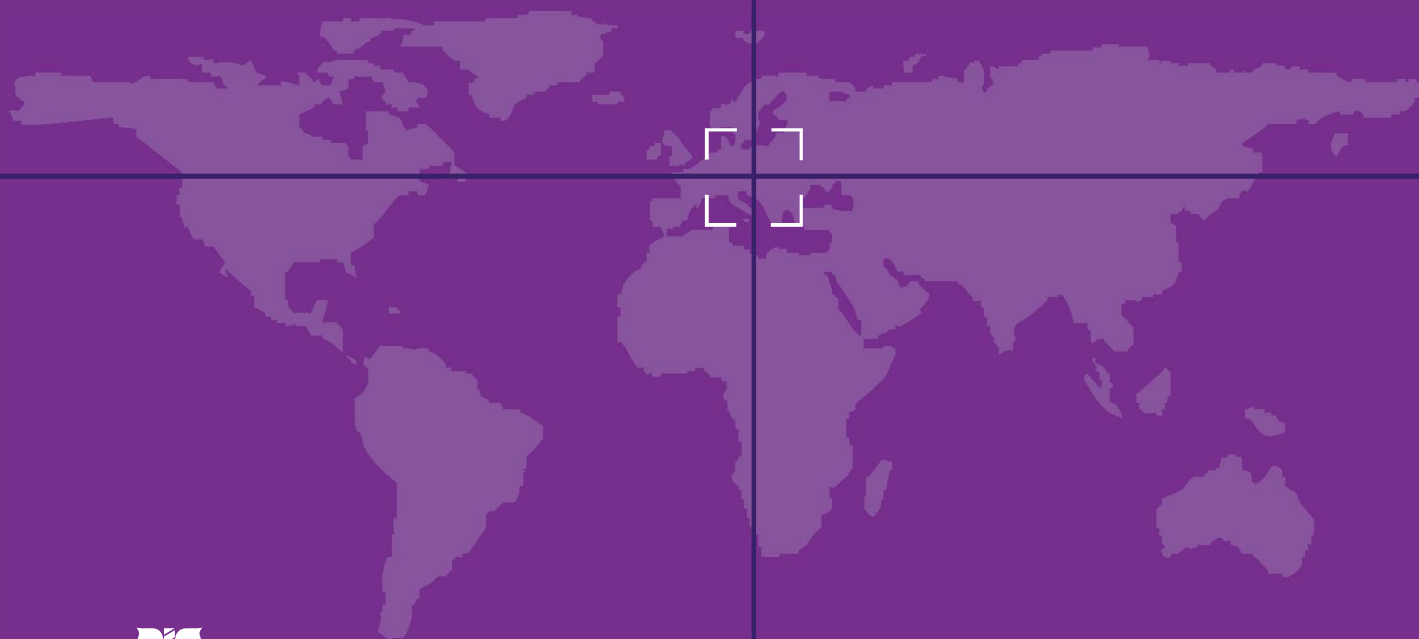


# Criminal Justice and Security in Central and Eastern Europe

From Common Sense to Evidence-based Policy-making

25-27 SEPTEMBER, 2018 // LJUBLJANA // SLOVENIA



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Criminal Justice and Security

# **Criminal Justice and Security in Central and Eastern Europe**

**From Common Sense to Evidence-based Policy-making  
Conference Proceedings**

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**Branko Lobnikar**  
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Maribor, September 2018

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# CRIMINOLOGICAL AND LEGAL ASPECTS OF CROATIAN PORTS AND MARINAS SECURITY

*Josip Pavliček<sup>1</sup>, Adriana Vincenca Padovan<sup>2</sup>, Marija Pijaca<sup>3</sup>*

## ABSTRACT

The article<sup>4</sup> provides results of phenomenological research of criminal offences as the most severe forms of threat to security in Croatian ports and marinas. It also analyses legal norms related to security in ports and marinas. In particular, the study deals with criminological features of 981 offences committed in Croatian ports and marinas in a seven-year period. The research results confirm the hypothesis according to which there are significantly more criminal offences committed in ports open to public traffic compared to marinas. The crime mainly includes offences against property, predominantly theft (51%) and aggravated theft (21.6%), occurring mostly during summer tourist season. In relation to the research results, the authors analyse the relevant criminal, administrative and civil law norms aimed at providing legal protection to ports and marinas, as well as to their users. Special emphasis is placed on marina operator's liability for damage arising from criminal offences.

*Keywords:* security in ports and marinas, legal aspects of security, nautical tourism, criminal offences, maritime security

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## INTRODUCTION

Amongst the most significant indicators of security in ports and marinas is the data on the type and number of criminal offences committed in those micro locations. There are numerous causes which pose a threat to ports security due to their transport, economic, tourist and other functions both in the Republic of Croatia and worldwide. However, marinas are primarily in the function of nautical tourism. Considering this tourism-related component which is common to ports and marinas, the article will put an emphasis on observing the analysed crime through the prism of its influence on tourism which is an important economic branch of Croatian economy. Apart from the natural beauties and kind personnel, personal security is among the most important factors which affect the level of satisfaction of tourists coming to the Republic of Croatia (Marušić, Ćorak, & Sever, 2018). Furthermore, criminal offences, as the most severe form of threat to people's security, have the highest impact on the perception of one's own security (Garg, 2015: 4). That is where we have found the grounds for this criminological analysis because it is important, among other issues, as a foundation for making security assessments and designing an efficient crime prevention system. It should be pointed out that this is a very rare criminological aspect to consider since the search of the available scientific databases did not yield any scientific or professional papers analysing crime in ports or marinas.

