The Legal Framework relating to Security in the Ports of Nautical Tourism

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General Framework

- SOLAS Convention – XI-2 Chapter – Special Measures to Enhance Maritime Security
- Regulation (EC) No 725/2004 on enhancing ship and port facility security
- Directive 2005/65/EC on enhancing port security
- Security Protection of Maritime Vessels and Ports Act
- Maritime Demesne and Maritime Ports Act
- Private Security Act
- By-Law on conditions and methods of enforcing technical protection
- By-Law on arrangement and classification of ports of nautical tourism
- ...
General Nautical Data

• State Bureau for Statistics (2016)
  • 139 ports of nautical tourism – 71 marinas and 69 other ports
  • Overall space volume = 3.7 m$^2$, over 17,400 mooring berths
  • Continuous berth: 13,422 vessels (little more than half are motor yachts, little less than half are sailing yachts)
  • Transit vessels: 3 counties (Split-Dalmatian, Šibenik-Knin and Zadar) = over 135,000, 13.1% annual increase; in total: over 198,000 vessels, 8.6% annual increase
  • Flags: majority under Croatian flag, other dominant flags: Austria, Germany, Italy and Slovenia
  • Total income: 796 million HRK; 70% berthing (4% annual increase)

• eCrew system (Ministry of Tourism, January-September 2016)
  • Nautical guests – 410,541 arrivals and 2,84 million overnight stays
Practical Issues

• Ports of nautical tourism that employ private protection service providers:
  • Control of entry and exit
  • Right to prevent free access to the port area?
  • Protection of infrastructure
  • Protection of guests’ property
    • Does this include boats, vessels etc. anchored in the port area, and to what extent?
  • Protection of people and property through constant supervision and control
    • Scope of rights and powers to act? Responsibility and liability for poor performance or non-performance?
    • Is it necessary to provide both the physical and technical protection?

• Art. 2, para 1, p. 6 – definition of security protection
  • A system of preventive measures aimed to protect a vessel and port from threats of intentional unlawful conduct
  • What about negligent conduct or omission resulting in damage?
• Art. 25
  • Security in the special purpose ports (including the ports of nautical tourism) => responsibility of the concessionaire
  • Necessary to establish a port security protection service organization

• Art. 26
  • Port of nautical tourism security risk assessment plan => responsibility of the concessionaire (in accordance with the Annex 4)
    • To be approved by the Ministry of the Sea, Transport and Infrastructure (prior opinion by the Ministry of Interior)

• Art. 27
  • Port security protection plan
    • Based on the risk assessment, cannot be prepared by the same organization in charge of risk assessment preparation
    • To be approved by the Ministry of the Sea, Transport and Infrastructure (prior opinion by the Ministry of Interior)

• Art. 29 – security levels (1 – basic level, 2 – increased threat, 3 – high probability of threat occurring)
By-Law on arrangement and classification of ports of nautical tourism (2008)

- **Art. 2** – Port of nautical tourism definition:
  - Business-functional complex in which a legal or physical person conducts business and provides tourism services in nautical tourism and other services in function of tourist spending (commercial, catering and other)

- **Art. 11** – general conditions, including: secure movement of tourists and staff

- Porter/reception services (0-24h) and seamen-protection service requirements, if ports are categorized for specific categories, such as ports of nautical tourism
  - What is „seamen-protection service“? Contractual based definition or general legal requirements?
  - General liability in accordance with *lex generalis*, or contractual determination of liability division?
Private Security Act (2010) (i)

- Categories and conditions with regard the provision of private security services
- Art. 27 et cet – physical protection
  - Rights and powers: identification, issuing warnings and orders, limitation of movement, bodily and property examination, use of force (including lethal weapons)...
  - Gradual, proportional, selective, exceptional and necessary use of force
- Art. 43 et cet – technical protection
  - Anti-theft, unlawful entry, unlawful entry of forbidden materials... means and mechanisms ...

- Art. 9 – Responsibility and Liability
  - Damage compensation, private security service provider’s employees, contractual and non-contractual (third party) liability, conduct contrary to the Act and other relevant legislation – **strict liability principle**
  - Recourse right against employees – if intent or gross negligence

- **Problem 1:** status of employees -> technical protection contractors = possibility to use their services under the contract of result

- **Solution:** general contractual and non-contractual liability norms in Obligations Act

- **Problem 2:** so-called „dangerous activities“ as opposed to the necessity to prove unlawful conduct?
Thank you for attention!