/4 of the MDSPA) [29]. When setting the period for which the concession will be granted, the purpose, scope and value of necessary investments as well as the overall economic effects accomplished by the concession grand shall be considered. The provision of the Art. 22 of the MDSPA on extension period of the granted concession may also be applied. Period of granted concession may be extended providing the new investments commercially justify such extension. In that case concession grantor may extend the period of granted concession up to thirty years in total with regard to the concession granted by the county assembly, and up to sixty years in total with regard to concessions awarded by the Croatian government. Of course, such prolongation of concession will result in amendments to other conditions from the decision on concession grant and the concession contract.

Ports of nautical tourism are established by the decision awarding a concession. Decision on granting a concession shall specify the area of maritime domain being granted for use or economic exploitation; mode, conditions and period of use or economic exploitation of maritime domain, degree of exclusion of general use, fee paid for concession, powers of concessant, list of superstructure and infrastructure located on maritime domain and being granted for concession, rights and liabilities of concessionaire, including the liability of maintenance and protection of maritime domain, as well as preservation of nature, if maritime domain is located in a protected part of nature (Art. 24 of the MDSPA). Decisions granting concession have to be based on the urban planning acts (Art. 80/7 of the MDSPA).

A concession for economic exploitation of maritime domain shall be granted on the basis of a public tender. The procedure is the same regardless of whether the concession is granted for existing marina or the new one. The elected concessionaire signs the concession contract. Besides the obligation to use the port in compliance with concession-granting decision and concession

[29] If the nautical tourism port is of state importance the Government is entitled to award the concession for the period of time up to fifty years, while for the period over fifty and up to 99 years the consent of the Croatian Parliament is required. In the case where the port is of regional importance the concession is awarded by the county assembly. It may be awarded for the period of the maximum twenty years.

contract, the concessionaire shall undertake to maintain the port in line with its purpose and navigation safety requirements in it. Provisions on navigation safety requirements are more precisely prescribed by the Maritime Code. Concessionaires in special purpose ports shall undertake to equip the port with appropriate devices for handling and collecting of solid and liquid waste, remainders of cargo, greasy and fecal waters as defined by the provisions of amended MARPOL Convention 73/78. Concessionaires are also obliged to prepare Rules of Order for their port.

4. *Nautical tourism ports* de facto

From a brief review of legal regime of nautical tourism ports *de lege lata* it can be concluded that the legal framework is rather scarce, in antinomy with the general regulation from the AORR and unattractive for investors. There are also some provisions prescribed in order to enhance the legal certainty, but are, at the same time, in discrepancy with the situation on the ground, and thus inapplicable in number of situations. The example of such inapplicable provision is the one prescribing that determined boundaries of maritime domain and registration of maritime domain into land register are statutory requirements for concession granting. Namely, there are still number of private owners registered on maritime domain, in some cases registered on valid and in others on invalid legal basis. Part of the problem is arising from the fact that registration of maritime domain in land registers, as common good, was not mandatory. Decades of neglecting the role of land registers in general contributed as well as the fact that urban planning acts were in practice very often not respected. Some unresolved property issues are emanating from the period before Croatia became independent, when the economy and society were based on social ownership, and some, from the period after gaining independence due to the repercussions of the process of transformation of social ownership. Even though problems (or at least some of them) were detected on time, they were not resolved and they multiplied by years. Current provisions might block the new concession granting procedures and even destroy existing ports of nautical tourism.

4.1. *Problems emanating from the processes of transformation and privatisation*

Number of Croatian nautical tourism ports were built in years before 1991, when economy and society were based on social ownership. In order to

understand the present situation in the Croatian ports of nautical tourism it is necessary to comprehend the process of transformation of social ownership. Apart from transformation of social ownership into civil one, and thus the alteration of the Croatian legal order, the process of transformation produced huge social and economic effects with long term consequences [30]. The process of transformation and the process of privatisation that followed it itself were very complex and rather controversial, both in doctrine and practice [31]. In cases where maritime domain was involved in process of transformation the discussions were highly turbulent. For the purpose of this paper only basic features will be presented, pointing out the main consequences of those processes regarding the nautical tourism ports.

