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


I. RECENT AMENDMENTS OF THE MARITIME CODE

The Croatian Maritime Code (MC), since the last major update in 2011, has twice been amended (in 2013 and 2015).

1. Amendments in 2013

The major updates of MC in 2013 were focused on two aspects: a) the harmonization with the relevant European Union (EU) law (maritime cabotage, safety and security of navigation, rights of passengers, protection of marine environment, etc.), and, b) the wreck removal regulation. A special consideration was given to the fact that the Croatia was about to enter the EU, with a number of required legislative changes that

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needed to be completed in time for the entry (ie, the status of the Croatian Registry of Shipping, the issue of fees for foreign boats and yachts, and etc.).

a) Maritime Cabotage

In line with the Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage), the MC was amended in order to enable the freedom of maritime cabotage services in the Croatian waters with regard all the EU shipping companies, whereas the third countries’ operators must seek a special clearance of the relevant Ministry (Croatian Ministry of Maritime Affairs, Transport and Infrastructure). The current concession cabotage contracts signed into prior to the Croatian accession to the EU will expire on the 31st of December 2016, whereas the rule limiting the right to provide circular cabotage services with vessels less than 650 gross tons to Croatian flagged vessels registered in the Croatian shipping registries has already expired (31st of December 2014).

b) Athens Regulation

In line with the Regulation (EC) No 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents, the MC has incorporated all the relevant provisions of the said Regulation, and, in addition, has enacted the relevant International Maritime Organization’s (IMO) Reservation and Guidelines (with regard the 2002 Athens Protocol) as mandatory. It is important to mention that the new regime applies to each international carriage and certain domestic carriage (the vessels of classes A and B, in line with the Directive 98/18/EC), provided that: a) the vessels carry an EU flag or are registered in an EU ship registry, or, b) the contract of carriage has been entered into in an EU Member State, or, c) the starting or ending point of carriage is within an EU Member State. The advance payment is set to €21,000,00 and the carrier’s liability for maritime accidents and other causes is set in accordance with the 2002 Athens Protocol. The carrier is under an obligation to secure the insurance or similar financial coverage in the sum of 250,000 SDR, with the actio directa right enabled for the injured party. Other carriage is regulated in line with the 1990 Athens Convention provisions.

c) Rights of Passengers

In line with the Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by

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3 Further developed through the By-Law on requirements necessary for the provision of maritime cabotage in Republic of Croatia, NN, 56/14.
4 Further developed through the amendments to the Act on liner and free voyages in coastal maritime carriage, NN, 33/06, 38/09, 87/09, 18/11, 80/13.
sea and inland waterway and amending Regulation (EC) No 2006/2004, in case of a justifiable cancelation or delay in embarkation (90 minutes), the carrier is under an obligation to provide: information, meal, refreshment and accommodation (€80 per night, maximum of 3 nights), with the passenger being additionally free to choose between an option to be diverted to the final destination in accordance with the comparable terms and without any additional costs, or, to be reimbursed for the ticket costs and returned, free of charge, to the starting point. In case of delay in arriving to the final destination in time, the passenger has a right to reclaim an amount from 25% to 50% of the ticket price (exceptions: bad weather and exceptional circumstances, information on projected delay prior to the ticket purchase, delay caused by a passenger).

d) Insurance Directive

In line with the Directive 2009/20/EC of the European Parliament and of the Council of 23 April 2009 on the insurance of shipowners for maritime claims, all vessels of 300 gross tons or more, entering Croatian ports, must ensure an insurance or similar financial coverage in line with the 1996 LLMC Protocol. The MC does not, however, provide the right of actio directa for this mandatory insurance coverage.

e) Bunker Pollution

In line with the Bunker Convention, the MC was amended to include a complete set of norms implementing the Bunker Convention (with regard the insurance and certificates – similar amendments were implemented with regard the CLC Convention). It is important to mention that the MC requires from the Croatian registered shipping with 1000 gross tons or more to ensure insurance or similar financial coverage with regard the costs associated to the bunker pollution, in line with the 1996 LLMC Protocol.

f) Wreck Removal

In line with the Nairobi Convention on Wreck Removal, the MC was amended to include a complete set of norms implementing the Nairobi Convention. It is important to mention that the MC requires from the Croatian registered shipping with 300 gross tons or more to ensure insurance or similar financial coverage with regard the costs associated to the wreck removal.

g) Waste Disposal

In line with the Directive 2000/59/EC of the European Parliament and of the Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues, the MC has been amended to include the provisions on the relevant Ministry and Port Authorities’ inspection activities.

h) Tonnage Tax
In line with the introduction of the tonnage tax in the 2011 amendments of the MC, the 2013 amendments further regulate the taxation system by including the possibility of utilizing the current taxation system to the voyage, time and bareboat (and demise) charter, including the vessels utilized in the international maritime cabotage at the Adriatic sea.

2. Amendments in 2015

The major amendments in 2015 focused on the more detailed regulation of issue with regard the exploration and exploitation of the sea-bed (see below for further consideration), and the issue of maritime safety and security (ie, the establishment of the Registry of the objects relevant for the safety of navigation, the introduction of the electronic Ports Registries, and etc.).


II. OTHER MAJOR LEGISLATIVE DEVELOPMENTS

1. Exploration and Exploitation of Adriatic

As the prelude to the regulation of marine exploration and exploitation activities in the Croatian Adriatic waters,6 the new Mining Act7 and Act on exploration and exploitation of hydrocarbons8 have provided a general legal framework for the natural resources exploration and exploitation. The latter Act also appropriated the establishment of the independent regulatory body, the Hydrocarbon Agency.9 It is important to mention the Decree on Fees for exploration and production of hydrocarbons,10 and the Decree on main technical requirements on safety and security of offshore exploration and production of hydrocarbons in the Republic of Croatia,11 that are of special relevance12 for the current activities with regard the proposed

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6 Currently, there are only three gas platforms on the Croatian side of the Adriatic, in joint cooperation with the Italian partner (INA and ENI), whereas on the Italian side, there are currently around 150 platforms, out of which, more than a 100 are gas platforms and around 40 are oil platforms. In addition, as opposed to the Italian side where the number of (used or currently being used) absorption wells exceeds 1500, there are only 133 drilling sites on the Croatian side of the Adriatic.