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Furthermore, the paper will present an overview of the existing Croatian legal framework relating to security in the seaports, and particularly in marinas as special purpose – nautical tourism ports, considering their dominant role in nautical tourism in Croatia, and the fact that a majority of the total number of nautical berths are situated in marinas (Perko, 2017: 24). Due to the importance of marina industry for sustainable development of nautical tourism, the issue of marina operator's civil liability arising from adverse incidents such as criminal offences against property or persons within the marina is identified as relevant for the research. It is placed in relation to the matter of minimum security standards whether prescribed by law or legitimately expected by the clients based on berthing contracts. Therefore, we will shortly look into the standard business practices and berthing contract terms of Croatian marinas, as well as the relevant judicial practice dealing with marina operator's third party liability for damage arising from criminal acts against property or persons within marinas. Such analysis should show whether the prevailing business models relating to security in marinas strike a fair balance between the commercial interests of the marina operators and the legitimate expectations of their clients or whether there is place for improvement in the general interest of security and of sustainable development of this strategically important branch of economy in Croatia.

As a matter of terminology, Croatian Maritime Domain and Seaports Act (2004) (hereinafter: MDSPA) differentiates seaports open to public traffic and special purpose ports. Marina is a type of a special purpose port dedicated to nautical tourism. It is a port serving for the reception and accommodation of vessels, equipped for the provision of services to its users and vessels, and which businesswise, construction wise and functionally forms a unified whole (Regulation on the Classification of the Seaports Open to Public Traffic and of the Special Purpose Ports, 2004: Article 10). Marina is defined as a part of water space and of the shore specially constructed and arranged for the provision of moorings, accommodation of tourists on the vessels and other services in nautical tourism (Ordinance on the Classification and Categorization of the Ports of Nautical Tourism [OCCPNT], 2008: Article 10). It is operated by a single concessionaire, a commercial company (marina operator). On the other hand, seaports open to public traffic are operated on a landlord model, by the port authorities established by the state or regional government that are, *inter alia*, entitled to grant concessions and concession permits to providers of various port services or port facility operators.

## **AN ANALYSIS OF THE TYPES OF CRIMINAL OFFENCES IN CROATIAN PORTS AND MARINAS**

The first part of the article is focuses only on the phenomenological analysis of criminal offences committed in ports and marinas. Etiological aspects have not been considered in more detail because of a foreseen limited scope of the paper.

### **METHODOLOGICAL CONSIDERATIONS**

As mentioned above, the main features of the types of crime in Croatian ports and marinas have been selected as the problem of this research. The research is limited to the study of the criminal offences, whilst misdemeanours and other less severe forms of threats to security have not been taken into account. The sample consists of 981 criminal offences in the sea and inland ports and marinas on the territory of the entire Republic of Croatia from 1 January 2010 to 31 December 2016. The data includes all reported criminal acts committed

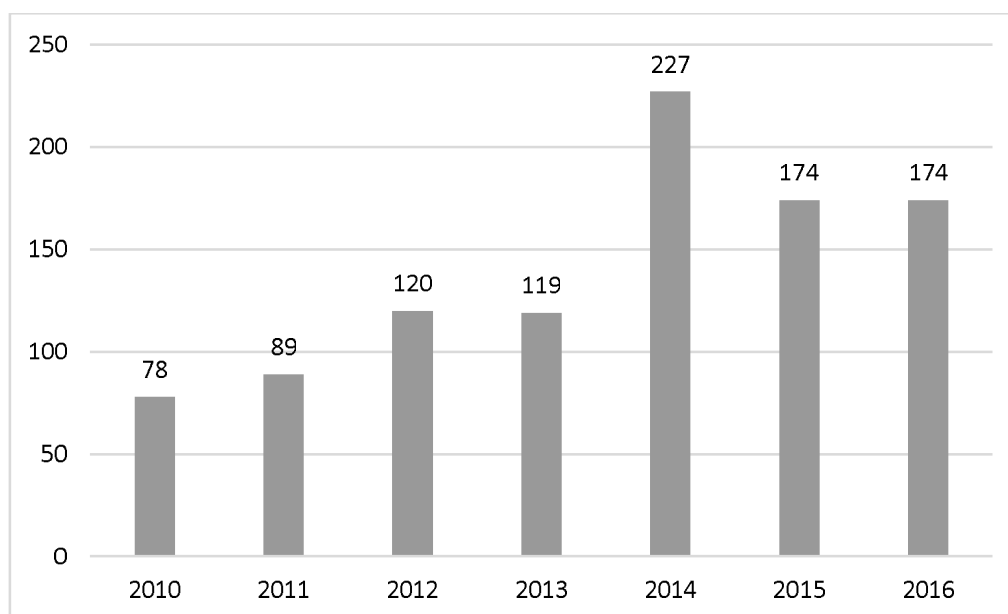
in ports and marinas in the mentioned analysed period. The focus is mainly on the sea ports and marinas because only four criminal acts against the property were committed in inland ports. The data on criminal offences was gathered from the records of the Ministry of the Interior. Due to a large overall number of the included criminal offences, data entry and processing started in mid-2017 which is why the data for this particular year was not available at the time of research. Based on the available data, a special survey was prepared and used to analyse each and every criminal offence. The collected data was statistically processed using the IBM SPSS 20 software tool.