Prior to explaining the particularities of the process of transformation in ports of nautical tourism it is important to give a note on social ownership and the process of transformation in general. With regards to the real estate in social ownership socially owned enterprises (and in some cases natural persons as well) had different para-real rights (management of state owned property, right to use the socially owned real estate and right to disposal of property as well as right to use purposive to build) which were legally separating building from the socially owned building plot. In the 1991, when Act on Transformation of Socially-Owned Enterprises [32] was brought, commenced the process of transformation of social ownership. According to its provisions socially-owned enterprises turned into trading companies with determined owner (joint stock company or limited liability company). In order to carry out the procedure of statutory transformation of the socially owned enterprises the estimation of the value of the social capital had to be done. Of course, the most valuable part were real estates. The enterprises undergoing the process of transformation had to obtain the approval to the intended transformation from the Croatian Privatisation Fund – an institution founded by the Republic of Croatia with the task to carry out the processes of transformation and privatisation. After the approval by the Fund, estimated value was entered into company's share capital. In this manner, at the same time, two transformations were committed - the statutory alteration of so-

[30] P. SIMONETTI, *Pretvorba društvenog vlasništva na nekretninama*, in *Zbornik Pravnog fakulteta Sveučilišta u Rijeci*, 1998, 2, p. 367.

[31] Extensively on the process of transformation of social ownership: P. SIMONETTI, *Pretvorba*, *cit.*, pp. 363-421; N. GAVELLA, T. JOSIPOVIĆ, *Pravni učinci pretvorbe društvenih poduzeća s osobitim osvrtom na njezine imovinskopravne učinke*, in *Informator*, Male stranice, no. 5106-5107, 5108.

[32] Official Gazette of the Republic of Croatia, no. 18/1991, 83/1992, 16/1993, 2/1994, 9/1995, 42/1995, 21/1996, 118/1999, 99/2003, 145/2010 (AT).

cially owned enterprises, and transformation of rights to management/use/disposal over the things in social ownership of those enterprises into their civil ownership. The process of transformation was usually followed by the process of privatisation, and company's shares or stocks were sold.

Numerous enterprises in nautical tourism ports were transformed according to provisions of the AT. At that time maritime domain was in the regime of "socially owned in common use" and it was *extra commertium* [33]. In behalf of its special legal regime, process of transformation of social enterprises operating on maritime domain should have been carried out with outstanding attention and care. Namely, from its status of *res extra commertium* emanates the impossibility of its transformation into right of ownership [34]. Unfortunately, it was very common that approval by the Croatian Privatisation Fund was given, without additional examination of the request, even though the estimated real estate could not be subject to transformation. The problem was that the status of maritime domain often was not registered in the land registers, and some transforming enterprises enclosed the value of those land parcels in the transformation request, even though it was contrary to the provisions of the MDSPA. As a consequence of valuation of land (maritime domain) in the process of transformation and its entrance into share capital some nautical ports have managed to register their ownership on the maritime domain [35]. Many of those registrations were subject to legal proceedings run by the state attorney, and, in accordance with judgements, were erased from land registers and marked as maritime domain. Subsequently, those parcels of maritime domain had to be erased from the assets of the company. It is indisputably that transformations implemented in such a manner were illegal. At the same time, it has to be stressed that, even though the transformation was illegal, building and investment on the maritime domain were legal. Those investors, whose rights were erased, remain without just compensation which infringes the acquired rights, violates the legal certainty [36] and hence questions the constitutionality of those procedures.

The number of questionable transformations during the first several years of appliance of the AT probably inspired the legislator to introduce the Art. 66

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[33] Art. 4/2 and 4/4 of the MWDPHA of 1974.

[34] P. SIMONETTI, *Prava*, *cit.*, p. 666.

[35] In the case law it was stated that the Fund's approval cannot affect the acquisition of ownership, because it does not have such authority. See the court's reasoning of the Supreme Court of Republic of Croatia, Pž-1250/09-6 of April 2nd 2009.

[36] S. FRKOVIĆ, *Prikaz*, *cit.*, pp. 10-11, 18.

of the Seaports Act of 1995 [37], according to which the transformation of users of special purpose ports may be obtained in a manner and under conditions prescribed by the AT, only after the boundaries of maritime domain are determined [38]. However, numerous transformations in ports for nautical tourism were at that time already carried out [39].