7 NN, 56/13, 14/14.
8 NN, 94/13, 14/14.
9 NN, 14/14.
10 NN, 37/14, 72/14.
11 NN, 52/10.
12 Other relevant regulation includes: MC, Act on the Natural Resources Protection (NN, 80/13), Environmental Protection Act (NN, 80/13, 153/13), Decree on Environmental Impact Assessment (NN,
project of exploration and exploitation of the Croatian waters in search for gas and oil sea-bed deposits.

The Hydrocarbon Agency has published the Strategic Study of the Likely Significant Environmental Impact of the Framework Plan and Program of Exploration and Production of Hydrocarbons in the Adriatic, a document receiving a lot of criticism from the legal experts and general public. At the same time, the experts tend to support the general idea of sea-bed exploration and exploitation, with the major antagonism still being present in the general public, with several initiatives introducing the possibility of a public referenda to oppose the sea-bed exploration and exploitation.

The Government is currently preparing the Act on the Safety of Offshore Hydrocarbon Exploration and Production Operations, based on the Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorizations for the prospection, exploration and production of hydrocarbons, the Commission Implementing Regulation (EU) No 1112/2014 of 13 October 2014 determining a common format for sharing of information on major hazard indicators by the operators and owners of offshore oil and gas installations and a common format for the publication of the information on major hazard indicators by the Member States, and the Directive 2013/30/EU of the European Parliament and of the Council of 12 June 2013 on safety of offshore oil and gas operations and amending Directive 2004/35/EC. The General Framework (Plan and Program) of Exploration and Exploitation of Hydrocarbons in the Adriatic envisages 29 exploration fields, and 10 companies have recently been granted a license to initiate the exploration of 10 exploration fields. In accordance with the Act on exploration and exploitation of hydrocarbons, the duration of exploitation cycle is set to 25 years, with the possibility of further extension. In addition, two Croatian maritime ports opened for international trade (the Port of Ploče and the Port of Rijeka) have been centered out as the potential logistics ports for the planned offshore activities.

2. **Strategy of Maritime Development and Integral Maritime Policy of the Republic of Croatia**

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61/14), Decree on assessing the acceptability of plans, programs and projects for the ecological network (NN, 118/09), Decree on the conditions and methods of maintaining order in ports and other parts of internal waters and territorial sea of the Republic of Croatia (NN, 90/05, 10/08, 155/08, 127/10, 80/12), Act on Management and Disposal of Assets owned by the Republic of Croatia (NN, 94/13), Corporate Income Tax Act (NN, 177/04, 90/05, 57/06, 80/10, 22/12, 146/08, 148/2013, 143/14), Personal Income Tax Act (NN, 177/04, 73/08, 80/10, 114/11, 22/12, 144/12, 43/13, 120/13, 125/2013, 148/13, 83/14, 143/14), Value Added Tax Act (NN, 73/13, 99/13, 148/13 153/13, 43/14), Act on implementing customs regulations of the European Union (NN 54/13), Council Regulation (EC) No 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty (Official Journal of the European Union, L 324/23), and, Ordinance on the right to exemption from customs duty (NN, 93/13).


The Croatian Government has adopted the Strategy of Maritime Development and Integral Maritime Policy of the Republic of Croatia for the period 2014-2020. The study conducted for the drafting purposes offers the following data relevant for the maritime sector: a) the length of the Croatian shore amounts to 6,278 kilometers with 1,244 islands, 49 of which are inhabited; b) the Croatian ports produce an annual turnover of 19 million tons of goods and 12 million passengers; c) the coastal liner carriage, with 56 public lines of public significance, produces an annual turnover of 11,1 million passengers and 2,76 million cars carried by sea; d) the Croatian shipping consists of 1,245 vessels with the 1,274,833,36 gross tonnage, with 121 vessels involved in international navigation; e) the Croatian shipping registries contain 72 floating objects, 4 offshore unmovable objects, 2,500 yachts and 118,000 boats and smaller crafts, with around 60.00 foreign recreational vessels entering Croatian waters on an annual basis; f) Croatia has around 22,000 seafarers, with 7,500 seafarers involved in domestic navigation and 14,500 seafarers involved in international navigation, all of who are educated in Croatia (8 maritime high schools, 4 maritime higher education facilities [maritime sciences faculties] and 22 specialized maritime colleges).

The Strategy places emphasis on the sustainable development and the competitiveness of Croatian maritime economy, safe and sustainable maritime transport, maritime infrastructure and maritime domain. The Strategy sets a number of specific goals: a) the increase in Croatian shipping gross tonnage of 60% through taxation and fiscal measures; b) the increase of maritime transport in the overall domestic and international transport; c) the increase of island connection capacities with the parallel decrease in state subsidies in coastal liner services; d) the increase of Croatian seafarers’ officer cadre; and, e) the increase in annual revenue derived from concessions on maritime domain from the current 80 million Croatian Kuna to 160 million Croatian Kuna. In addition, the Strategy envisages specialization of several Croatian ports opened for international trade: a) the Port of Rijeka and the Port of Ploče to be specialized in the container trade (including bulk and liquid goods); b) the Port of Zadar, the Port of Šibenik and the Port of Split to be specialized in the ro-ro and passenger carriage and the circular carriage; c) the Port of Dubrovnik to be specialized in the cruiser circular navigation sector.

The Strategy further emphasizes the necessity of enhancing the safety and security standards (the complete removal of under-standard shipping, decrease in the overall maritime accidents statistics, the improvement of public life salvage services, as well as the decrease in marine environment pollution and a promotion of the work on the envisaged Adriatic Convention on Marine Environment Protection).