The information regarding security in marinas and the standard terms of berthing contracts was collected through field research in marinas and interviews of marina management staff based on a questionnaire, covering 35 marinas in Croatia, 1 in Slovenia, 4 in Malta, 4 in Spain, 3 in Italy and the association of Italian marinas ASSOMARINAS.

The initial hypothesis of this research is that considerably more criminal offences are committed in ports open to public traffic compared to marinas and that most of these offences are crimes against property committed during summer season.

## RESULTS AND DISCUSSION

The initial analysis focused on the distribution of criminal offences in the analysed period and it showed that in the first part of the seven-year period there was a rising trend of criminal offences committed in ports and marinas, concretely, from 78 in 2010 to 227 in 2014, which indicates that the figure almost tripled (Graph 1). The second part of the analysed period recorded a decrease in the number of criminal offences by 23% in 2015 and 2016.

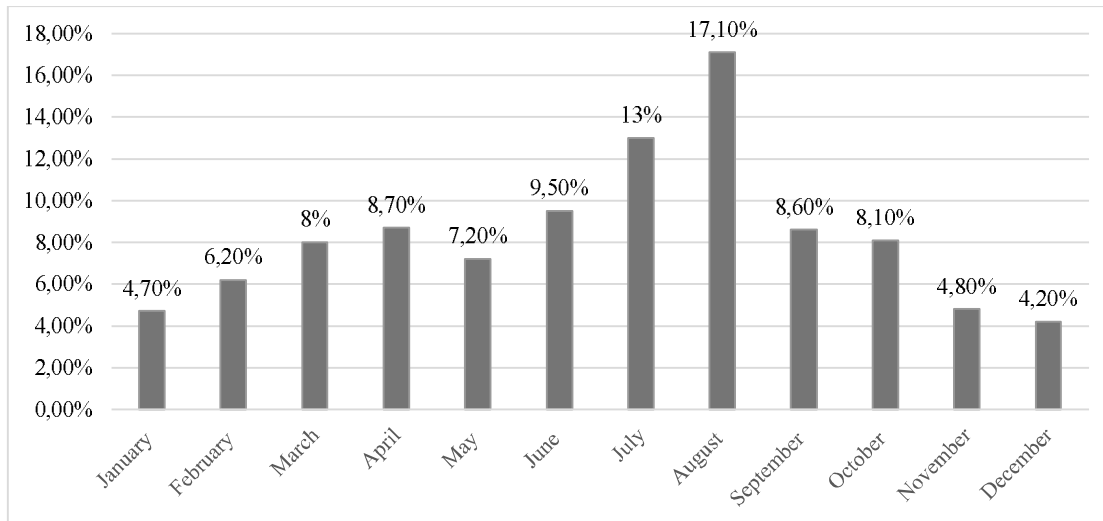


$$(\chi^2 = 1.225, df = 6, p < 0.001)$$

**Graph 1:** *Number of reported criminal offences (N=981)*

It should be clarified that the share of the analysed criminal offences is not too significant when compared to the total crime rate in the Republic of Croatia. The total number of criminal offences in the Republic of Croatia in the analysed period ranged from 75 620 in 2011 to 55 824 in 2016 (Ministry of the Interior, 2016) while the average share of the analysed type of crime amounted to less than 0.003% in the total crime rate.

If individual years are observed, the analysis brings us to a conclusion that an increase in the number of tourists and other users of ports and marinas over the year contributes to an increase in the number of criminal offences. Such impact, on the level of the entire tourist destination, is also confirmed by certain studies, as mentioned by Montolio and Planells (2013: 5). Accordingly, as expected, the largest number of criminal offences was recorded during summer tourist season, especially during its peak in July and August when almost a third of the analysed criminal offences occurred (Graph 2).



$$(\chi^2 = 1.766, df = 11, p < 0.001)$$

**Graph 2:** Distribution of criminal offences per month throughout a year (N=981)

Considering the time when the criminal offences occurred, 39.3% of them were committed during several day periods of absence of the owners from their vessels and other movable property against which the crime was committed. It has been established that 37.2% of criminal offences were committed in the evening or at night-time, while the rest (23.4%) were committed at daytime. ( $\chi^2 = 43.835, df = 2, p < 0.001$ )

If we analyse the territorial distribution of the analysed criminal offences in the Republic of Croatia more closely, we can establish that the majority occurred in Split-Dalmatia County (27.8%), Istria County (26%) and Primorje-Gorski Kotar County (20.9%) which are also the counties with the largest population and which have the highest number of tourists. ( $\chi^2 = 1156.095, df = 9, p < 0.001$ ) The area of the city of Pula in Istria County stands out as a micro location because 12.9% of the total number of criminal offences were committed there alone.

