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A Comprehensive Analysis and Assessment of the Content of Business Cooperation Agreements and Contracts of Berth between Marinas and Charter Agencies

Marija Pijaca, Ph. D. *

ABSTRACT

The basic aim of this paper is to research business cooperation agreements and contracts of berth between marinas and charter agencies by analysing the rights, obligations and responsibilities of the contracting parties and to assess the various aspects of their content. The data on the number of marinas and registered charter agencies have been determined through an analysis of the business practices of Croatian marinas. The paper refers to the legal framework applicable to this type of legal relationship. Taking into consideration the fact that legal sources mainly allow the contracting parties to independently regulate their mutual relationships, this paper will try to provide answers to the following questions. Should legal sources contain provisions dealing with the legal matters of business cooperation agreements and contracts of berth between marinas and charter agencies? Are there, when entering into business cooperation agreement or a contract of berth between marinas and charter agencies, unspoken rules sufficient to enter into and carry out said agreement/contract? The importance of the analysis set out in the paper can be seen primarily in the role and importance of marinas and charter agencies for nautical tourism in Croatia. The services provided by nautical tourism essentially formulate the core of the business activities carried out by marina and charter agencies. Thus, when these two parties enter into a business cooperation agreement or a contract of berth, all of the core business objectives are met. Therefore, it is logical to give due attention to business cooperation agreements and contracts of berth between marinas and charter agencies. However, an analysis of the existing research has shown that this topic has not been sufficiently studied in the Croatian scientific literature, and that it has been marginalized in legal theory and in the comprehension of legal doctrines and principles.

KEY WORDS

Marinas, Charter Agencies, Business Cooperation Agreements, Contracts of Berth

1. Introduction

The subject matter of our interest in the DELICOMAR¹ Project has been, among other things, the study of the business practices of Croatian marinas in their activities regarding contracts of berth. A content analysis of the contract of berth entered into by marinas has shown different denominations and modes in the content of the same contracts.² When it comes to the terminology used in a contract of berth, it should be emphasized that marinas use different nomenclature/terms in their business practice, e.g., *contract on berth rental* or *contract No ___ on berth rental* (marina operators leave a blank space in which to enter the contract number), *marina services contract*, *berth hire contract*, *contract for using berth*, *berthing accommodation contract*, etc. Apart from this terminological inconsistency, the content of contracts is not uniform and either, i.e., the variety of contractual obligations of marinas indicates the existence and implementation of different models of contracts of berth.³ One such contractual model, in which a marina undertakes the responsibility to allocate a safe berth in which to accommodate a vessel during the contract period, is specific to contracts of berth between marinas and charter agencies. Therefore, charter agencies can be berth users, that is to say, they can be the contracting party in a contract of berth between a marina and a charter agency. This brings up the question of whether there are any content-specific features when regulating the rights and responsibilities of these contracting parties in a contract of berth, i.e., the marina and the charter agency.

By analysing the current business practice of Croatian marinas, we have established that some marinas conclude specific contracts, i.e., business cooperation agreements.

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¹ See RF 1.

² Skorupan Wolff, V.; Padovan, A. V., "Are there any Elements of the Contract of Custody in the Marina Operators' Contracts of Berth?", Book of Proceedings, 2nd International Transport and Insurance Law Conference, Zagreb, 12-13 October 2017, pp 313-351, special attention to be paid to pp 317-322.

³ Ibidem, pp 317-322; also, Skorupan Wolff, V., "Standardization of Marinas' Terms and Conditions as a Way Forward", 22nd International Scientific Conference on Economic and Social Development "Legal Challenges of the Modern World", The Round Table Discussions: Current Legal Challenges of Sustainable Development of the Adriatic Ports of Nautical Tourism, Split, 29-30 June 2017.

Therefore, aside from an analysis of the content of contracts of berth, an illustration of the legal relationship between marinas and charter agencies should also include an analysis of the content of business cooperation agreements between the contracting parties. It should be noted that a list of charter agency crafts, their names, the owners' names and details on their technical specifications form an integral part of the agreement, and that contract of berth is made individually for each and every charter agency craft. Subsequently, it turns out that the contract of berth is a consequence of the business cooperation agreement between a marina and a charter agency.

Only a few Croatian marinas have a practice of entering into agreements with charter agencies, namely with those with a larger fleet. In other words, some marinas offer charter agencies only standard contracts of berth, i.e., they do not offer the possibility of mutually regulating their business cooperation. The indicated autonomous legal sources dealing with the regulation of the legal relationship between marinas and charter agencies have not yet been the subject of interest, nor they have been given due attention in maritime legal theory. Therefore, the need for an individual paper that would clearly define the characteristics of this legal relationship has been raised during work on the DELICOMAR Project.

The aim of this paper is to research business cooperation agreements and contracts of berth between marinas and charter agencies by analysing the rights, obligations and responsibilities of the contracting parties and to assess the various aspects of their content. In addition, the paper refers to the legal framework applicable to these types of legal relationships. Taking into consideration the fact that legal sources mainly allow the contracting parties to independently regulate their mutual relationships, this paper will try to provide answers to the following questions. Should legal sources regulate the legal relationship between marinas and charter agencies? Are there, in the business practice of marinas, unspoken rules sufficient for the regulation of the mutual rights and responsibilities of the contracting parties, i.e., marinas and charter agencies? The results of the analysis presented in this paper are mostly significant because of the role played by and the importance of marinas and charter agencies in nautical tourism in Croatia. In terms of the number of charters and chartered vessels it contains, the Republic of Croatia

is the leading country in the world.⁴ Therefore, the regulation of legal relationships between marinas and charter agencies has an important role to play in the development of nautical tourism in the country.