3. Armed Guards on-board Vessels

In 2012, Croatia has adopted the By-Law on the Conditions required to be adhered to by Persons that Offer a Service of Boarding Armed Escort on Croatian Flagged Vessels. The By-Law has been adopted in line with the relevant IMO guidelines and recommendations. As a prerequisite, the Act on the Security Protection of Seafaring

16 NN, 123/12.
Vessels and Ports\textsuperscript{17} was amended to allow the use of weapons on Croatian flagged vessels and port.

In summary, a company that wants to offer private maritime security services on Croatian flagged vessels must procure a permit issued by the Ministry of Maritime Affairs, Transport and Infrastructure, with a prior consultation with a special Committee (consisting of various stakeholders in the maritime sector). The Croatian Ministry tends to recognize the permits issued by other EU Member States’ relevant ministries, in line with the EU Directive on Freedom of Services. The conditions that each company must fulfill in order to be issued the permit are as follows: a) at least two years of experience in the provision of private maritime security services; b) registered for the provision of private maritime security services; c) mandatory liability third-party insurance coverage (500,000.00 Croatian Kuna – approximately €66,600.00); d) risk assessment and quality control systems in line with the ISO or similar standards; and, e) at least 10 permanently employed guards with all the necessary standards and requirements for the provision of private maritime security services (including the STCW, ISM, ISPS and BMP requirements). The Master of Vessel retains the ultimate authority on-board, including the decision to utilize force, and the use of force falls under the Croatian criminal law regulation.

4. Other Developments

In line with the EU requirements, the Croatia has established the Agency for examination of air, maritime and rail transport accidents.\textsuperscript{18}

In line with the Directive 2009/13/EC Agreement on the Maritime Labour Convention of 16 February 2009 implementing the Agreement concluded by the European Community Shipowners’ Associations (ECSA) and the European Transport Workers’ Federation (ETF) on the Maritime Labour Convention, 2006, and amending Directive 1999/63/EC, the MC was amended to include a complete set of norms in line with the mentioned regulation.

III. JURISPRUDENCE

1. Maritime Agency

High Commercial Court of Republic of Croatia, Pž-2403/09, 25\textsuperscript{th} March 2014 – Maritime Agency Contract – on Behalf and on Account of Principal – Invalid Clause in General Terms and Conditions – Whether there is a Lack of Agent’s Passive Legitimation

\textsuperscript{17} NN, 124/09, 59/12.

\textsuperscript{18} Act on the establishment of the Agency for examination of air, maritime and rail transport accidents, NN, 54-1076/13.
The case concerns the issue of late payments for custody and supervision of a vessel docked in the claimant’s shipyard repair facility (the first defendant, the owner of vessel, has regularly paid the docking fees). The second defendant, maritime agent, raised the objection of passive legitimation, arguing that he has acted on behalf and on account of his principal, the first defendant, when accepting the contract, and that, therefore, he should not be held liable for any damage. The first instance court, after the renewed proceedings (due to the decision of the Supreme Court of Croatia), accepted the claim against the first defendant (with a lower awarded amount than originally claimed, later appealed by both the first defendant and the claimant) and denied the claim against the second defendant, accepting the second defendant’s objection.

The claimant appealed, arguing that his general terms and conditions (General conditions for docking, repair and berth) stipulate (Art. 2) the joint responsibility of, among other, the maritime agent for any damage, and that the noted terms have been previously known to the second defendant. The second defendant responded by arguing that the claimant’s general terms and conditions were not known neither to him nor the first defendant. The second defendant further argued that such a term is, in any case, contrary to the good commercial customs, in line with Art. 143 Obligations Act,19 and, therefore, invalid.

The High Commercial Court denied both the claimant’s and the first defendant’s appeal with regard the first instance court’s decision concerning the claim against the first defendant. With regard the second defendant, the High Commercial Court stated that if the maritime agent clearly stipulates that he intends to act as a maritime agent (Art. 687 and 693 MC20), the maritime agent will not be acting in his own name. Furthermore, the Court found no evidence that the general terms and conditions were previously known to the second defendant (due to the fact that the general terms and conditions were not present in the contract proposal and the claimant failed to prove otherwise). Even if the general term and conditions would have been known to the second defendant, the Court found them to be in a direct contradiction with the general principles of civil law. The general terms and conditions are exclusively valid for a particular contract and the parties to that contract. The application of such terms to the parties outside of the contract is contrary to the principles of good faith and fair dealing (Art. 143 Obligations Act). Therefore, the High Commercial Court confirmed the first instance court’s finding and rejected the claimant’s appeal with regard the second defendant.

2. Maritime Arbitration

Supreme Court of Republic of Croatia, VSRH Revt 321/2013-2 – Main Contract and Annex to the Main Contract – Contract of Assurance – Whether the Conclusion of Arbitration Agreement in the Main Contract is Valid for the Annex to Main Contract – Whether the Arbitration Agreement present in Main Contract is Valid for a Party Adjoined to the Annex to Main Contract – Whether the Arbitration Award is to be Set Aside


20 NN, 17/94, 75/94, 43/96 – the relevant version of Act for the present case.
The claimant, who has offered a personal assurance of payment to the debtor with regard the debt arising from a contract of ship repair entered into between a customer and a shipyard repair facility (defendant), sought to set the arbitration award aside. The arbitration took place before the Permanent Arbitration Court at the Croatian Chamber of Economy. The claimant has argued that there were no grounds to commence the arbitration proceeding (no arbitration agreement, invalid arbitration agreement, and, the arbitration award is directed to the dispute not covered by the arbitration agreement), and that, therefore, the arbitration award should be set aside, in accordance with the Art. 36, para. 2, point 1.a) and 1.d) of Arbitration Act.  

The first and second instance courts denied the claim. In accordance with the legal reasoning of the said courts, there was no dispute as to the question of whether the contract of ship repair, signed into in November 1996, contained an arbitration clause (Clause 19). In addition, the parties to the present dispute have agreed with the fact that in June 1997 the parties to the main contract (contract of ship repair) have signed the annex to main contract with regard the additional ship repair activities, whereby the claimant agreed to offer a special guarantee with regard the payment of the overall charges and debt (arising both from the main contract and the annex to main contract) to the debtor (defendant).