Even in cases where maritime domain was registered in land registers or transforming enterprises did not include the maritime domain (as a land parcel) the practice of estimation of the value of the social capital was very uneven. Namely, users of maritime domain had "right to use" maritime domain and right to build different objects [40]. Buildings were appurtenances of maritime domain and thus *extra commertium*, but, at the same time they were kept in port user's records as basic assets used in order to perform the economic activities in port [41]. In practice it proved to be controversial whether the right to use on the building built on maritime domain could have been transformed into right of ownership [42]. The question was raised whether those two rights, 'right to use' socially owned building plot, and "right to use" maritime domain had the same legal nature, and is the "right to use" maritime domain subject to transformation. Some authors assert that the right to use on the building plot had para-real legal nature, whilst the right to use on maritime domain had legal nature of obligation [43]. On the other hand, others argue that the right to use on the maritime domain in some cases had the nature of real right, whilst in others by its nature was obligation [44]. Even if the right to use maritime domain in some cases had real

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[37] Official Gazette of the Republic of Croatia, no. 108/1995, 6/1996, 137/1999, 97/2000, 158/2003.

[38] D. LAMBAŠA, *Praktični problemi pretvorbe u lukama*, in *Pravni problemi instituta pomorskog dobra u Republici Hrvatskoj s posebnim osvrtom na luke otvorene za javni promet*, Split, 1998, pp. 31-32.

[39] Part of the Croatian legal doctrine held that those transformations obtained before the Seaport Act came to force should be annulled. See: V. HLAČA, *Pravni režim pomorskog dobra, posebice morskih luka u hrvatskom zakonodavstvu*, in *Pomorski zbornik*, 1996, 1, p. 187.

[40] Art. 6 of the MWDPHA of 1974.

[41] Art. 35/1 of the MWDPHA of 1974.

[42] In the case of transformation the owners of the building would tacitly acquire legal concession that separates the building from the land. P. SIMONETTI, *Prava*, *cit.*, p. 666.

[43] *Idem*, pp. 102-103.

[44] S. FRKOVIĆ, *Prikaz*, *cit.*, p. 7; B. KUNDIH, *Hrvatsko pomorsko dobro u teoriji i praksi*, Rijeka, 2005, pp. 46-48. His argumentation is based on the Art. 88 of the Act on Maritime and Water Domain, Ports and Harbours of 1974, within the Transitional and Final Provisions. Namely, in this article it was prescribed: "If, at the time of the coming into force of this Act, on the maritime domain exists the right of ownership or other real right, apart from right to use…" Cited formulation gives a strong argument in favour of such opinion. Furthermore, in the Art. 35 of the same Act it was provided a right of pre-emption of the facilities in the port in favour of the user

(or para-real) legal nature, it is not the same right as "right to use" which could have been established exclusively on the building plot. Furthermore, the right to use on the building plot was inseparably linked to the right of ownership on the building, i.e. the building couldn't be sold without the right to use. On the other hand the right to use the maritime domain was non-transferable [45]. At that time, before 1991, the difference was not so important and, maybe for that reason, was not perceived by many jurists. The importance became visible too late – only during, and after the process of transformation.

As a consequence of stated situation subject to estimation of the value of the social capital in the process of transformation were sometimes maritime domain together with buildings and structures built on it, sometimes only buildings and structures build on the maritime domain, and mostly only investments done on the basis of the right to use [46].

Further complications appeared in cases where the construction of nautical tourism port was realized through "joint venture" agreements between the users of port and other socially owned-enterprises. As compensation for their investment other socially owned enterprises would acquire right to use on parts of buildings within the port (for examples business premises for restaurants, stores and other auxiliary services rendered in port for nautical tourism). In the process of transformation those enterprises-investors estimated the value of their 'right to use' on buildings or the value of their investments and estimated value was entered into their company's share capital.

Knowing that maritime domain, as well as buildings and structures build on it, may not be subject to property rights, the question has to be raised what is in the company's share capital at all? And, additionally, what did shareholders buy? Which rights (proprietary rights) have to be considered acquired during and after the process of transformation? When answering those questions Art. 49/4 of the Croatian Constitution, prescribing that "the rights acquired through the investment of capital shall not be infringed by law or any other legal act' shall be considered. Some of the investors were foreign companies, and since the Republic of Croatia had signed a number of agreements on encouragement and

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of the port. If the user had the pre-emption right it means that those objects could have been sold to the third party as well. Bolanča differs two the legal nature of right to use on maritime domain, depending on weather the user had 'right to use maritime domain in order to build' (in that case it had real nature) or pure 'right to use' (in which case it was an obligation). D. BOLANČA, *Problem*, *cit.*, pp. 333-335.