2. Definition of the terms *marina* and *charter agency* and their basic features

The contracting parties in a contract of berth or a business cooperation agreement, the contents of which have been analysed in this paper, are the marina and the charter agency. In order to identify the usual content of these sources, and to determine the specific rights, obligations and responsibilities inherent in the legal relationships between a marina and a charter agency, it is necessary to provide definitions of the terms *marina* and *charter agency* and to state their basic characteristics.

2.1. Marina – definition, classification, categorization and the performance of business activities in terms of concessions

In Croatian legislation, the term *marina* is defined by The Ordinance on Classification and Categorization of Nautical Ports.⁵ According to this legal source, a marina is a nautical tourism port; ⁶ a nautical tourism port is subsequently defined as a functional business unit in which a legal entity or a natural person operates and provides nautical tourism services as well as other accompanying services to nautical tourists (trading, catering, etc.)⁷ There are different types of nautical ports, and their classification has been determined according to the types of services that they render in the port. In addition to

⁴ Meetings of the Nautical Tourism Association, member association of the Croatian Chamber of Commerce (HGK), held during “The Days of Croatian Nautical Tourism” sponsored by HGK; meeting of the member associations of the HGK, the Association of Croatian Marinas and the Association of Providers of Accommodation on Board – charter at Biograd Boat Show, 19 November 2017.

⁵ Official Gazette, No 72/08. It is specified that the Ordinance on the Classification and Categorization of Nautical Ports was adopted as a subordinate act pursuant to the Act on the Provision of Tourism Services (Official Gazette, No 68/07, 88/10, 30/14, 89/14, 152/14), the implementation of which is under the competence of the Croatian Ministry of Tourism, while the legal status of nautical ports, including marinas and maritime domains with a concessionary contract to provide nautical tourism and services, is primarily regulated by the Maritime Domain and Seaports Act (Official Gazette, No 158/03, 100/04, 141/06, 38/09, 123/11, 56/16). Padovan, A.V. “Arrest of a yacht in a Croatian court for the purpose of securing a marina operator's claim”, Book of Proceedings, 2nd INTRANSLAW, Zagreb, 12-13 October 2017, p 380.

⁶ Article 5 of the Ordinance on the Classification and Categorization of Nautical Ports.

⁷ Article 2, paragraph 1 of the Ordinance on the Classification and Categorization of Nautical Ports.

marinas, nautical ports are classified as anchorages, boat storages and land marinas.⁸ Marinas, which offer the highest level of quality in nautical tourism, are considered to be the most commercially important ports of nautical tourism.⁹ Moreover, the professional literature highlights that marinas are the most developed and most complex types of nautical tourism port, whose berths, equipment and other facilities located in the sheltered basin are employed to render the services of vessel accommodation and recreational sojourns to yachtsmen and boatmen.¹⁰

These interpretations of legal theory are based on the definition of the term marina. Croatian legislation defines a marina as: "a part of the water and shore area specially built and equipped to render the services of berth rental, tourist accommodation on vessels and other nautical tourism services. It can also render catering services pursuant to this Ordinance."¹¹ In addition to these definitions of the term marina as a nautical tourism port and as part of the water and shore area specifically built and equipped for rendering berth rental services, tourist accommodation on vessels, catering services, etc., a marina can be analysed in terms of its different aspects, taking into consideration its facilities, construction type, sea area, ownership and location.¹² Regarding these aspects, there are many classifications of marinas, e.g., standard, luxurious, recreational, Mediterranean, Atlantic, open, enclosed, completely enclosed, private, communal and public, and sea, lake, river and canal marinas.¹³ Moreover, marinas are individually categorized in accordance with the detailed criteria and sub-criteria listed in the table of Annex 1 of the Ordinance on the Classification and Categorization of Nautical Ports under the heading *Terms and conditions for the categorization of marinas*. Pursuant to the Ordinance, marinas are categorized into four categories according to anchors awarded for each category, the

⁸ For the terms anchorage, boat storage and dry marina, see articles 7 and 8 of The Ordinance on the Classification and Categorization of Nautical Ports; for more on their characteristics, see Luković, T. et al., *Nautički turizam Hrvatske*, Redak, Split, 2015, pp 161-164.

⁹ *Ibidem*, p 164.

¹⁰ Hlača, V., Nakić J., "Pravni status marina u Republici Hrvatskoj", *Periodical of the Croatian Academy of Legal Sciences*, vol 1, no 1, 2010, p 175.

¹¹ Article 10, paragraphs 1 and 2, The Ordinance on the Classification and Categorization of Nautical Ports.

¹² Luković, T. et al., RF No 9, op cit, p 165; also see the term marina in *Pomorska enciklopedija*, book IV, *Jugoslavenski leksikografski zavod "Miroslav Krleža"*, Zagreb, 1976, p 367.