The disputed legal facts have concerned the issue whether the claimant, when being inserted into the text of annex to main contract, which included a clause (Clause 5 Annex) stating “All other terms and conditions remain unaltered” (referring to the main contract), has accepted the arbitration agreement, or, has accepted the validity of the arbitration clause present in the main contract. In addition, the claimant has disproved the validity of the main contract due to the alleged claim that the legal person who was nominated as the customer in the main contract was not in existence. The first two instances found the claimant’s reasoning flawed. In accordance with their legal reasoning, when the claimant has agreed to guarantee for all charges and debts arising from both the main contract and the annex to main contract, and when he has not disputed the wording of the annex to main contract stipulating that all other terms and conditions are to remain unaltered, the arbitration clause present in the main contract has automatically become valid for the annex as well. The courts reasoned that the claimant knew or should have known the contents of main contract to which he was adjoined by signing into the annex to main contract, what is especially supported through the virtue of assurance and the quoted Clause 5 Annex. This was further supported by the fact that in another proceeding with regard the same subject matter, the commercial court found itself incompetent to preside over the issue.

The Supreme Court, in the revision procedure, approved the claim and set aside the arbitration award. In accordance with the Civil Procedure Act (Art. 470 para. 1), an arbitration agreement is valid only if entered into in a written form (including the possibility of the arbitration agreement being present in general terms and conditions). The Supreme Court has reasoned that the document signed into in June 1997 contains two different legal contracts. The first is the annex to main contract, and the second is the contract of assurance (whereby the claimant promised to pay all due claim to debtor [defendant – shipyard repair facility]). The Supreme Court has further reasoned that the two contracts do not form a legal unity to the extent that the terms and conditions of the first contract are directly applicable to the second contract.

21 NN, 88/01.
22 NN, 53/91, 91/92, 112/99 – the relevant version of Act for the present case.
Unlike as is the case with the main contract, where the parties to the contract are the defendant and the customer, in the contract of assurance the parties to the contract are the defendant and the claimant. Therefore, the Supreme Court has established that the quoted Clause 5 Annex refers strictly to the parties of the main contract and the annex to main contract, and not to the parties of the contract of assurance (thus making the issue, whether the legal person nominated as the customer in the main contract is in existence, irrelevant). Even if one is to reason that the quoted Clause 5 Annex refers to the defendant, this could only serve to establish that the defendant was in agreement that the Clause 19 of main contract remains valid, thus referring the parties of the main contract and the annex to main contract to arbitration. Therefore, there are no legal grounds to hold the claimant’s signature on the annex to main contract as a formal stipulation of (or agreement with the) arbitration agreement.

With regard the previously mentioned fact that the commercial court found itself incompetent to preside over the issue, the Supreme Court found this fact to be irrelevant for the present case. Therefore, the Supreme Court set aside the arbitration award (a rare occurrence in the Croatian jurisprudence) and referred the case back to the first instance for a new proceeding with regard the damage compensation and the costs of proceedings.

3. Ship Arrest

High Commercial Court of Republic of Croatia, Pž-10848/13-3, 22nd January 2014 – Temporary Measure of Ship Arrest – 1952 Arrest Convention – Whether the Temporary Measure of Ship Arrest can be applied against Previous and Current Shipowner – Maritime Lien – Whether the Limitation of Legal Proceedings has expired

The case concerns the issue of temporary measure of ship arrest brought before the first instance court against the previous owner (first temporary measure contestant) and the current owner of vessel (second temporary measure contestant). The applicant (port authority) applied for the temporary measure of ship arrest in order to secure the claim related to the payment of port fees (in accordance with Art. 60 and 62 of Act on Maritime Domain and Maritime Ports, these consist of fees in connection to the use of shore, demurrage and berth). Prior to the temporary measure of ship arrest application, the applicant has submitted the claim against the first temporary measure contestant to the commercial court. In the meantime, the vessel changed ownership.

The applicant has based his application on Art. 1 para. 1 point (l) of 1952 Arrest Convention, which, in line with the understanding of the first instance court, refers to claims based on shipbuilding, ship repair and refitting, and ship docking. The first instance court rejected the application of temporary measure of ship arrest due to the fact that the port fees are not included in the above quoted article of the Convention. Furthermore, the first instance court stated that the applicant did not meet the requirements present in Art. 3 of the Convention, and that the applicant is trying to arrest a vessel not (anymore) owned by the person responsible for the payment of port fees (debtor, first temporary measure contestant). With regard the fact that the applicant is pursuing a joint responsibility of the first and second temporary measure

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23 NN, 158/03, 141/06.
contestants, the first instance courts stated that such an action is not legally permitted, nor is there such an agreement between the first and second temporary measure contestants. The court further stated that the acceptance of proposed temporary measure of ship arrest would, de facto, align the temporary measure with the maritime lien on ship, what would be in a contradiction with Art. 9 of the Convention. In addition, the first instance court stated that the limitation of legal proceedings with regard the maritime lien for port fees has expired (one year period), and that the monetary claim that the applicant potentially has against the first temporary measure contestant (debtor) does not fall under the category of a maritime claim allowing the application of temporary measure of ship arrest. In accordance with Art. 954 MC, the temporary measure of ship arrest can only be applied against a vessel that is owned or operated by a personal debtor to the applicant, thus excluding a possible application of temporary measure of ship arrest against the second temporary measure contestant. Therefore, the first instance court rejected the application.

The applicant appealed, arguing that: a) the first instance court utilized a flawed translation of the Convention; b) that the Convention allows for a temporary measure of ship arrest against any previous and current owner of the vessel, and, c) that the MC is not to be applied in the current dispute due to the supremacy of the Convention’s provisions.