The analysis also indicates that notably more criminal offences were committed in ports open to public traffic, amounting to as much as 69%, whilst only 16,9% occurred in marinas. This was expected since there are approximately 440 ports, harbours and small harbours along Croatian coast and on its islands (Perko, 2017:24) and about 100 sports ports (Luković et al., 2015:167). On the other hand, there are 57 marinas registered in the Republic of Croatia (Croatian Bureau of Statistics, 2017). Criminal offences committed in the streets or promenades alongside ports open to public traffic have also been considered. These public spaces are located next to or within the ports open to public traffic, and a total of 8.9% of criminal offences were recorded there. Considering that anchorages, mooring areas and unclassified nautical tourism ports are also in the function of nautical tourism, and in Croatia



there is an official record of 68 such facilities (Croatian Bureau of Statistics, 2017), another 5.2% of criminal offences were recorded in such places. ( $\chi^2 = 1041.650$ ,  $df = 3$ ,  $p < 0.001$ )

Apart from the distribution of criminal offences over space and time, the structure of crime in terms of types of criminal offences was also analysed. The results are in line with the expectations laid out in the main hypothesis. A total of 83.8% of the analysed criminal offences are exclusively offences against property which can be broken down into: 51% theft; 21.6% aggravated theft; 11.2% causing damage to other people's property and 2.3% embezzlement. The largest share in the aggravated theft category belongs to the cases of burglary (20.5%) and the cases of aggravated theft where high value items were stolen (0.7%). Aggravated theft cases where high value items were stolen mainly refer to the theft of very valuable vessels, while cargo thefts in ports worth millions, as mentioned by Frittelli (2005: 9), have not been recorded as a type of crime in Croatian ports. There are certain criminal offences on record which are less frequent such as drugs abuse related offences (3.7%), threats (2.9%), forgery of documents (1.4%) and customs control evasion (1.1%). Another 30 different criminal offences were committed in the analysed period which do not constitute a significant share in the crime rate or they are recorded as single cases such as extortion, unauthorized use of other people's movable assets, prostitution, illegal collection. ( $\chi^2 = 2506.426$ ,  $df = 10$ ,  $p < 0.001$ ) If we compare this structure and the volume of criminal activity with the main threats to security in the other European ports, including transport of bombs by ships or using ships as bombs, narcoterrorism, weapons smuggling, human trafficking, illegal migrations and drugs, alcohol and cigarettes smuggling, as mentioned by Carpenter (2012), we can see that they do not fit in this scope. It is in fact the opposite, it should be emphasized that there were no serious single criminal offences committed in ports and marinas such as murders, robberies or terrorist attacks which would, considering their consequences, have a significant impact on the security of people and property.

As there is a high share of burglaries, the majority of items stolen from vessels are personal items, nautical gear, vessel equipment (30.3%). In terms of individual objects, in 13.5% of cases outboard engines were stolen from the vessels, while in 12.4% of cases personal documents, money and credit cards were stolen. From the criminological point of view, it is interesting that in 4.1% of analysed criminal offences metal parts of infrastructure in ports and marinas or parts of vessels were stolen in order to be resold as secondary raw material. ( $\chi^2 = 1367.763$ ,  $df = 15$ ,  $p < 0.001$ )

Thefts of vessels were analysed in particular. In the analysed period, there were 58 such cases or 5.9% in the total number of criminal offences. Mostly smaller vessels were stolen such as inflatable boats or small fishing boats, while there were only few cases where expensive yachts were stolen. In the majority of cases, yacht thefts were connected to unresolved ownership issues. Since there is a high share of criminal offences causing damage to other people's property, we have found that this most frequently includes damage to vessels, vessel parts or vessel interiors (in 64.6% of cases), damage to cars and motorcycles (in 13.6% of cases) and to immovable property in ports and marinas such as facilities, entrance barriers and similar infrastructure (in 10.9% of cases). ( $\chi^2 = 3.091$ ,  $df = 150$ ,  $p < 0.001$ )

From the security and crime prevention point of view, we can see that in future it will be necessary to implement prevention activities and programs focused on reducing crime against property. A reduction of crime against property is also largely connected to an increased presence of competent national authorities (port authority employees, the police), private security employees or marina staff in the risky zones. This certainly needs to be supplemented by adequate technical protection measures including CCTV, restrictions and

surveillance of movements in certain parts of ports and marinas, installing alarm systems, technical and anti-theft protection systems. Needless to say, self-protection measures are very important because adequate care for one's own property can considerably prevent this kind of criminal offences.

Most of the victims of the analysed criminal offences are natural persons. In 75.1% of cases criminal offences were committed against single natural persons and in 1.7% of cases against several natural persons ( $\chi^2 = 838.532$ ,  $df = 2$ ,  $p < 0.001$ ). In 17.3% of cases criminal offences were committed against single legal persons and in 0.4% of cases against several legal persons ( $\chi^2 = 1099.015$ ,  $df = 2$ ,  $p < 0.001$ ). There were only 4 cases where both natural and legal persons were victims of a criminal offence. In all other analysed criminal offences, there were no victims. These were criminal offences related to drugs abuse, forgery and alike.

It is important to consider the share of Croatian and foreign citizens among the victims of the analysed criminal offences. As expected, most of the victims of the analysed criminal offences are Croatian citizens i.e. in 76.4% of cases, while foreign citizens are victims in 16.8% of cases. Almost equal share of foreign citizen victims of these offences was recorded in ports open to public traffic and in marinas. If we analyse more closely the criminal offences committed against foreign citizens, we can find that the number of victims among foreign citizens in ports and marinas increases during summer tourist season: June 9.1%, July 17.1%, August 24.4% and September 12.2% in the total number of victims among foreign citizens. ( $\chi^2 = 26.980$ ,  $df = 11$ ,  $p < 0.01$ ) Most of the foreign citizens were victims of the analysed criminal offences in the area of Istria County (42.7%) and Split-Dalmatia County (21.3%), they were equally affected in Zadar County and Primorje-Gorski Kotar County (14%) and least affected in Dubrovnik-Neretva County (4.3%), Šibenik-Knin County (2.4%) and Lika-Senj County (1.2%). ( $\chi^2 = 26.669$ ,  $df = 9$ ,  $p < 0.01$ ) The fact that the largest share of these crimes were committed in Istria County can probably be linked to the fact that this is the leading tourist region in the Republic of Croatia which had, for example, 31% of overnight stays and 26% of tourist arrivals in 2012 alone (Ćorluka, Matošević-Radić, & Geić, 2013).