¹³ More on each of these types of marina in Luković, T. et al., note RF 9, pp 165-167.

lowest category being a marina with two anchors and the highest category a marina with five.¹⁴

When describing the basic features and characteristics of a marina, it is important to mention that a marina, as a subject of nautical tourism, is granted the concession of performing its activities in accordance with the regulations of the Maritime Domain and Seaports Act.¹⁵ The basic provisions of this legal source state that this concession for the special use and economic exploitation of a part of the maritime domain can be granted to natural persons and legal entities through a legally prescribed process.¹⁶ According to the legal process, the economic exploitation of the maritime domain is based on this concession-granting decision. Contractual and legal relationships, including concession-related rights and liabilities, are established by entering into a concession contract between the grantor and the concessionaire.¹⁷ The concessionaire can be any natural person or legal entity who meets the legal and business requirements and is registered and qualified to perform the business activity for which the concession has been granted.¹⁸ Therefore, a marina is granted a concession based on a concession-granting decision and, as the concessionaire, enters into a concession contract. As the concessionaire, the marina is legally entitled to render nautical tourism services, notably those of berth rental for the accommodation of vessels and the accommodation tourists

¹⁴ Article 22 of the Ordinance on the Classification and Categorization of Nautical Ports.

¹⁵ See *supra*, RF No 6.

¹⁶ Article 7 of the Maritime Domain and Seaports Act.

¹⁷ Concession-granting decisions shall specify the area of the maritime domain being granted for use or economic exploitation; the mode, conditions and period of use or economic exploitation of the maritime domain, the degree of exclusion of general use, the fee paid for the concession, the powers of the grantor, a list of the superstructure and infrastructure located in the maritime domain and being granted for concession, the rights and liabilities of concessionaire, including liability for the maintenance and protection of the maritime domain, as well as the preservation of nature, if the maritime domain is located in a protected part of nature. In compliance with the concession decision, the concession contract regulates the purpose for which the concession has been granted, the conditions that the concessionaire must meet during the concession period, the amount and mode of payment of the concession fee, the concessionaire's guarantees, as well as other rights and liabilities of the grantor and concessionaire. See Articles 24 and 25 of the Maritime Domain and Seaports Act. Also, Luković, T. et al., RF No 9, pp 35-36; Bolanča, D., "Osnovne značajke Zakona o pomorskom dobru i morskim lukama", *Comparative Maritime Law*, vol 43, No 158, 2004, pp 11-42; Đerđa, D., *Upravnopravni aspekti koncesije*, a doctoral dissertation, Faculty of Law, University of Split, Split, 2005, pp 18-19; Ljubetić, S., "Construction of Buildings and other Infrastructure Objects in the Ports of Nautical Tourism", 2nd INTRANSLAW, Zagreb, 12-13 October 2017, p 293.

¹⁸ Stančić, F., Bogović, M., "Koncesija na pomorskom dobru- odnos zakona o koncesijama i Zakona o pomorskom dobru i morskim lukama", *Pravni vjesnik*, vol 33, No 1, 2017, p 83.

on these vessels, electricity and water connections and the supply of fuel, provisions, spare parts, equipment, etc. to yachtmen.

In a nutshell, maritime domain concession issues are very complex. Therefore, a legal procedure to promulgate new legal act on standards and rules for the awarding of concessions is underway. In this part, we have highlighted only the basic features of concessions in order to explain marina's business activities in terms of the concession granted.¹⁹

2.2. Charter agency – definition, terms and conditions for conducting charter activities

In Croatia, the term *charter agency* is defined by the Ordinance on the Conditions for Conducting the Activity of Chartering of Vessels With or Without Crew and the Provision of Guest Accommodation Services on Vessels (henceforth the 2017 Ordinance).²⁰ This definition states that a charter agency “is a natural person or legal entity being the owner or the user of a vessel, or having, under written contract, assumed responsibility for operating the vessel, and by assuming such responsibility, having assumed authorities and responsibilities as laid down in this Ordinance and in positive law regulations of the Republic of Croatia related to safety of navigation and the protection of the sea from pollution”.²¹

The term *charter agency* was introduced instead of the term *charter firm*, which was used in the earlier Ordinance that Water Craft, Natural Persons or Legal Entities Carrying Out Charter Activities Must Satisfy²² and which was revoked upon the entry into force of the 2013 Ordinance on the Conditions for Conducting the Activity of Chartering of Vessels With or Without Crew and the Provision of Guest Accommodation

¹⁹ More on the granting of concessions in the maritime domain in RF 17; also, see Mišić, Ž., “Unsolved questions in the application of the Maritime Domain and Seaports Act with suggestions for amendments”, *Comparative Maritime Law*, vol 44, No 159, 2005, pp 69-81; Mišić, Ž., “Kritički osvrt u odnosu na važeće propise s prijedlogom mjera za kvalitetnije upravljanje pomorskim dobrom”, *Comparative Maritime Law*, vol 51, No 166, 2012, pp 259-333; Staničić, F., Bogović, M., “Koncesije na pomorskom dobru-odnos Zakona o koncesijama i Zakona o pomorskom dobru i morskim lukama”, *Pravni vjesnik*, vol 33, No 1, 2017, pp 73-104.

²⁰ Official Gazette, No 42/17.

²¹ Article 5, point 5 of the 2017 Ordinance.

²² Official Gazette, No 41/05, 62/09.

Services on Vessels.²³ The latter was similarly revoked upon the entry into force of the 2017 Ordinance.²⁴ The definition of the term charter firm is basically very similar to that of the term charter agency. The definition states that a charter firm is a "natural person or legal entity registered in the Republic of Croatia to conduct the activity of chartering of vessels."²⁵

The terms and conditions for conducting the activity of chartering of vessels with or without a crew, including guest accommodation services on vessels (charter activity) are also regulated by the 2017 Ordinance.²⁶ First of all, the term *vessel*, as determined in the Ordinance, is a waterborne craft, defined in the Maritime Code²⁷ as a boat or a yacht²⁸ used for charter activities.²⁹ According to the 2017 Ordinance, a charter activity indicates the provision of a vessel to an end user for entertainment purposes, with or without a crew, without guest accommodation services, for an appropriate, pre-established and publicly available fee; while the provision of accommodation services means providing a vessel to an end user, with or without a crew, for a time period during which the passengers remain on the vessel overnight, for an appropriate, pre-established and publicly available fee.³⁰

The 2017 Ordinance specially regulates the terms and conditions referring to the seaworthiness³¹ and technical fitness of a vessel to conduct charter activities.³² It is the responsibility of the charter agency to meet the obligation of submitting a request for the

²³ Official Gazette, No 99/13.