The High Commercial Court\textsuperscript{24} rejected the appeal and confirmed the first instance court’s decision. The High Commercial Court, however, pointed to the fact that the first instance court erred in its finding that the disputed case does not fall under the category of a maritime claim allowing the application of temporary measure of ship arrest. In line with the understanding of the High Commercial Court, Art. 1 para. 1 point (l) of 1952 Arrest Convention refers to claims based on shipbuilding, ship repair and refitting, and port fees and charges. Therefore, it is possible to apply for a temporary measure of ship arrest against the first temporary measure contestant, provided that he is the owner of vessel connected to the maritime claim. Due to the fact that the first temporary measure contestant is no longer the owner of vessel, it is not possible to apply the measure against him. However, contrary to the finding of first instance court, it is possible to apply for a temporary measure of ship arrest against any previous and current owner of the vessel, who has the passive legitimation, provided that all other requirements (in line with MC and the Forced Execution Act\textsuperscript{25}) are met. Nevertheless, the High Commercial Court concluded that the applicant erred in requesting the temporary measure of ship arrest on the basis of joint responsibility of the previous and current owner, with an additional absence of required elements necessary to properly identify the object of temporary measure (referring solely to the name of vessel is not sufficient).

Following the above noted decision of the High Commercial Court, the applicant submitted a new application of temporary measure of ship arrest against the current owner of vessel (second temporary measure contestant in the previous proceeding). The first instance court accepted the application and issued the temporary measure of ship arrest.

The temporary measure contestant (second temporary measure contestant in the previous proceeding) appealed, arguing that he is not the personal debtor of the applicant. Furthermore, the temporary measure contestant stated that the claim

\textsuperscript{24} Case P2-6297/13-3, 4\textsuperscript{th} September 2013.

\textsuperscript{25} NN, 112/12, 25/13.
forming the basis for the temporary measure is a maritime lien, and that the limitation of legal proceedings with regard this particular maritime lien (for port fees) has expired. Finally, the temporary measure contestant asserted that the claim forming the basis for the temporary measure has been, in the meantime, paid to the previous owner’s agent.

Contrary to the decision reached by the same Court in the previous proceedings (above), due to the fact that the temporary measure contestant is not the personal debtor of the applicant and due to the fact that the claim in question is a maritime lien, and that the limitation of legal proceedings with regard this particular maritime lien (for port fees) has expired, the High Commercial Court accepted the appeal and rejected the application of the temporary measure of ship arrest.

4. Marine Insurance

High Commercial Court of Republic of Croatia, Pž-3097/11, 9th April 2013 – Hull and Machinery Insurance – Insured Interest – Whether the Insurer is liable for the Consequential Loss

The case concerns the issue of two hull and machinery insurance policies issued for the claimant’s two vessels. With regard the damage to the first vessel, the claimant sought the compensation of damage from the first defendant (insurance company), whereas with regard the second vessel, the claimant sought the compensation for both the damage and loss of profit from the second defendant (insurance company).

The first instance court denied the claim against the first defendant. The first instance court accepted the first defendant’s objection with regard the lack of active legitimation. The legal reasoning for that decision has been derived from the fact that the claimant has sold the first vessel after the occurrence of insured peril, but prior to the claim being brought to the first instance court. The court has, therefore, concluded that the claimant no longer has the right to seek damage compensation from the first defendant due to the fact that the claimant no longer holds the insured interest nor is any longer the insured person. This is further supported by the fact that the claimant has not made any repairs of the first vessel after the occurrence of insured peril, and the damage to the first vessel no longer hurts the claimant’s interests after he has sold the first vessel.

With regard the second defendant, the first instance court partially allowed the claim, both for the damage and loss of profit. Irrespective of the fact that the claimant has made no repairs to the second vessel after the occurrence of insured peril, and despite the fact that the insurer’s Conditions for insurance of maritime boats (Art. 17) require that the insured person must first repair the damage in order to be able to seek the payment of insurance compensation, the first instance court found that provision to be unfair and extortionately. In addition, with regard the loss of profit, the first instance court found the damage to the second vessel to be of such nature that it has disabled the possibility of commercial charter – the regular commercial activity carried out by the claimant, as evidenced by an older agency contract supplied by the claimant.

The claimant appealed, stating, with regard the first vessel, that he was the insured person at the time of the occurrence of insured peril, and has continued to be the owner of the first vessel during the next seven months, awaiting the payment of
insurance compensation. Due to the fact that the first defendant refused to pay the insurance, the claimant was forced to sell the vessel, as it was unfit for commercial charter.

The second defendant also appealed, contesting the value of awarded amount of compensation, and disputing the first instance court’s decision to invalidate Art. 17 of the Conditions for insurance of maritime boats – a term that is, according to the second defendant, commonly utilized in all similar general terms and conditions and is a standard marine insurance term. The second defendant further objected with regard the loss of profit, arguing that the claimant’s agency contract is invalid due to the fact that it was not carried out in accordance with the Croatian law. Furthermore, the second defendant argued that in accordance with the Clauses on the loss of profit insurance (Art. 2) relevant for the hull and machinery insurance policy, the insurer is under an obligation to compensate the loss of profit in accordance with the valid charter price list. The first instance court, in the opinion of the second defendant, has failed to take this into account when assessing the award with regard the loss of profit. Finally, the second defendant has stated that the claimant had failed to inform him about the occurrence of the insured peril, thus being in the breach of insurance contract.

The High Commercial Court affirmed the finding of first instance court with regard the first defendant. In accordance with Art. 698 MC, the insured person has the right to claim insurance compensation for damage covered by the insurance policy if the insured person has a (material) interest over the object of insurance at the moment of the occurrence of insured peril, or if the insured person has acquired such interest afterwards. Despite the fact that the claimant was the insured person and had the interest at the time of occurrence of the insured peril, after the first vessel has been sold, the claimant lost the attribute of the insured person due to the fact that the damage suffered by the first vessel no longer materially affects the claimant.

With regard the second defendant, the High Commercial Court decreased the amount awarded for damage compensation. In addition, the High Commercial Court affirmed the finding of first instance court that Art. 17 of the Conditions for insurance of maritime boats is too strict, and invalidated the said provision, by referring to the Art. 143 Obligations Act,26 in accordance to which all general terms and conditions clauses that are contrary to the main purpose of contract or the good commercial customs are invalid.27 The Court summarily concluded that such a provision has no sense, for if the insured person is capable of sustaining the costs of repair its own, the purpose of insurance coverage is defeated in its merits, or, in other words, the marine insurance is no longer required.