[45] Art 14 of the MWDPHA of 1974.

[46] B. KUNDIH, *Pretvorba i privatizacija na pomorskom dobru*, in Ž. Panjković (edited by), *Zbornik radova Pomorsko dobro u fokusu znanosti i pragme*, Rijeka, 2005, pp. 18-19.

protection of investments, it became exposed to the risk of being subject to international disputes and arbitrages [47]. The question of state liability could (and should) be raised since the Fund was approving the transformation [48]. It seems that majority of shareholders are not aware of the seriousness of the situation. Namely, after the termination of the concessions those concessionaires will have no rights nor on maritime domain neither on buildings and structures and will have to erase them from the assets of the company and reduce the share capital. Consequentially the value of shares and stocks will most likely fall, and for some companies, having nautical tourism as their main activity, this could lead to their collapse.

4.2. *Exclusion of ports from the regime of maritime domain*

Ports were part of maritime domain, and in the same regime as maritime domain, since 1811 when Austrian Civil Code was introduced. When passing Croatian Maritime Code, in 1994, ports were omitted from the definition of maritime domain. Some say that it happened by mistake [49], others believe it was on purpose. However, six months later, in October 1994 Maritime Code was amended and ports were "returned" under the non-proprietary regime of maritime domain. According to the prevailing opinion in Croatian doctrine during that period, ports were subject to the general proprietary regime [50]. In that case, the owners which have acquired their proprietary right on maritime domain during that period, have a right to just compensation for expropriated land [51].

Of course, in that case additional would be the question how to determine the just compensation when the maritime domain may not be subject to legal transactions. The significance of this omission is particularly evident when observed in the context of transformation of social ownership into civil one which occurred at that time.

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[47] J. JUG, *Stvarna prava na pomorskom dobru?*, in *Zbornik Pravnog fakulteta Sveučilišta u Rijeci*, 2013, n. 1, pp. 301-302.

[48] The process of transformation on the maritime domain spurred heated debates on the legality and validity of its performance. Number of academics and practitioners argued that all transformations should be annulled, while others thought that civil ownership should be protected. See: B. KUNDIH, *Pretvorba*, *cit.*, pp. 20-22.

[49] The Ministry held to be an editorial error. See: *Idem*, pp. 17-18.

[50] J. JUG, *op. cit.*, pp. 291-292.

[51] *Idem*, p. 292.

4.3. *Non-valorisation of legitimate investments after the termination of concession*

Apart from problems mainly steaming from consequences of transformation of social ownership, there are some outstanding issues concerning existing ports, regardless of when they were built. As repeatedly pointed out, maritime domain is *res extra commertium*, and it can be used for economic exploitation and performing economic activities only on the basis of a concession. A concession for nautical tourism port will, as a rule, include investments in construction of new nautical tourism port, or, in the existing ports, construction of new capacities for reception of vessels or reconstruction of the existing facilities. Rights and duties of the person who has built facilities on the maritime domain are prescribed in the Art. 33 of the MDSPA. According to the cited provision if the concessionaire has built something on maritime domain on the basis of the concession, he shall have the right to remove all additions which are not permanently attached to maritime domain if it is reasonably possible without causing substantial damage to maritime domain. Other buildings and structures, indivisible from maritime domain shall be considered as a part of maritime domain. It is indisputable that investments in the nautical tourism ports increase the value of the maritime domain where port is situated. However, by expiry of the period for which concession has been granted, former concessionaire does not have the right to compensation for that increased value. Only in the event of revocation of concession the concessionaire shall be fully entitled to compensation of expenses for structures which belong to maritime domain, but even then, in proportion with the period of time of which concessionaire has been deprived in using the concession (Art. 29/2 of the MDSPA) [52][53].

Former concessionaire does not have the right to priority concession either. In the new concession granting procedure former concessionaire, who had built and invested into the port's superstructure and infrastructure and developed the business and brand of nautical port, will be in the same position as all

[52] In the ruling of the Supreme Court of Republic of Croatia Revt 73/2009-2 of the March 2nd 2010, the Court opened the door to the application of the institute of unjust enrichment for the investments done on the maritime domain. Contrary to the High Commercial Court reasoning in the contested judgement Pž 1558/08-5 of November 25th 2008, Supreme Court held that the term 'assets' has to be interpreted not in a sense of ownership, but wider, as any benefit or increase in assets, and the Republic of Croatia, even though is not the owner of the maritime domain, benefits from its increased value.