**Table 1:** *Criminal offences and items affected by criminal offences committed against Croatian and foreign citizens*

		Croatian citizens N (%)	Foreign citizens N (%)	All N (%)	$\chi^2$
Criminal offence (N=911)	Theft	401(53.7)	99(60.4)	500(54.9)	18.408*
	Aggravated theft	171(22.9)	41(25.0)	212(23.3)	
	Damaging property	101(13.5)	9(5.5)	110(12.1)	
	Document forgery	2(0.3)	0(0)	2(0.2)	
	Threat	27(3.6)	1(0.6)	28(3.1)	
	Embezzlement	15(2.0)	8(4.9)	23(2.5)	
	Fraud	7(0.9)	2(1.2)	9(1.0)	
	Bodily injury	6(0.8)	2(1.2)	8(0.9)	
	Other criminal offences	17(2.3)	2(1.2)	19(2.1)	
	<b>Total</b>	747(100)	164(100)	911(100)	
Subject of criminal offence (N=911)	Outboard motor	113(15.1)	19(11.6)	132(14.5)	39.241***
	Parts/interior of vessel	79(10.6)	7(4.3)	86(9.4)	
	Several items from vessel	228(30.5)	61(37.2)	289(31.7)	
	Fuel	50(6.7)	4(2.4)	54(5.9)	
	Documents, money, cr. cards	75(10.0)	35(21.3)	110(12.1)	
	Battery/electric generating unit	9(1.2)	3(1.8)	12(1.3)	
	Metal objects	36(4.8)	4(2.4)	40(4.4)	
	Car/motorcycle	20(2.7)	5(3.0)	25(2.7)	
	Physical and mental integrity	46(6.2)	6(3.7)	52(5.7)	
	Immovable property	16(2.1)	0(0)	16(1.8)	
	Tobacco/alcohol	8(1.1)	0(0)	8(0.9)	
	Weapons	2(0.3)	0(0)	2(0.2)	
	Vessel	57(7.6)	19(11.6)	76(8.3)	
	Bicycle	8(1.1)	1(0.6)	9(1.0)	
<b>Total</b>	747(100)	164(100)	911(100)		

Note. \*  $p < 0.05$ , \*\*  $p < 0.01$ , \*\*\*  $p < 0.001$ .

If we observe these criminal offences in terms of whether Croatian or foreign citizens were affected (Table 1), we can see that foreign citizens are mainly victims of theft and aggravated theft and similar crime against property, and that they are extremely rarely victims of other criminal offences in ports and marinas.

A more detailed analysis of property subject to criminal offences shows that in the majority of cases involving foreign citizen victims (37.2%), various objects were stolen from their vessels because they left them in the exterior parts or there was a burglary into the interior, as well as they had their documents, money or credit cards stolen (21.3%) from the vessel or from them when they were spending time in ports and marinas. Outboard motors were stolen from foreign citizens in 11.6% of analysed cases. Whole vessels (usually auxiliary boats) were stolen also in 11.6% of cases.

Finally, it should be pointed out that the perpetrators were found in 23.3% of the analysed cases. This piece of information about a relatively low percentage of discovered perpetrators of criminal offences in ports and marinas raises the issue of responsibility for security in ports and marinas and their property but also for the potential compensation for damage caused by such criminal offences. Therefore, the second part of this article focuses on the relevant legislation relating to security in ports and marinas and the repercussions of security standards on the potential port operators' civil liability for damage.

## LEGAL ASPECTS OF SECURITY IN CROATIAN PORTS AND MARINAS

According to the Article 3 of the Police Duties and Powers Act (2009), the tasks that are in the competence of the police are: protection of life, rights, freedom, security and inviolability of persons; protection of public peace and order, and property; prevention of criminal offences and misdemeanours, their discovery and collecting information on those acts and their perpetrators; searching for the perpetrators of criminal offences and misdemeanours which are prosecuted *ex officio*, and bringing them before the competent authorities. The police is authorized to implement these tasks throughout the territory of the Republic of Croatia and in relation to all persons within this territory, including ports and marinas. In terms of the organizational set-up of the police, three different organizational forms of the police are intertwined in ports. Local police stations are mostly competent for ports but since there are also border crossings in some ports, border police also carry out their tasks there. On islands where there are no police stations, maritime police officers are responsible, but they also carry out other maritime duties. There are other different solutions for security issues in Europe such as Port Police in Rotterdam which polices the water, docks and terminals and their tasks are divided into border control, local policing and criminal investigations (Marks, Van Sluis, Vervooren, & Zeer, 2013).

