Pijaca, Marija,

Legal Relationship between Marina Operator and Charter Agency Arising from the Contract of Berth - Comparative Analysis

2nd Adriatic Maritime Law Conference, Opatija, 25-27 May
Developing a Modern Legal and Insurance Regime for Croatian Marinas –
Enhancing Competitiveness, Safety, Security and Marine Environmental Standards
 lack of professional legal literature
 a disparity in the court practice
 legal ambiguity with regard to the issue of the liability
clear and competitive standards for operating quality for marinas
THE GOAL OF THIS PAPER:
clarify the contractual relationship between
marina operator and charter agency.
- Croatian law/practice
- Italian law/practice
- Slovenian law/practice
- legal framework
- content of general terms and conditions for marinas' operation
- content of the contractual provisions from the contract of berth
<table>
<thead>
<tr>
<th>Maritime law</th>
<th>Civile law</th>
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<tbody>
<tr>
<td><strong>Croatia:</strong> <em>Maritime Code</em></td>
<td><strong>Croatia:</strong> <em>Law on Obligations</em></td>
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<td><em>Maritime Domain and Seaports Act</em></td>
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<td><strong>Italy:</strong> <em>Codice della navigazione</em></td>
<td><strong>Italy:</strong> <em>Codice civile</em></td>
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<td><em>Codice della nautica di diporto</em></td>
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EXAMPLE

__________________(further on: the Marina)
and_________________(further on: Charter Agency)

have agreed upon the following:

CONTRACT no. ___
for using the berth

Subject of the Contract

Article 1

The subject of this Contract
is the service of using the berth no , on the pier no , with the following details: beam : _____m,
only for the following vessel: 1. Name of the vessel:____ 2. Registration number: ____ 3. Flag: 4.
Overall length:____m 5. Max. beam:____m 6. Owner:____

Duration of the Contract

Article 2
- **the concept** of the contract of berth

- **the legal nature** of the contract of berth

- defines **who are the parties** of the contract of berth

- **the common content of the rights and obligations** of each contracting party

  - providing place for berth
  - payment of the berth

- **the issues of party liability** are also considered

  - questions of liability arise in the case of damage to a charter's vessel
THE TERM

CONTRACT OF BERTH

absence of a definition for the term contract of berth

IMPORTANCE OF AUTONOMOUS LEGAL SOURCES

Analysis of the content of the general terms and conditions of the marinas’ operations
THE LEGAL NATURE OF THE CONTRACT OF BERTH

establishing the legal nature of the contract of berth is by no means trivial.

Berthing places → charter agency

the berths are ceded to the charter agency only for use.
THE PARTIES TO THE CONTRACT OF BERTH

marina

when we talk about a marina as a contractual party we mean a n/l person providing berth services and other services on nautical tourism

"A marina is a part of a water area and shore purposely built and developed for the purpose of providing berthing services, accommodation of vessels and other services in the nautical tourism [...]”.

art. 10 of Croatian Ordinance on Classification and Categorisation of Nautical Ports

charter agency

"[...] natural or legal person, owner or user of vessel, who has responsibility for the management of the vessel and assumed such responsibilities with the powers of this law and the positive regulations [...] relating to the safety of navigation and the protection of the sea from pollution [...]”.

art. 2 of Croatian Rule on Terms for Charter Services
Opći uvjeti poslovanja MARINA

I. DEFINICIJE
U ovom Ugovoru koriste se slijedeći pojmovi:
**UGOVOR** označava ovaj Ugovor o korištenju veza zaljubčen između stranaka.
**MARINA** znači hrvatsko društvo, d.o.o. – Marina, Don Petra Špike 2a.
**KLIJENT** znači fizička ili pravna osoba koja polaže pravo na plovišno bilo kao vlasnik, posjednik ili korisnik ploviša u članku 1. Ovog Ugovora.
**STRANKE** znači stranke ovog Ugovora – Marina i Klijent.

II. SVRHA I CILJ UGOVORA
Ovim ugovorom uređuju se uvjeti i odredbe pod kojima Marina daje u zakup Klijentu, a Klijent uzima u zakup od Marine vez, te uvjeti pod kojima Marina pruža ostale povezane usluge.

III. PREDMET: IZNAJMLJIVANJE VEZA
Za vrijeme trajanja ugovora Marina daje na korištenje vez prema važećem cjeniku za tekuću godinu isključivo za plovišno bilo definirano u Ugovoru.
THE MAIN OBLIGATION OF MARINA

- Providing place for berth

the marina allocate specific part of their waters, facilities, infrastructure and corresponding equipment to the charter agency
THE BASIC OBLIGATION OF THE CHARTER AGENCY

- *Pay the berth fee*

  in defining the prices the parties refer to the valid price list of marina services for the year in which these services are being used.
The usual content of these contracts in practice also implies the following elements:
The charter agency is obliged to conclude/maintain third party liability insurance for damage that may occur to third parties regarding the use of vessel.

The marina is committed to maintaining:
- coasts,
- pontoon,
- equipment,
- installations,
- fire-fighting systems,
- supplying electricity/water

Taking care of the cleanliness of the sea.

The liability for damage to marine vessels is excluded, resulting from:
- lack of suitability of rope for mooring,
- unfavorable weather conditions,
- for damage caused by third parties,

Any damage that may occur to third parties in connection with the use of berths.
In general terms and conditions of the marina there are usually cases and damages for which the marina is not responsible:

<table>
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<th>Damages to the equipment or the disappearance of the equipment of the vessel</th>
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<td>Damages or disappearance of technical equipment on the vessel</td>
</tr>
<tr>
<td>Damages to the equipment of a vessel that are not included in the inventory list</td>
</tr>
<tr>
<td>Damages due to loss or damages to works of art, objects made of precious metals, money</td>
</tr>
<tr>
<td>Damages due to loss or damages to the personal belongings of the users of berths, crews or other persons on the vessels</td>
</tr>
<tr>
<td>Damages due to force majeure, war, strike, civil unrest, political risks, terrorism and similar events</td>
</tr>
</tbody>
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CONCLUSION

When it comes to the legal relations between marina operator and charter agency arising from the contract of berth,

the lack of legal regulation in practice leads to significant contractual imbalance in the position of the parties

which goes in favor of the marina.
thank you for your attention