[53] The possibility of extension of the concession period is provided for in the Art. 22 of the MDSPA, but the problem of non-valorisation of the investments after the expiry of the concession remains as a problem; the concession's extension only postpones it.

parties interested in becoming concessionaries on already built and maintained nautical tourism port. It seems that concessionaire who had operated in accordance with the contract and the law, and thus in accordance with the interest of Republic of Croatia, should be in a more favourable position than the other interested parties. This could be achieved either by prescribing the statutory right to be granted a concession at request [54] either by prescribing such model of concession granting that would appraise previously done investments.

Current legal framework is very disincentive for concessionaire's investments into existing nautical tourism ports. Prior to each investment the concessionaire will order feasibility study, and it is clear that, after the certain period of concession has passed, the investment will not be justified any more. Concessionaire will constrain its investments to regular maintenance and investments required by law, and will continue to use the port until the expiration of concession. Such approach is not in a line with the interest of Republic of Croatia and is certainly not in a line with Nautical tourism development strategy. Instead of encouraging and stimulating concessionaire's investments throughout the concession period, current legislative framework encourage them to deplete maximum from the existing nautical port.

4.4. *Boundaries of maritime domain and its entry into land register*

Numerous proprietary problems regarding maritime domain, and thus nautical tourism ports as well, are closely connected to land registers and the fact that very often the status of maritime domain is not published. There are several reasons for this. Initially, it has to be noted that since maritime domain is not subject to ownership and other property rights there was no legal obligation for its registration. Legal acts regulating the matter of maritime domain prior to the MDSPA, brought in 2003, did not contain any provisions on registration of maritime domain in land registers. Possibility of its entry in land registers was provided in the Art. 17/3 of the Land Registration Act [55], prescribing that common good shall be entered into the general register if so requested by any person having a legal interest therein. At the same time LRA prescribed in the Art. 224/3 the state attorney's duty to register common goods in land registers. In spite of the statutory duty the significant change occurs by passing the MDSPA

[54] T. LUKOVIĆ (edited by), *Nautički turizam Hrvatske*, Split, 2015, p. 39.

[55] Official Gazette of the Republic of Croatia, no. 91/1996, 68/1998, 137/1999, 114/2001, 100/2004, 107/2007, 152/2008, 126/2010, 55/2013, 60/2013 (LRA).

which introduces the obligation to determine the boundaries of maritime domain and its entry into land registers as statutory requirements for concession granting [56] (Art. 7/4 of the MDSPA) [57]. It is also prescribed that the land boundaries of maritime domain are at the same time boundaries of the port area. The legislator's intention was, probably, to increase legal certainty. However, the legislator should have been more prudent and thoughtful when passing these provisions, especially bearing in mind all problems arising from incompatibility of the state in land registers and real state. The aforementioned provision is commendable for the new ports. However, its effect on the existing ports of nautical tourism is rather adverse. Such adverse effect is linked to the problems deriving from the fact that there are number of ownership and other proprietary rights acquired and registered [58]. Legal basis for registration their acquisition was in some cases valid and in the others invalid [59]. Part of those registrations derive from the processes of transformation and privatisation on maritime domain (*infra 4.1.*). Those registered rights hamper the registration of maritime domain in land registers, and consequently block the concession granting processes [60].

[56] For example, Ministry of Sea, Tourism, Transport and Development annulled by its Ruling Klasa: UP:I-342-01/07-01/15, Ur.br. 530-04-07 of April 2nd 2007 the decision on concession granting since maritime domain was not entered into land register even though the boundaries were determined. See the reasoning and its confirmation in the Judgement of the Supreme Court of Republic of Croatia, Pž-1250/09-6 of April 2nd 2009.

[57] Procedure of determining the boundaries of maritime domain is prescribed by MDSPA and Ordinance on the procedure for determining of the boundaries of the maritime domain. The procedure is very expensive, especially in those cases where private owners have to be expropriated. See N. PERKO, *Morske luke i pomorsko dobro*, in *Uloga i ovlasti državnog pravobraniteljstva glede određenih nekretnina u vlasništvu Republike Hrvatske i općih dobara uz osvrt na neke obveznopravne odnose*, Zagreb, 2000, p. 142.