However, it is generally not realistic to expect from police officers to be in all places at all times. Therefore, legislation envisages the possibility of the individual legal or natural persons hiring companies or professional individuals authorized to provide private protection services. In essence, they consist of physical and technical protection of persons and property in a particular area. The Private Security Protection Act (2003) (hereinafter: PSPA) regulates the provision of personal and property protection services which are not provided by the state and which go beyond the scope provided by the state. Port operators, i.e. port authorities in the public ports and concessionaires in the special purpose ports or port facility concessionaires may engage private security companies. This possibility applies to marina operators as concessionaires in the nautical tourism ports. However, for reasons further elaborated herein, marina operators considerably rely on their own dock staff (mariners-watchmen) in the prevention of accidents and incidents within marinas, including also the prevention of criminal acts, and generally in respect of safety and security within marinas. The so-called mariners-watchmen service is prescribed as one of the mandatory requirements for all marinas according to the OCCPNT 2008. However, as Jović and Mudrić (2018: 241) correctly point out, their function should be regarded primarily in the context of safety of navigation and maintenance of the port order, rather than in the context of security protection of property and persons in marinas. Nevertheless, continuous presence of marina mariners within marinas certainly contributes to the overall security and prevention of incidents, in the interest of marina operators and marina users.

The main legislation regulating ports in Croatia includes the previously mentioned MDSPA and the Maritime Code (2004) with their respective subsidiary legislation. Accordingly, the entity responsible for the operation of a port (port authority or concessionaire) has a public duty and power to care for the safety, security, environmental protection and maintenance of the port order within the port. Port security is further regulated by the Security Protection of Seagoing Ships and Ports Act (2017) (hereinafter SPSSPA), the International Ship and Port Facility Security Code (2003) (hereinafter the ISPS Code) and the Regulation (EC) no 725/2004 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security (2004).

## **SECURITY PROTECTION OF SHIPS AND PORTS**

The ISPS Code was first implemented in Croatia by the Regulation on Security Protection of Merchant Ships and Ports Open to International Traffic (2003) followed by the Security Protection of Merchant Ships and Ports Open to International Traffic Act (2004). As a part of the accession process, Croatia harmonized its national legislation with the EU legislation on port security, the result of which was the SPSSPA (2009). Finally, after the accession, the SPSSPA (2017) was adopted for the purpose of further harmonization with the relevant EU law, in particular with the Regulation EC 725/2004 and the Directive 2005/65/EC of the European Parliament and of the Council of 26 October 2005 on enhancing port security (2005).

It should be emphasized that this legislation is based on the ISPS Code, which emerged in the wake of the 9-11 terrorist attacks on the United States (Kraska, 2016: 443). It is specifically aimed at prevention of terrorist attacks, armed robberies, piracy and similar unlawful acts against commercial ships and ports and their protection from such malicious acts. Port security assessments should evaluate important shipping infrastructure that if damaged could cause significant loss of life or damage to the economy and environment (Kraska, 2016: 448).

According to the SPSSPA (2017), it is a responsibility of the port operators to ensure port security by making port security assessments, developing port security plans implementing detailed security measures, designating port security officers (PSO) and port facility security officers (PFSO), ensuring that training of port security personnel and drills take place regularly and that security equipment is properly operated, tested and maintained. Regular security inspections of the ports and port facilities are in the competence of the harbour master's offices. Similarly, Benamara and Asariotis (2007: 282) describe the main obligations under the ISPS Code in respect of port facilities. A liaison officer is nominated by the Minister of the sea, transport and infrastructure with a task of coordinating the communication with the European Commission and the other EU member states related to maritime security.

The SPSSPA (2017) applies to ports and port facilities serving to passenger ships engaged on international voyages and to cargo ships of 500 GRT and above engaged in international trade. The mandatory port security risk assessments and plans are conducted by the recognized port security organizations compliant with the mandatory requirements prescribed by the SPSSPA (2017).

There are 6 major ports operated by the port authorities established by the Government, and each has at least one PFSO responsible for the ISPS/SPSSPA implementation. County port authorities are responsible for the smaller public ports that are home to small vessels and used for national passenger transport. Since the ISPS ships call at these ports only occasionally, only one PFSO is usually appointed per authority and is responsible for all the ports in the area (Zec, Frančić, & Šimić Hlača, 2010: 44). Privately operated ports, including marinas, if allowed to accommodate ISPS ships, must have at least one PFSO (Zec et al., 2010: 45). Currently, in Croatia there are 33 ISPS compliant ports including 54 port facilities (Croatian Parliament, 2017a, 2017b), and 4 recognized security organizations authorized to carry out the port security assessments and port security plans (Croatian Parliament, 2017a, 2017b). However, all marinas in Croatia currently fall outside the ISPS regulations (Zec et al., 2010: 45) and of the SPSSPA (2017). Therefore, marina operators are free to implement their own security policy which will be dominantly influenced by the commercial factors

and ultimately by their business model. In reality, security aspect is an important factor of competitiveness in the marina business which in Croatia is perceived to be on a good overall quality level (Luković et al., 2015: 98).

## MARINA SECURITY

Due to the maritime domain regime, there is no marina in Croatia where public access has been entirely excluded. This means that they are freely accessible from the waterside, whilst access from the land is partly limited and controlled. The prevailing practice is that marinas are partly fenced, they have one or more entrance gates, the entry of vehicles into the ports is controlled, whilst access is free for pedestrians, only some marinas use locked gates at the piers limiting access to the moorings. Access to the open-air land areas of marinas and to shops, cafés, bars, restaurants, etc. is free to the public. Some marinas are located in the coastal towns forming their integral part in which case the open access may pose a considerable security issue. Piers, moorings and waterside are observed and patrolled regularly by the marina dock staff (mariners). Piers, operative areas, common areas, buildings within the marina and its infrastructure are secured by the 24/7 CCTV systems and most of marinas contract professional security companies in accordance with their specific needs. Professional security guards are physically present in most marinas, but there are marinas that use only their own mariners as watchmen and rely on the local public law enforcement.