²⁴ Article 36 of the 2017 Ordinance.

²⁵ Article 2 of the Ordinance on Conditions that Water Craft, Natural Persons or Legal Entities Carrying Out Charter Activities Must Satisfy.

²⁶ See supra FN 21, definition of a vessel according to article 2, point 1 of the Ordinance on the Conditions for Conducting the Activity of Chartering of Vessels With or Without Crew and the Provision of Guest Accommodation Services on Vessels.

²⁷ Official Gazette, No 181/04, 76/07, 146/08, 61/11, 56/13, 26/15.

²⁸ For definitions of the terms boat and yacht, see Article 5, paragraph 1, point 20 of the Maritime Code.

²⁹ Definition of the term vessel according Article 2, point 1 of the 2017 Ordinance.

³⁰ Article 2, points 3 and 4 of the 2017 Ordinance.

³¹ When it comes to seaworthiness, the vessel must be registered for economic use in the state of its nationality, technically fit to conduct charter activities in the Republic of Croatia, have the minimum number of adequately qualified crew members, in possession of other valid certificates and books complying with the regulations of the flag state and in possession of a third-party liability insurance policy that also covers harmful events in the internal waters and territorial sea of the Republic of Croatia. Conditions for vessels of third-country nationality have also been added. See Articles 5 and 6 of the 2017 Ordinance.

³² A vessel used for the provision of accommodation services shall be built and equipped in a way that enables the accommodation and stay of the crew and passengers on the vessel for several days. The technical fitness of a vessel to conduct charter activities shall be determined through a technical survey. Articles 5 and 6 of the 2017 Ordinance.

assignment of the user's rights to work on the central database. In accordance with the 2017 Ordinance, prior to chartering a vessel, the charter agency is required to submit a written request to the Ministry for the assignment of the user's rights to work on the central database, in which all registrations of the crews and passenger lists on vessels are recorded.³³ The 2017 Ordinance regulates in detail the obligations of a charter agency and its work on the central database. The charter agency must have the equipment necessary to electronically register the crew and passenger lists, including an Internet connection and equipment to create an advanced electronic signature. The charter agency must report the crew and passenger list to the Ministry's central database prior to any navigation, have a guest reception area and own, be leased or granted a concession.³⁴ Henceforward, there are other provisions of the 2017 Ordinance that regulate the various obligations of the charter agency in light of the above stated conditions.³⁵

One of the most important provisions is that regulating procedures of admitting guests onto premises, that, for instance, a marina has rented to a charter agency. It is the obligation of the charter agency to rent an office or business premises within the marina area for the purposes of performing charter services. Therefore, the definition of rights and responsibilities regarding the lease is an integral part of the business cooperation agreement or the separate property lease agreement.³⁶

2.3. The number and capacity of marinas and the number of active charter agencies in the Republic of Croatia

Today, there are 139 nautical tourism ports in the Republic of Croatia, 71 marinas (of which 13 are land marinas) and 68 other nautical tourism ports. The total number of berths is 17,428. In 2016, there were 13,422 vessels permanently moored in nautical ports and 198,151³⁷ vessels in transit. It is considered that private service marinas

³³ Article 11 of the 2017 Ordinance.

³⁴ Article 12 of the 2017 Ordinance.

³⁵ See more in Article 11 of the 2017 Ordinance.

³⁶ The business practices of Croatian marinas have shown that some marina operators tend to integrate the property lease agreement into The Agreement on Business and Technical Cooperation signed with the charter agencies.

³⁷ Croatian Bureau of Statistics – Release, Nautical Tourism - Capacity and Turnover of Ports in 2016, No 4.3.4. from 24 March 2017; available at https://www.dzs.hr/Hrv_Eng/publication/2016/04-03-04_01_2016.htm (logged in on 15 November 2017).

constitute the majority of marinas and mooring capacity in the Republic of Croatia.³⁸ Marina Dalmacija in Sukošan is the largest marina in Croatia, with 1,200 water moorings. The quality of the berths in this marina allow the reception of mega-yachts up to 80 m in length.³⁹

There are 645 active charter agencies in the Republic of Croatia, but the number of charter agencies registered in the Commercial Court register (the activity of vessel chartering – code '71') reaches 1,906. Around 200 charter agencies have three or more vessels in their fleet. There are 3,305 active charter vessels, which means that the Republic of Croatia makes up 25% of the world's overall charter fleet. These data refer only to the chartering of vessels without a crew.⁴⁰

3. Sources regulating the legal relationship between marinas and charter agencies in Croatian business practice

In order to determine the specific qualities of legal relationships between marinas and charter agencies, we have researched the business practices of Croatian marinas by collecting and analysing business cooperation agreements and contracts of berth between marinas and charter agencies. Since a contract of berth between a marina and a charter agency is in some cases preceded by a business cooperation agreement between the same parties, we will start by analysing the content of the latter.