[58] The procedure of expropriation of objects built on maritime domain was prescribed in transitional provisions of all acts regulating matter of maritime domain, and it was controversial in all of them.

[59] The notion of the phrase 'valid legal basic' is disputable in the legal doctrine and practice. See for example: J. JUG, *Uknjižba stvarnih prava na Republiku Hrvatsku, općeg dobra, s posebnim osvrtom na pomorsko i javno vodno dobro*, in *Uloga i ovlasti državnog pravobraniteljstva glede određenih nekretnina u vlasništvu Republike Hrvatske i općih dobara uz osvrt na neke obveznopravne odnose*, Zagreb, 2000, pp. 74-76.

[60] T. LUKOVIĆ (edited by), *Nautički turizam Hrvatske*, *cit.*, pp. 34-35.

5. *Conclusion*

Croatian strategic orientation and natural predisposition towards nautical tourism on one side and absence of economic development based on this branch of economy on the other side imposed the need to devote special attention to reasons for this discrepancy. In order to give comprehensive solutions screening of all the problems within the matter of nautical tourism ports is necessary. The paper is limited to the review of the *de lege lata* proprietary regime and analysis of some unresolved proprietary relations hindering the development of nautical tourism ports.

The weak effectiveness of land registers in general, intertwined with problems emanating from the repercussions of the process of transformation of the social-ownership and transformation of socially owned enterprises into commercial companies with determined owners, problems of acquired rights, problems of registered ownership and other proprietary rights on land not marked as maritime domain makes the legal regime on the maritime domain particularly complex. The scope of the problem is well illustrated by the fact that the solution was not reached in more than twenty years. Over the time, new parties are entering into those, already very complicated, proprietary relations. The number and the importance of existing dilemmas shows the extent of legal uncertainty, which adversely affects the possibility of development of maritime domain and therefore the development of nautical tourism ports, too. The nature of the opened issues is not purely legal. It is even more political (and of course economical) and it is the legislator's duty to find a model to resolve those outstanding issues.

Since the current law does not provide adequate instruments for resolving those problems which are obviously of crucial importance for further development of maritime domain and nautical ports as its part, all stakeholders involved – investors, state and third parties having interest on maritime domain should be seeking the resolution through the alternative means of dispute resolution, providing quick results. Effective solution would be in the interest of current concessionaire, because it would enable him to invest (while he is still the concessionaire) in the maritime domain and hence improve the offer of nautical tourism port, especially the offer of auxiliary services. For that reason the concessionaire would probably be interested even in paying certain compensation to the third party registered in the land register. That would presumably suit the third party since it is possible and even likely that its rights will be erased from the land registers without any compensation. Finally, it is in the interest of Republic of Croatia, since unsettled proprietary relationship within the boundaries

of maritime domain will obstruct the awarding of the new concession once the existing concession expires. It is in state's interest to stimulate the investments and to raise the standards in the existing ports. Since Republic of Croatia is responsible for maritime domain and its protection it should provoke and stimulate such processes by assembling interested parties in order to jointly seek for solution of their common problems.

State should also bring a work plan and provide resources for resolving proprietary relations on those land parcels where resolution of open issues cannot be achieved through alternative instruments. Priority should be given to those areas where concession already exists as well as to the parcels of maritime domain where granting concession is planned. The order and dynamics of proceedings should be communicated and agreed with interested parties, primarily current concessionaires.

It is certain that the maritime domain has to remain *res extra commertium*, and hence the solutions have to be found within the instruments of the obligation law. As regard the valuation of investments done on the maritime domain, it seems that the possible solutions should be sought in different regimes for the concession granting depending on whether the concession is granted for building and performing activities in the new nautical tourism port or in the existing port where concessionaire wants to continue to perform activities. Valuation of investments (of course, only legitimate ones) after the termination of the concession, either in form of compensation for increased value of maritime domain or in form of a right to priority concession or privileged position in concession granting is necessary if Croatia wants to compete with other Mediterranean countries.

Republic of Croatia should make every effort to resolve outstanding issues which hamper the progress of existing nautical tourism ports and question their survival. Unfortunately, only few realise the seriousness of the situation. Regulations on legal regime of maritime domain always cause much dispute on its subject. Somehow those questions always remain unimproved, even though, taking into account the position of the parties involved, seeking the resolution is in their complementary interest.

It seems that the uniqueness and special regime of maritime domain are at the same time its curse.

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