The concession contracts do not provide for any details regarding security standards and solutions to be implemented in the marinas, neither is there obligatory legislation in Croatia prescribing minimum security standards for marinas, except that OCCPNT 1999 and 2008, as by laws to the Provision of Services in Tourism Act (2017) (hereinafter: PSTA), prescribe that to be classified as a marina, the facility must establish doorman service and the above-mentioned mariners-watchmen service. As explained, mariners-watchmen are marina dock staff responsible primarily for berthing assistance, safety of navigation and overall safety and order in the port (Petrinović, Mandić, & Milošević Pujó, 2018) and are neither trained nor licensed as security staff.

On the other hand, it is interesting to note that for dry marinas OCCPNT 1999 and 2008 prescribe a mandatory security guard service and a combined reception/doorman service. This may imply that dry marinas offering exclusively dry-berth or land storage on premises that are fenced and locked or indoor, which in most cases are not in the regime of maritime domain and where access is usually limited to the clients only, are generally perceived as bailees, which is not necessarily the case with marinas.

Security standards implemented in a marina are subject to the free business decision of the marina operator. Depending on the level of service, each marina will design its own specifically tailored security policy. The scope and quality of service will be reflected in the price of berth. In particular, if under the standard terms and conditions of berthing contracts marina undertakes to act as a bailee for the vessels berthed therein, it owes a duty of care in protecting the vessels and their equipment from theft, vandalism or similar criminal acts, unless it expressly excludes such liability under the contract. Marina operator opting for a business model based on bailment should implement stricter security measures, because of assuming liability for the care, custody and control of the vessels. On the other hand, a marina providing a safe berth on the basis of a contract similar to berth rental or lease will not be liable for damage caused by unlawful acts of third parties. Whilst it is a general practice worldwide that transit berth is purely a lease of a safe berth, the longer-term berthing contracts may imply a bailment relationship. The majority of marina operators in

Croatia apply a model of annual rental of a safe berth including a certain level of control of the vessel on berth exercised through patrols performed by marina mariners combined with continuous video surveillance and control of third party access to the marina.

Standard clauses found in the Croatian marina operators' berthing contracts contain clauses expressly excluding liability for third parties' malicious acts. According to some clauses, the exclusion does not apply if there is proof of lack of due diligence on the part of marina operator or its staff, whilst other require proof of their gross negligence or willful misconduct. Furthermore, there are examples of clauses implying marina operator's liability in case of burglary and theft of vessel equipment and stores from the locked compartments. However, this liability is made subject to the mutual acceptance of a written inventory list and vessel survey report upon subjecting the vessel to marina operator's control. Finally, there are examples of standard contracts of berth clearly based on the model of berth rental where there is no mention of liability for theft or similar unlawful acts. Accordingly, marinas applying berth rental model hold that private security guards primarily protect the marina premises and employees, that 24-hour surveillance through CCTV and by marina mariners is aimed at prevention of accidents and incidents, but marina does not warrant to protect the vessels from malicious acts of third parties and may not be held liable for such damage. Nevertheless, in practice marina staff observe the access to the vessels and require the owners' written authorization for boarding the vessels berthed marinas (e.g. maintenance people, custodians, skippers, etc.). On the other hand, marinas applying the model of contract of berth with the elements of bailment hold that 24-hour surveillance and security control is a responsibility of marina and that marina may be found liable for damage caused by third parties if there was a lack of due care to prevent such adverse event on the part of the marina. Croatian courts dealing with the civil law claims arising from the cases of yacht theft (Commercial Court in Rijeka, 2012), burglary into the vessel (High Commercial Court, 2006) and unauthorized taking possession of the vessel (Supreme Court, 2013) whilst on berth in a marina held that a contract of berth in a marina which includes marina's obligation of the custody and control of the vessel is a bailment contract, which as a nominate contract is regulated under the Obligations Act (2005). Furthermore, the courts held that such bailment can be contracted informally, therefore the mere fact that a vessel is berthed in a marina combined with the marina accepting the vessel's documentation and keys and payment of berthing fees proves that the bailment contract was concluded. Therefore, the position of the courts is that marina is presumed liable for damage caused to the vessel during the contract, unless it proves that as a bailee it performed due care in protecting the vessel from the possible accidents, incidents or malicious acts of third parties. Marina can expressly exclude its liability under the contract for damage arising from theft, burglary or other third parties' acts, except when there is gross negligence or wilful misconduct on the part of the marina. In addition, the courts recognize that bailment of the vessel's equipment and stores placed in the locked compartments of the vessel can be subject to the acceptance of a written and signed inventory list and of the survey report upon the handover of the vessel to the marina in the absence of which there is no marina operator's liability for bailment of the equipment and stores. Generally, it is submitted that judicial practice regarding marina operators' contracts of berth varies and sometimes incorrectly interprets the relationship as bailment. For more discussion on the nature and contents of the contract of berth, relevant judicial practice and autonomous law see Padovan (2013); Padovan & Skorupan Wolff (2017); Pijaca (2018); Skorupan Wolff & Padovan (2017); Skorupan Wolff, Petrinović, Mandić (2017).