3.2. Business cooperation agreements between marinas and charter agencies

The results of research into the business practices of Croatian marinas have shown that a business cooperation agreement may contain the following provisions. The basic obligation of the marina, according to a business cooperation agreement, is to provide the charter agency with a sufficient number of free berths for charter vessels for a certain period of time, usually one year with the possibility of prolongation. If one of the parties does not renounce the agreement, it will automatically be prolonged for one more year.

³⁸ Luković, T. et al., RF 9, p 174

³⁹ <https://www.d-marin.com/en/marinas/croatia/dalmacija//about-us.aspx> (logged in on 1 November 2017).

⁴⁰ <http://mint.hr/default.aspx?id=21414> (logged in on 15 November 2017).

Attached to this business cooperation agreement is a list of charter vessels, containing details such as the name and technical characteristics of the vessel (e.g., length/m), as well as the owner's details. The list of vessels shows that the charter agency, i.e., the party in the contract with the marina, does not always own the vessel in question. In other words, the owner of the vessel, according to the details in the list, is usually a *leasing* company or any other company, quite possibly another charter agency, that has rented the vessel to the charter agency, the contracting party in the business cooperation agreement with the marina. Consequently, the charter agency, a party in the agreement with the marina, as the lessee of the vessel in question, is the *beneficiary* of the vessel. Such circumstances, in which the charter agency is either the owner or the beneficiary of a vessel, may become potentially problematic in the context of the payment of marina fees or when attempting to define the debtor of claims from the business cooperation agreement or the contract of berth between the marina and the charter agency (e.g., claims for berth rental fees).⁴¹ However, examples of business practice show that a marina will deal with such questions through the business cooperation agreement or the contract of berth, requiring the charter agency to deliver the owner's power of attorney for the exploitation of the vessel, as well as a statement from the owner expressing that the marina is authorized to arrest the vessel unless the charter agency settles all of its obligations towards the marina regarding said vessel.

From our analysis of the business practices of Croatian marinas, we have been able to determine that certain business cooperation agreements involve the detailed regulation of methods of payments of the annual berth fee. In such cases, the marina approves, and the charter agency accepts, payment in instalments of annual berth fees for the contracts signed by the day of entry into business cooperation agreements or for those that will be signed by the end of the calendar year. According to the business practices of some marinas, the possibility of instalment payments can only be signed with charter agencies with more than 10 vessels in their fleet.

According to the same agreements, for some vessels, the entire annual berth fee has to be paid by 1 April, for some by 1 June and for the rest by 1 August. The total sum of the annual berth fee depends on the length of the vessel. In other words, the annual berth fee

⁴¹ On issues of the implementation of legal measures to ensure the marina's claims see Padovan, A.V., RF No 6, pp 379-406.

for a vessel of measuring 10.75 m in length costs 38,509.20 kn, whereas for a vessel measuring 16.75m in length, it costs 78,298.80 kn, etc.⁴² If the charter agency fails to pay the berth fee via instalment payments as set out in the contract of berth, or during the period defined in the business cooperation agreement, the marina can terminate the agreement. In the case of termination, the charter agency has to pay the annual berth fee in the ways prescribed by the Ordinance on Berth Use Charges and Methods of Payment of the Contract of Berth, which has to be signed for every vessel included in the business cooperation agreement. Upon an examination of the content of contracts of berth and the Ordinance on Berth Use Charges and Methods of Payment, the charter agency is obliged to pay the rental fee no later than seven days after the contract of berth is signed (at the reception desk or via the marina operator's transfer account). However, if the charter agency repeats its failure, either entirely or in part, to pay the berth fee, the marina can terminate the contract of berth and charge the charter agency for a vessel according to the valid marina daily berth price list.⁴³ A daily berth fee is charged from the day that the contract is signed. If the charter agency partially repays the annual berth fee, this money will be used to pay the daily berth fee.

Business cooperation agreements also regulate the charter agency's obligation to deliver a blank promissory note for a determined sum of money to the marina, in order to ensure the payment of the annual berth fee defined in the business cooperation agreement and the contract of berth. This blank promissory note must be solemnized by the notary public. In order to ensure that the payment is made, the marina is allowed to use the promissory note.

Some business cooperation agreements regulate the right of the marina to prevent the charter vessel from leaving if the berth fee or any other fee has not been paid. A written notice, issued by the marina, must precede this action. In addition to this, some business cooperation agreements only regulate the methods permitted to pay the annual berth fee, while others regulate the marina's obligations to supply the charter agency's vessels with

⁴² These amounts for claims have been calculated by analysing business cooperation agreement/s signed in 2017. However, the price lists of marinas are also available on the Internet. For example, see the price list available at: <http://www.aci-marinas.com/wp-content/uploads/2014/04/2017-HR-ACI-cjenik-WEB-FULL.pdf> (logged in on 15 November 2017).

⁴³ The usual practice distinguishes a daily or transit berth from a permanent berth. A daily berth refers only to the use of a berth in the marina, while a permanent berth includes the rent of the berth, the monitoring of the berth and the vessel and, in some cases, the obligation of the custody, maintenance, repairs, etc., of the vessel. Skorupan Wolff, V.; Padova, A. V., op. cit., RF No 3, pp 323-324.

potable water and electricity (including the use of showers and sanitary blocks by the charter guests), as well as the use of the crane and automatic slipway (some agreements even contain details on the size/lifting capacity of the crane and automatic slipway). Fees for the use of the crane and automatic slipway are determined by the marina's pricelist. The marina can also be obliged to provide the charter agency with a free parking space. It can further be obliged to take care of the charter guests' cars, which can be parked in an open parking area or in the marina's hangar. The parking fee must be paid at the reception desk.