With regard the issue of loss of profit, the High Commercial Court has dismissed the alleged invalidity of the agency contract and accepted its value as evidence of commercial activity. With regard the fact that the claimant failed to inform the second defendant about the occurrence of insured peril, the Court accepted this fact as a basis for potential decrease of second defendant’s exposure to liability (although the Court has stated that there is no visible potential for the decrease in present case), but not as a cause for the breach of contract. Finally, with regard the awarded amount as to the loss of profit, the Court accepted the second defendant’s argument that the said


27 This being in sharp contrast with the classic P&I pay-to-be-paid rule.
amount is limited through the virtue of Clauses on the loss of profit insurance, and referred the case back to the first instance for a new proceeding.

5. Maritime Domain

Administrative Court in Rijeka, 1 UsI-541/12-33, 8th September 2014 – Maritime Domain – Ordinary and Extraordinary Maintenance – Whether the Damage occurred due to an Extraordinary Event

The case concerns the issue of ordinary and extraordinary maintenance of maritime domain in connection to the damage on a beach promenade. The claimant, local city authority that was assigned the responsibility to recover the damage, issued a claim before the Administrative Court seeking a judgement whereby the Ministry of Maritime Affairs, Transport and Infrastructure (defendant) will nominate the County (adjoined in the dispute as a third party interested person) as the responsible person, given that the claimant believes that the damage sustained by the beach promenade falls into the category of extraordinary maintenance, what falls under the responsibility of a County, and not local authority. The claimant has argued that the ordinary maintenance concerns minor management of promenade, whereas higher costs of recovery fall under the category of extraordinary maintenance.

The defendant argued that the damage on a beach promenade has resulted due to continuous lack of management (the claimant continuously failed to execute necessary construction and maintenance work to prevent the landslide). Furthermore, the defendant stated that the category of extraordinary maintenance should be reserved for extraordinary events (such as the earthquake, floods, high waves, extremely bad weather, and etc.) that are regularly confirmed to have occurred by the competent authorities (such as the city, the weather services, port authority, and etc.). As this was not the case in the present dispute, the defendant concluded that the damage does not fall under the category of extraordinary maintenance responsibility. The County fully endorsed the defendant’s position.

In accordance with Art. 11 of Act on Maritime Domain and Maritime Ports, the extraordinary maintenance is valid for recovery of damage to the maritime domain, among other things, due to extraordinary events. Based on the witness testimony and official documents and reports, the Administrative Court has established the lack of regular ordinary maintenance on that particular part of promenade, taking into consideration that the landslides are a typical event falling into the ordinary events category, and that no extraordinary events were taking place during the time of the relevant damage occurrence. As a result, the Administrative Court concluded that the damage to the beach promenade resulted due to the continuous neglect of ordinary measures that needed to be taken in order to prevent any serious damage. Therefore, the Administrative Court denied the claim.

6. Personal Injury – Passenger

28 NN, 158/03, 100/04, 141/06, 38/09 – the relevant version of Act for the present case.
The case concerns a constitutional complaint with regard the incident resulting in the injury of passenger (claimant) while disembarking from a passenger vessel. The claimant was previously rejected by all regular court instances (including the revision before the Supreme Court of Croatia), except the first instance court. The first instance court held that the injury resulted from the skidding and fall on the walking ramp due to the weather conditions (humidity and the connected ramp moisture) which are generally known and accepted for such circumstances. In accordance with Art. 154 para 2 of Obligations Act, the responsibility of the carrier (defendant) is to be reviewed in accordance with objective responsibility criteria (the existence of carrier’s fault is irrelevant), as the first instance court considered the walking ramp to be a dangerous object.

The second instance court rejected the claim. The court stated that the primary legal source relevant for the present dispute is MC, in accordance to which, due to the fact that the injury did not result from a maritime accident, the carrier’s responsibility (considered in accordance with the subjective responsibility criteria) is not presumed. This however, in line with the reasoning of second instance court, does not preclude the possibility that the carrier is to be held liable in line with the previously noted general civil law criteria (dangerous object). However, the second instance court has accepted the defendant’s appeal that the humidity and moisture conditions are not a common fact, but, instead, need to be proven by the party relying on such an assumption. Due to the fact that the claimant has failed to provide evidence of the same, the second instance court rejected the position taken by the first instance court (that the walking ramp was humid) and refused to consider the walking ramp as a dangerous object. In addition, due to the fact that the claimant failed to prove the lack of due care on the side of carrier, the claim was rejected. The Supreme Court of Croatia rejected the revision due to the lack of formal requirements.

In the constitutional complaint, the claimant has placed forward the following elements: a) if the MC is a primary legal source, the fault of the carrier should be presumed; b) the walking ramp was not adequately positioned on the shore, and, being in a pertinent connection to the vessel, the walking ramp is to be considered as a dangerous object, due to the fact that the vessel is, in accordance to the claimant, obviously a dangerous object (thus, the relevant provision of Obligations Act should be applicable); and, c) it is questionable whether the first instance court was competent to resolve the issue.

The Constitutional Court reviewed the question whether the claimant, during the regular court proceedings, enjoyed the right to a fair trial (Art. 29 para. 1 of Constitution of Republic of Croatia), and concluded that the claimant has fully enjoyed the right to a fair trial, including the possibility to follow the proceedings.

29 For more information on the Croatian judicial system, see: Mišo Mudrić, “Croacia”, Anuario de derecho marítimo, Año 2012, Número 29, at 312.
31 NN 56/90, 135/97, 113/00, 28/01, 76/10, 5/14.
take part in the proceedings and conduct all legally allowed procedural acts. Therefore, the Constitutional Court rejected the constitutional complaint.