In our opinion, it is of utmost importance to clearly define the scope of liability assumed by marina in accordance with its business model, by implementing well-drafted standard contract forms and general terms and conditions. Furthermore, marina operator should as a prudent businessman apply a solid policy of risk management including, *inter alia*, security risk assessment, security plan and associated standard operating procedures. A higher security standard is a comparative advantage for marina operators, and as such it may include the following: adequate lighting, effective fencing, measures for access control, calibrated and maintained CCTV system monitored by trained security staff, reasonably short response time in the event of an incident, facility actively patrolled by marina staff or professional security officers who understand marine operations (Ranslem, 2012). It is a good practice to have procedures to record and meet any deficiencies with an adequate processing system and to plan and execute an emergency response system in the marina (TransEurope Marinas, 2014.). Heron and Juju advise that every marina should consider including vandalism, theft and terrorist acts or threats in its business continuity and crisis communication plans (Heron & Juju, 2012). In developing and applying security policy, under Croatian law marina is bound by the PSPA (2003), and potentially by the Protection of Monetary Institutions Act (2015) if on its premises there are ATM machines, currency exchange offices or if in the course of its regular business it handles larger amounts of cash. However, an established marina security program does not relieve vessel owners of responsibility for their own protection (Gardner, 1995), including security awareness, cooperation with the marina staff and duty to insure the vessel, including *inter alia* the risks of theft, vandalism and unauthorized use. Security standards specific for nautical yachting tourism are generally on a considerably higher level in marinas compared to ports open to public traffic. The vessel owners' criteria for the choice of berth are examined by Perko (2017) who found that security standard is regarded as an important factor on the priority list of clients choosing a place for a permanent berth in a marina, whilst it is generally less important for transit berth. Furthermore, the study shows that vessel owners choosing marinas are willing to pay more for higher quality service. Security standard is far less important to the vessel owners choosing berth in the ports open to public traffic where location and price are decisive factors (Perko, 2017). However, security system and planning, especially crisis management and international cooperation become an indispensable part of business planning in tourism (Boban, 2016), and particularly in nautical tourism.

## DE LEGE FERENDA INITIATIVES – YES OR NO?

When managing risk through legislation, regulatory assessment models are used to assess risk levels and examine the impact of policy options, usually in terms of the costs and benefits of a regulatory proposal (Bichou & Evans, 2007: 265). Therefore, any *de lege ferenda* initiative in the direction of new mandatory security standards in ports and marinas should be based on such cost-benefit assessment. However, we are more inclined to support the position of Zec et al. (2010) who submit that further developments should aim to promote better co-operation with neighbouring countries, introduce additional education and training requirements for all personnel with security related tasks, make access to data sources more efficient, improve communication between stakeholders having security related information and responsibilities, combine security related data sources and services with navigation safety, as notable advances can be expected when implementing these measures with ISPS non-compliant ports and marinas, where, as a final goal, adequate but invisible security protection should be in place.



## FINAL CONSIDERATIONS

As opposed to criminological evaluations where Eski (2016) claims that ports suffer from different forms of crime and insecurity, starting from dangers related to work processes to strikes in ports, cargo and metal thefts, human and drug trafficking, illegal weapons smuggling, corruption among the high-positioned employees in ports who turn a blind eye to smuggling, piracy or terrorism, the results of this phenomenological analysis of criminal offences committed in ports and marinas show that they are not major focal points in terms of crime in the Republic of Croatia. It is obvious that a large number of criminal offences were not recorded in ports and marinas. However, it is well known that crime statistics do not always show the real situation and the dynamics of crime rate. Only if we take into consideration good quality assessments of dire crime figures can we get a more realistic picture of the situation regarding crime. Even now, a relatively low number of criminal offences recorded in ports and marinas should be an encouragement to look into this segment of crime. More efforts should be invested in terms of combating crime against property, with a focus on movable assets, personal items, documents, money and similar objects of port and marina users. Security of ports and marinas is a significant component of general security of citizens and tourists. Considering the general characteristics of criminal offences in ports and marinas is the foundation for preparing prevention programs which will include a more active role of the police, port authorities, local authorities, marina concessionaires, but will also include a satisfactory level of self-protection which should be exercised by citizens and tourists.

Ports and marinas have to pay particular attention to the issues of security as part of their tourism-related function because tourism implies carefree, relaxed behaviour of tourists who have a guarantee from the tourist destination that they and their property will be safe. Security measures need to be designed and implemented so that the usual behaviour of citizens and tourists is minimally disrupted without these measures becoming the so-called securitization as mentioned in the context of the United Kingdom ports by Malcom (2011) which include an excessive use of security standards aimed at protecting critical national infrastructure which certainly includes ports.

It should also be emphasized that the research confirmed the hypothesis that a significantly higher number of criminal offences is committed in ports open to public traffic compared to marinas and that these were mainly offences against property committed in the summer period.

## LIMITATIONS OF THIS RESEARCH

To get a more complete insight into the phenomenology of crime in ports and marinas and thus create a more precise foundation for etiological research of crime in these locations, a more detailed insight into the complete documentation of criminal records composed by the police, and other competent bodies which take part in criminal proceedings, is necessary.

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