Consistently with some business cooperation agreements, the charter agency has the right to choose its representatives and base supervisor, who are obliged to comply with the marina's activity regulations. In the case of a severe violation of these regulations, the marina can terminate the agreement with immediate effect. Technical assistance from the marina, as part of the marina's facilities, will provide priority repair works on the charter agency's vessels at the base supervisor's request. This thus enables the vessel to leave undisturbed. In other words, this is the most frequent type of business cooperation agreement between a marina and a charter agency, the content of which depends entirely on their free will. By applying the general provisions of the Obligations Act (hereafter referred to as the OA),⁴⁴ the parties in the agreement, in this case the marina and the charter agency, regulate their contractual relationship freely but in accordance with the Constitution, mandatory regulations and social morality.⁴⁵ Besides, the marina and the charter agency are obliged to act in accordance with the general provisions of the OA, which refer to obeying the duty of cooperation, the prohibition of abuse of law, the fulfilment of the obligations of the counterparty, etc.⁴⁶ Some marinas and charter agencies sign special agreements regulating the rights and obligations resulting from the business cooperation agreement and the contract of berth. This is why we are going to analyse the content of contracts of berth between marinas and charter agencies. It should be added that, in some cases, business practices favour only a contract of berth between a marina and a charter agency, without the previous signing of a business cooperation agreement.

⁴⁴ Official Gazette, No 33/05, 41/08, 125/11, 75/15.

⁴⁵ Article 2 of the OA.

⁴⁶ Articles 1-15 of the OA.

3.3. Contracts of berth between marinas and charter agencies

In the context of the content analysis of the contract of berth between the marina and the charter agency based on the contracts collected from the business practice of Croatian marinas, the following characteristic and features of their legal relationship may be emphasized. By signing a contract of berth with a charter agency, a marina undertakes the responsibility to provide the charter agency with a secure and safe berth to accommodate a vessel for a specific period of time. The charter agency uses these berths for vessel rental activities; they are allocated solely for the purpose of berthing and not for the employment of the berth. The marina allocates the contracted number of moorings, i.e., berths, to accommodate vessels used by the charter agency for rental activities. The charter agency is not allowed to allocate or rent its berths to third parties, nor to use the berths for any other activity other than the activity of chartering vessels. Due to the features described, a contract between a marina and a charter agency shares many elements with renting/rental agreements.⁴⁷ Therefore, the provision of a berth, i.e., 'the rental of a berthing space', is the basic purpose of a contract of berth between a marina and a charter agency.

It might seem that the scope of a marina's obligations in this contractual relationship is very wide; however, the results of our research have shown that the marina's obligations are very narrow in scope. Namely, the marina is obliged to provide the charter agency with a berth, i.e., the marina is contracted only to 'rent the space occupied by the berth', as well as obliged to ensure that the berth provided is in good order, technically and nautically safe and appropriate for the particular vessel in question in terms of its type, size and other technical specifications.⁴⁸ The subject of a contract of berth is the *vessel* in reference to which the contract is signed. This vessel is specified in detail. Usually, the information specifying the vessel in a contract of berth includes: the name of the vessel, the registration number, the type of vessel, the port of registry, the flag, the overall length,⁴⁹ the beam, the maximum draught, the construction material, the year of

⁴⁷ Padovan, A.V "Odgovornost luke nautičkog turizma iz ugovora o vezu i osiguranje", Comparative Maritime Law, vol 52, No 167, 2013, pp 7-8.

⁴⁸ Skorupan Wolff, V., Padova, A. V., op. cit., RF No 3, p 318.

⁴⁹ Some contracts of berth provide a definition of this term; it refers to the length stated in the vessel's documents, not to the overall length, which includes all equipment and upgrades, such as anchors, bow overhangs, bathing platforms, davits, catwalks, etc.

construction, the type of engine, the power and serial number of the engine, the underwriter, the insurance policy number and the insured value.

As previously stated, a contract of berth between the marina and the charter agency is concluded for a specific period of time.⁵⁰ However, if a new contract of berth is not concluded for the same vessel upon the expiration date, the charter agency is obliged to take over the vessel without delay and leave the marina. If this is not done, once the contract expires, the charter agency will be charged the price applicable for the daily berth of the vessel in accordance with the marina's valid price list. This has been shown by some of the provisions present in certain contracts of berth. In some cases, the contracting parties agree that the contract of berth shall be automatically prolonged for a period of, for example, two years, and if, for example, six months before the contract expires, neither of the contracting parties receives from the other party a written notice of cancellation of the contract.

On the other hand, the contract of berth determines a wide range of obligations on the part of the charter agency. First of all, one of the charter agency's obligations is to pay the fee due for using the berth. One should bear in mind that this particular obligation represents the marina's basic income and that acting in accordance with the contractual obligation to pay the rental fee is of the utmost importance for the existence of the marina.⁵¹ We have already mentioned the standard content of this contractual provision in a contract of berth. Some business cooperation agreements between marinas and charter agencies incorporate provisions on the payment of the berth fee during the contracting period and sanctions in the case of failure to pay the annual berth fee as stated in the agreement. According to the contract of berth, the charter agency is obliged to pay the rent, most frequently, within seven days of the beginning of the accounting period. However, if the charter agency fails to make the payment, either fully or in part, the marina has the right to cancel the contract and to charge the charter agency for the daily berth of the vessel in accordance with the marina's valid price list. Moreover, if the charter agency has only partially paid the annual berth fee, the payment received will be used to settle

⁵⁰Taking into consideration that the marina is granted the concession to perform its activities for a certain time period, there is no legal basis for signing a permanent contract of berth, i.e., for an indefinite period until the termination of the contract.