7. Personal Injury – Member of Crew

High Commercial Court of Republic of Croatia, Pž-6931/12-5, 28th November 2013 – Member of Crew – Personal Injury – Accident during the Performance of Work – Active Legitimation – Whether the Ship Operator is Responsible for Different Aspects of Consequential Loss

The case concerns the personal bodily injury sustained by a seafarer cadet on the defendant’s vessel (permanent health issues, with a special emphasis on the loss of hearing and the permanent injury to the center of balance), and the issue of loss of profit resulting from the claimant’s disability to perform as a seafarer. The claimant stated that he has successfully finished the maritime high school and intended to become a professional seafarer. Due to the sustained injuries, he was unable to enter into the maritime college or maritime higher education facility (maritime sciences faculty). The fact that he was able to finish the economics study in Croatia and a master study (in economics) in the United States proves, in accordance to the claimant, that he would have been able, free from injuries, to finish the study in the maritime sciences. The first instance court approved the claim.

The defendant appealed, stating that the claimant has failed to prove his residence in the Republic of Croatia and that the first instance court has failed to take into consideration defendant’s objection on absolute incompetence of the said court. The defendant has further argued that the witness testimony on the side of claimant was flawed, rejected the injury as the cause for the disability to perform as a seafarer (noting the issue with the claimant’s eyesight as the proper cause), stated that the claimant merely finished a maritime high school without becoming a full seafarer (and pursued a master study in the United States, which indicates that he had no intentions of becoming a seafarer in his future career), and objected the overall awarded amount as being based on false premises of calculation.

The High Commercial Court rejected the defendant’s objection with regard the active legitimation and the competence of Croatian courts, dully noting that the MC (Art. 988a32) specifically nominates Croatian courts as competent provided that the claimant has a Croatian residence (and the case revolves over the issue of bodily injury of the crew members), a fact which has been proven during the proceedings. The High Commercial Court furthermore fully accepted the findings of the first instance court with regard the permanent health disability and rejected the defendant’s notion with regard other possible causes of not being able to perform as a professional seafarer.

The Court further stated that the claimant has, in a different proceeding, already secured a payment (from the defendant) for the loss of practice, in line with the National Collective Contract for Seafarers. Therefore, in line with the legal reasoning of Court, the issue of loss of profits is to be resolved by calculating whether there is a difference in earnings between what the claimant is capable of earning in the current condition (non-seafarer professional activity) and what the claimant would have been

32 NN, 181/04, 76/07, 146/08 – the relevant version of Act for the present case.
able to earn as a seafarer. The first instance court commissioned an expert evaluation, and reached the amount to be awarded to the claimant. The High Commercial Court, however, stated that the first instance court has failed to take into consideration a number of important facts that influence the above noted consideration. Foremost, the Court stated that the claimant failed to provide adequate evidence over the certainty that he would have continued his seafarer profession absent of the injury. To the contrary, in line with the claimant’s endeavour to successfully seek further employment, the claimant changed his profession (from seafaring to economic sciences) and reached a high level of skills and competence enabling him to pursue a completely different professional career. The fact that the claimant was already awarded a considerable amount of money in line with the National Collective Contract for Seafarers enabled him to negate the aggravating circumstances with regard the loss of possibility to pursue a seafaring profession, and enabled him to financially cover all the expenses related to his new profession. Based on that, the Court held that the defendant enabled the claimant all the necessary requirements to pursue a different line of professional activity. Therefore, the High Commercial Court reversed the decision of first instance court, and rejected the claim.

8. Personal Injury – Ship Repairer


The case concerns the claimant’s injury during the ship repair work on the defendant’s vessel, due to the malfunction of the pneumatic hammer which, under pressure, struck his eye and nose. The injury has brought about the decrease in the claimant’s livelihood activities due to a reduced eyesight capability.

The defendant raised the objection of passive legitimation, arguing that he was not the claimant’s employer, but the ship operator of vessel where the injury has occurred. The defendant additionally argued that the successful medical treatment has resulted in a significant improvement of the defendant’s eyesight capability, with the aid of contact lens. Nevertheless, the claimant decided to undergo an unsuccessful operation, the result of which was the decreased eyesight capability, this, in line with the defendant’s argument, being the sole cause of the current state of claimant’s injury.

The first instance court held that the claimant has failed to establish the causal link between the defendant’s omission and the injury, therefore rejecting the claim.

The claimant appealed, stating that the defendant was his employer, and that in accordance with Art 15 of Act on Work Security,33 the employer is under an objective responsibility with regard the compensation of damage suffered during the course of employment. The claimant further stipulated that due to the fact that the use of pneumatic hammer is considered to be a work with a dangerous object (in accordance with Art. 1045 para 3 of Obligations Act34), the defendant’s objective responsibility is determined beyond any doubt.

33 NN 59/96, 94/96, 114/03, 100/04, 86/08, 116/08, 75/09, 143/12, 71/14.
34 NN, 35/05, 41/08, 125/11.
The defendant contested the claimant’s entire line of argumentation as previously stated. In addition, the defendant contested the claimant’s reasoning with regard the objective responsibility, arguing that the sole legal source relevant for the present case is MC, and that, due to the fact that the use of pneumatic hammer should not be considered to be a work with a dangerous object, the subjective evaluation should be utilized instead, but not with regard the defendant’s actions or omission (presumed fault), but, rather, the claimant’s lack of due care, what has resulted in the accident.

The High Commercial Court upheld the claimant’s appeal. In accordance with Art 145 MC, the ship operator is responsible for any injury to the crew on work or in connection to the operation of vessel, unless the ship operator proves that the damage has resulted absent of his fault. Furthermore, if the above noted damage has resulted in connection to a dangerous object or dangerous activity, the ship operator will be held responsible in accordance with the general liability rules. If the injury has resulted due to the lack of safety work conditions, do ship operator will only be able to escape liability if he can prove intentional or gross negligent behavior on the side of injured. Finally, the responsibility for the above noted instance of injury is jointly shared between the ship operator, manager, company and employer. The High Commercial Court further held that the use of pneumatic hammer is to be considered as a work with a dangerous object (not a regular and common tool to be used in an everyday work, but a potent tool with high risks of bodily harm), therefore requiring an objective assessment of the ship operator’s responsibility, whereby the instance of fault is rendered irrelevant, and it is presumed (Art. 1063 Obligation Act) that the injury has resulted from the dangerous object if it has occurred in connection to the dangerous object, unless (Art. 1067 Obligations Act) it can be proven that the dangerous object is not the cause (the cause being either a vis major or the act of the injured or third person).

