



Pijaca, Marija,

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

2nd Adriatic Maritime Law Conference, Opatija, 25-27 May



***Developing a Modern Legal and Insurance Regime for
Croatian Marinas –
Enhancing Competitiveness, Safety, Security and
Marine Environmental Standards***





the issue of the liability



clear and competitive standards for
operating quality for marinas



THE GOAL OF THIS PAPER:

clarify the contractual relationship
between

marina
operator

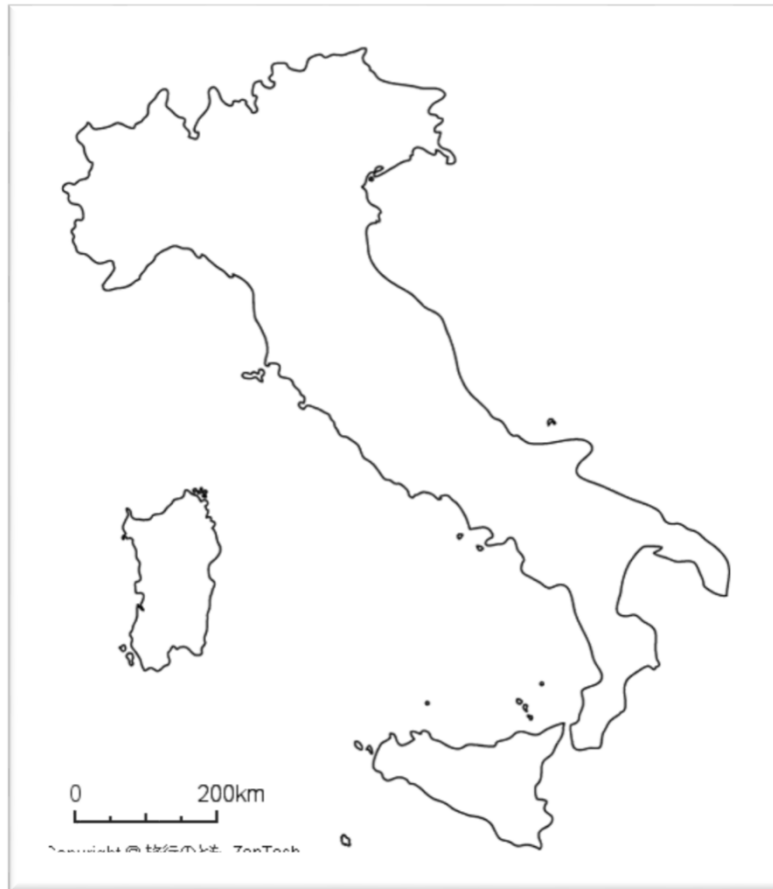


charter
agency





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- An aerial photograph of a coastal town and marina. The town, with red-tiled roofs, is in the foreground. A large marina with many white sailboats is in the middle ground. The background shows a large body of water with several islands and a clear blue sky.
- ❖ Croatian law/practice
 - ❖ Italian law/practice
 - ❖ Slovenian law/practice



- ☐ legal framework
- ☐ content of general terms and conditions for marinas' operation
- ☐ content of the contractual provisions from the contract of berth



Maritime law

Croatia: *Maritime Code*

*Maritime Domain and
Seaports Act*

Italy: *Codice della
navigazione*

*Codice della nautica di
diporto*

Slovenia:

Maritime Code

Civile law

Croatia:

Law on Obligations

Italy:

Codice civile

Slovenia:

Law on Obligations

EXAMPLE

_____(further on: the Marina)
and _____(further on: Charter Agency)

have agreed upon the following:

CONTRACT no. ____
for using the berth

Subject of the Contract

Article 1

The subject of this Contract
is the service of using the berth no , on the pier no , with the following details: beam : ____m,
only for the following vessel:1. Name of the vessel:____2. Registration number: ____3. Flag: 4.
Overall length:____m 5. Max. beam:____m 6.Owner:____

Duration of the Contract

Article 2

❖ **the concept** of the contract of berth

❖ **the legal nature** of the contract of berth

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

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

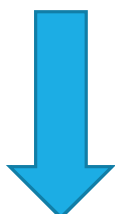
❖ **the issues of party liability** are also considered