⁵¹Padovan, A. V., op. cit., RF No 6, p 380, as cited in Majstorović, D., "Ovršno pravo – prodaja (napuštenih) plovila", XXIV Svjetovanje – Aktualnosti hrvatskog zakonodavstva i pravne prakse, Vol 16, Hrvatsko društvo za građanskopravne znanosti i praksu, Zagreb, 2009, pp 841-853.

the charter agency's obligations to pay the price applicable for the daily berth of the vessel. In addition, some contracts of berth contain provisions stipulating that the marina reserves the right to change and update the price list for its services for each calendar year during which the contract of berth is in force. The marina is obliged to promulgate the price list for the next calendar year no later than the due date. Furthermore, contracts of berth separately regulate the obligation to pay for the use of water and electricity installations, etc. As usually stated in the contract, electricity and water are charged according to monthly consumption and payments are made in due time. Otherwise, the marina has the right to charge legal interest rates.

An integral part of a contract of berth between a marina and a charter agency, as stated in each contract, is the marina's internal regulations: General Terms and Conditions and the Marina's House Rules (depending on the marina, sometimes referred to as *General Business Terms and Conditions/General Terms and Conditions of Berthing, Ordinance on the Order of Nautical Tourism Ports/ Ordinance on Order in the Marina* _ _ _). From the contents of some contracts of berth, it can be concluded that the marina's price list is also an integral part of the contract. A charter agency, by signing a contract of berth, confirms that the General Terms and Conditions and the Ordinance on Order have been read, i.e., it is familiar with and agreeable to them.

These sources define the mutual rights and obligations of the marina and service user in detail. Therefore, the charter agency, by entering into an agreement with the marina, must be well-acquainted with the basic provisions of the marina's internal regulations, which is finally confirmed by their signing of the contract of berth. Throughout this process, according to the content of the contract of berth, the marina reserves the right to modify or amend its internal regulations. These amendments enter into force after being displayed on the notice board or another prominent position in the marina. Violation of any of these regulations gives marina the same rights as for violation of the provisions contained in the contract of berth.

Some contracts of berth also contain specific provisions on the contractual liability of the parties, which take priority over the internal regulations. According to the content of the contract of berth, the charter agency undertakes full responsibility for the performance of its activities, and will indemnify the marina against any loss, damage, costs, claims or proceedings caused by it to the marina, its employees or its users.

Furthermore, the provisions state that the marina shall assume no liability, neither in the contract of berth nor in any other documents, for any loss, pilferage or other damage to the property of the charter agency or third parties. This provision in the contract of berth is very important, since it implies that the parties, i.e., the marina and its counterparty, mutually agree on the extent of their contractual liability. However, the legal acts do impose some restrictions, particularly provisions on sanctions for damage, liability for damages caused intentionally or by gross negligence, as well as provisions on conditions that would render the contract void, as defined by the Obligations Act.⁵² The general terms and conditions for marina services define in detail accidents and damage for which the marina is not responsible. The usual exclusion of liabilities present in the general terms and conditions for marina services are damage caused by bad maintenance, neglect or the worn out state of the vessel or equipment, the loss of fenders, anchors, ropes and other equipment, damage resulting from usual wear and tear, etc.⁵³ In the context of liability, it is important to mention that an analysis of the content of contracts of berth with charter agencies has not revealed any provisions on the obligations of marinas regarding custody of vessels. Examples from business practice have shown that the contracting parties in a contract of berth explicitly exclude the application of Section 16 of the Obligations Act, i.e., the application of provisions referring to rights and obligations regulated by the deposit contract. Taking into consideration the provisions in the general terms and conditions for the marina's services, it is necessary to indicate that the contract of berth should clearly state whether or not the marina has any obligations regarding the custody of a vessel. If this information is lacking, it could affect the issue of the contractual liability of the parties.

When it comes to liability for the pilferage of equipment or other items on the vessel, it is the opinion of the parties in the contract of berth that the charter agency should be obliged to fill in and deliver an inventory listing the equipment and items on the vessel and to inform the marina immediately of any changes to the equipment and items during the enforcement period of the contract of berth. According to the contract on berth, the inventory list is signed by both contracting parties, and each party keeps a validated copy of the list. In addition, according to the contract of berth, the charter agency is often obliged to be covered by third-party liability insurance for the agency itself, its guests and

⁵² See Articles 342, 345 and 294 of the OA.

⁵³ More in Padovan, A. V., *op. cit.*, RF No 48, pp 12-13.

its clients. The insurance policy covers any the damage and liabilities that may arise from an accident or other incidents that may occur during charter activities or as a result of said activities. Additionally, the contract of berth outlines specific provisions on environmental protection, as well as on marina security measures. According to these provisions, the charter agency, by signing the contract of berth, accepts legal and material liability for acting in accordance with the rules and regulations of the Republic of Croatia regarding the protection of the environment, occupational safety, firefighting precautions, etc.

For the purposes of applying the protection measures, the charter agency is obliged to open up its premises to inspections authorized by the marina or any other local or state authority. The charter agency must take all possible preventive measures to eliminate the risk of fire on its premises and must comply with legal firefighting measures. The storage and possession of flammable and toxic materials in the marina area is strictly forbidden without certified permission issued by an authorized government agency. Under the terms of the contract of berth, the marina accepts to take the measures necessary to ensure the safety and security of its facilities, while the charter agency undertakes full liability for issues regarding the performance of its activities.