Furthermore, the High Commercial Court, contrary to the reasoning of the first instance court, held that the claimant successfully established a causal link between the accident and the use of pneumatic hammer. The Court further held that it is now up to the defendant to endeavour to escape liability in accordance with the criteria as stated above. Therefore, the High Commercial Court referred the case back to the first instance for further proceeding.

9. Underwater Cable

High Commercial Court of Republic of Croatia, Pž-1092/01, 12th February 2014 – Damage to the Underwater Fiber-Optic Cable – Anchoring Vessel at the Forbidden Location – Biased Witness Account

The case concerns the defendant’s appeal to the first instance judgment holding the defendant liable for damage to the claimant’s underwater fiber-optic cable, due to the fact that the defendant’s anchor, in accordance with the finding of first instance court, struck and damaged the cable.

The defendant argued that the first instance court based its consideration on the fact the master of defendant’s vessel was sanctioned for offence due to the fact that he had anchored the vessel at a place where the anchorage was not allowed, having at the same time damaged an underwater telephone cable (not the subject matter of the offence proceedings). The defendant based his assertions on the witness testimony of
a diver engaged by the master of vessel. The diver was engaged to help clear the anchor from the underwater cable it was entangled with. The diver claimed that the anchor has struck an old abandoned cable, cut at several places. The diver additionally claimed to have spotted a new cable at the distance of 30 to 100 meters from the place of impact. The diver claims to have taken underwater photos, but the defendant was unable to procure these photos during the proceedings.

The High Commercial Court found the diver’s testimony to be fully aligned with the defendant’s case and biased. The Court could find no reasons to accept the diver’s testimony with regard the vessel’s anchor getting entangled with an old, abandoned and cut cable. The Court stated that had that been the case, it would have been possible for the Master to raise the anchor without problems, and move the vessel away. To the contrary, the vessel was stuck and could not move, and it was, therefore, first necessary to engage the diver who would manually release the anchor from the underwater cable. This has led the Court to conclude that the vessel of that size must have struck something stronger and durable, which, in any case, could not have been a cut, old cable. If it, indeed, were a cut cable, with multiple cuts being reported by the diver, the length of individual pieces would have been rather small, given the diver’s reduced visibility in the underwater conditions, further supporting the notion that a vessel of that size would have had no problems in raising the anchor with a short length of a cut cable attached to it. At the same time, whereas the claimant has successfully proved the existence of its cable at the location where the damage has occurred (this being the sole cable in the area, in line with the conclusion reached during the previously mentioned offence proceedings), the defendant has failed to offer any evidence over the existence of other cable that the defendant’s diver has noted in his testimony. Therefore, the High Commercial Court has predominantly upheld the position of the first instance court and found the defendant liable for damage.

IV. ACADEMIC EVENTS

• The Faculty of Law, University of Zagreb, has organized the “Transport Law de lege ferenda: 2nd Annual Young Academics’ Vision on Tomorrow’s Transport Law 2015 Conference”.
• The Croatian Academy of Sciences and Arts and the Adriatic Institute have organized the “Maritime Law and Law of Sea: Adriatic States in European Framework”.

35 It is relevant to compare the reasoning of the Croatian High Commercial Court with the reasoning accepted in the Canadian Peracomo case, where the Canadian Supreme Court has decided to accept the defendant’s testimony with regard the defendant’s claim to have endeavoured to obtain the information with regard the underwater cable by allegedly [with no evidence ever being presented to support this claim] visiting an abandoned church, now a museum, where an exhibition was held that, among other things, exhibited a map of the area with a supposed marking of the cable as abandoned – this, in the words of defendant, being reviewed only once, in as little as a few seconds.

• Faculty of Law, University of Split and the City of Rab have organized the “In memoriam prof. dr. sc. Vjekoslav Šmid – the Actual Tendencies of Croatian Maritime Law, Law of Sea, Law of Tourism, Civil and Administrative Law”.  
• The Croatian Association of Maritime Law has organized the “Draft Act on Maritime Domain and Maritime Ports, and Other Relevant Issues of Maritime Law and Law of Sea”.
• The Faculty of Maritime Studies, University of Split, and the Faculty of Maritime Studies and Transport, University of Ljubljana have organized the “6th International Maritime Science Conference”.
• The Jadrancki pomorski servis has hosted the “European Tugowners Association 50th Annual Conference”.
• The Croatian Association of Maritime Law has organized the 2013 Conference “New Amendments to the Croatian Maritime Code and other Actual Issues of Maritime Law”.

V. BIBLIOGRAPHY

1. Books


2. Journals

All of the below listed journals and articles are available in the electronic form (with the exception of the most recent issue).43

a) Comparative Maritime Law

Recent maritime law related topics:
• Vol.52 No.167, 2013 – Marina operator's liability arising from berthing contracts and insurance matters; The scope of coverage under the Rotterdam Rules - Unimodal and multimodal aspects; Article 47(2) of the Rotterdam Rules: Solution of old problems or a new confusion?; The Rotterdam Rules - A new attempt for the international legal codification of the liability for the carriage of goods by sea and other modes of transport connected therewith; From difference to convergence: A comparative analysis of the development of the legal protection of the underwater cultural heritage in China and the 2001 convention.

b) Collected papers of the Faculty of Law in Split

Recent maritime law related topics: Legal aspect of fraud in yacht hull insurance – boats for sport and leisure (Vol.52 No.2, 2015), Specifics of the legal regime in seaports (Vol.50 No.3, 2013).

c) Collected Papers of the Law Faculty of the University of Rijeka


d) Scientific Journal of Maritime Research


e) Journal of Maritime & Transportation Sciences


f) Our Sea, International Journal of Maritime Science & Technology


Short CV

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