A separate provision in the contract regulates the conditions for cancelling the contract of berth between the marina and the charter agency. Possible reasons for this might be: the violation of the contract regulations, legal acts or the marina's internal regulations by the charter agency; the charter agency is not willing/able to perform its activities in cooperation with other marina users (due to private or business reasons); the charter agency acts in a way that is harmful to the marina's reputation; or the marina cannot operate due to force majeure. This provision in the contract of berth, according to business practice, allows both parties to terminate the contract at any time, in writing, without stating their reasons and adhering to a one-year notice period. If the marina terminates the contract, the charter agency shall remove its equipment and inventory and vacate the marina property. If the charter agency has signed any other contract(s) of berth, such contract(s) shall automatically be considered terminated if the contract of berth is cancelled. The marina is not obliged to refund any fees already paid, regardless of which contracting party has terminated the contract of berth.

Undoubtedly, the content and scope of the rights and obligations contained in a contract of berth between a marina and a charter agency differ according to the varying business practices of Croatian marinas. In some cases, they do not contain many provisions and even are even identical to the content of contracts of berth signed by the marina with other users. On the other hand, in some cases, they are very detailed and contain clearly defined contractual rights and obligations that the parties must adhere to, which is truly commendable. When dealing with issues that have occurred during their business practices, some marinas have incorporated a series of the rights and obligations into their contracts of berth, finding that they are necessary to regulate these mutual rights and obligations.

In our opinion, the lack of legal provisions on the regulation of this contractual relationship fails to meet the needs of the signatory parties in contracts of berth. The rights and obligations of the parties, the marina and the charter agency should not be taken for granted. Therefore, we believe it is necessary to use the abovementioned provisions to assemble an accurate model of legal contractual relationships and to incorporate these into the legal framework. Regardless of the disposition of the content of these provisions, their presence in legislation would affect the content of contracts of berth between marinas and charter agencies, leading to the standardization of rights and obligations, i.e., the standardization of legal relationships between marinas and charter agencies.

4. Conclusion

In order to determine the features of the rights, obligations and responsibilities between marinas and charter agencies, we have analysed the business practices of Croatian marinas and a number of contracts of berth and business cooperation agreements between marinas and charter agencies. We have provided definitions of the terms marina and charter agency, and stated the basic characteristics of the contracting parties according to the provisions of various Croatian legal sources: The Ordinance on the Classification and Categorization of Nautical Ports for the term *marina* and its features; and The Ordinance on the Conditions for Conducting the Activity of Chartering of Vessels With or Without Crew and the Provision of Guest Accommodation Services on Vessels for the term *charter agency* and its features.

By analysing the business practices of Croatian marinas, we have determined that some marinas tend to sign contracts of berth and business cooperation agreements with the charter agency, while others offer a standard contract of berth, which is, in its content, quite often similar to those signed by the marina with other berth users. According to the presented business practices, marinas enter into business cooperation agreements solely with charter agencies with larger fleets (10 or more vessels in the marina).

The basic obligation of a marina in a business cooperation agreement is to provide the charter agency with enough free berths for a given number of vessels and for a certain period of time, usually for one year with the possibility of prolongation. The content of some business cooperation agreements is the detailed regulation of the permissible methods for paying an annual berth fee. In such agreements, the marina offers, and the charter agency accepts, payment of the berth fee in instalments. If the charter agency does not pay the fees, the marina has the right to terminate its legal relationship with the charter agency. Some agreements regulate the right of the marina to prevent the charter agency vessel from leaving the marina unless all fees and other charges (electricity, water consumption, etc.) have been settled. Altogether, the contract of berth is the main source for the regulation of the legal relationship between most marinas and charter agencies. This same contract also regulates the accommodation of the charter agency's vessels. Since it concerns the 'rental of the berthing space', this contract between a marina and a charter agency contains many elements involved in renting/rental agreements. What is specific to this contractual relationship is that the marina is liable only for the technical and nautical validation and safety of the berth. An analysis of the content of contracts of berth between marinas and charter agencies has not revealed any provisions on the marina's obligations regarding the custody of the charter agency's vessels. Examples from the business practices of Croatian marinas have shown that some contracting parties explicitly exclude the application of Section 16 of the Obligations Act, i.e., the application of provisions referring to rights and obligations regulated by the deposit contract. Although it exists, the custody of berthed vessels is not a common feature of contractual relationships between marinas and charter agencies, and it has not been observed in the content of contracts of berth.

The content and scope of the rights and obligations of contracting parties vary according to the business practices of Croatian marinas; in some cases, these provisions

are very narrow/general, or even identical to the content of the legal relationships between marinas and individual berth users. In some cases, on the other hand, they are very detailed, clearly regulating the contractual rights and obligations of the parties.

In our opinion, the lack of legal provisions on the methods of regulation and content of (mainly) contracts of berth does not contribute towards a balanced legal relationship between the parties. Autonomous legal sources that have developed through business practice are not sufficient to regulate the rights and obligations of the parties, i.e., marinas and charter agencies. There the content and scope of the obligations of these parties are not in proportion. So that nothing is left to chance, we believe that it is necessary to assemble provisions for contracts of berth and to incorporate them into the content of legal sources, which would help to regulate the legal relationship between marinas and charter agencies. Regardless of the disposition of such provisions, their presence in legislation would influence the content of this legal relationship and would lead to the standardization of the rights and obligations of both marinas and charter agencies.