➤ providing place for berth

➤ payment of the berth

➤ questions of liability arise in the case of damage to a charter's vessel





THE TERM *CONTRACT OF BERTH*



absence of condition
for the term *contract of berth*



IMPORTANCE OF AUTONOMOUS LEGAL SOURCES

analysis of
the content of the general
terms and conditions of
the marinas' operations

0 200km

THE LEGAL NATURE OF THE CONTRACT OF BERTH

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



Berthing
places →
charter
agency

the berths are ceded to the
charter agency only for use

THE PARTIES TO THE CONTRACT OF BERTH

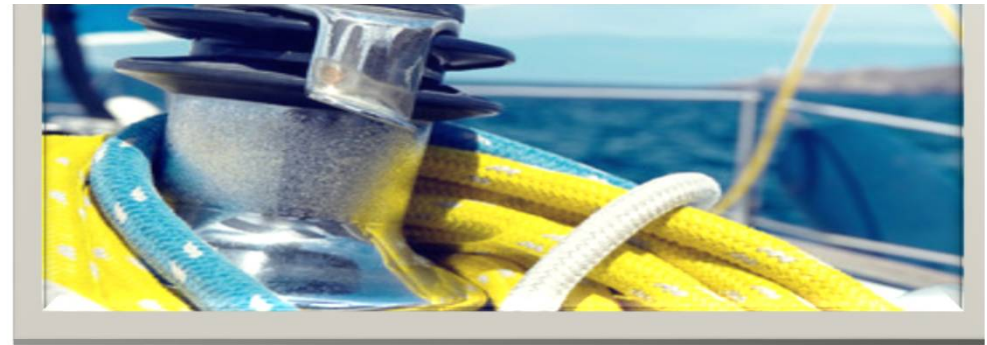


marina

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

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

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



charter agency

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

art. 2 of Croatian *Rule on Terms for Charter Services*

Opći uvjeti poslovanja **MARINA** _____

I. DEFINICIJE

U ovom Ugovoru koriste se slijedeći pojmovi:
UGOVOR označava ovaj Ugovor o korištenju veza
zaključen između stranaka .

MARINA znači hrvatsko društvo, d.o.o. – Marina _____,
Don Petra Špika 2a

KLIJENT znači fizička ili pravna osoba koja polaže
pravo na plovilo bilo kao vlasnik, posjednik ili
korisnik plovila u članku 1. Ovog Ugovora

STRANKE znači stranke ovog Ugovora – Marina i Klijent.

II. SVRHA I CILJ UGOVORA

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

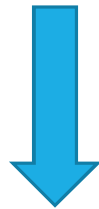
III. PREDMET: IZNAJMLJIVANJE VEZA

Za vrijeme trajanja ugovora Marina daje na korišten je
vez prema važećem cjeniku za tekuću godinu isključivo za
plovilo definirano u Ugovoru.



THE MAIN OBLIGATION OF MARINA

- *Providing place for berth*

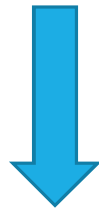


the marina allocate specific part of their waters, facilities, infrastructure and corresponding equipment to the charter agency



THE BASIC OBLIGATION OF THE CHARTER AGENCY

- *Pay the berth fee*



in defining the prices the parties refer to the valid price list of marina services

for the year in which these services are being used





***The usual content of these contracts in practice
also implies the following elements:***



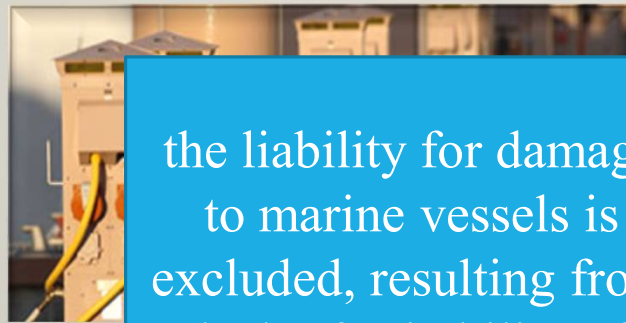
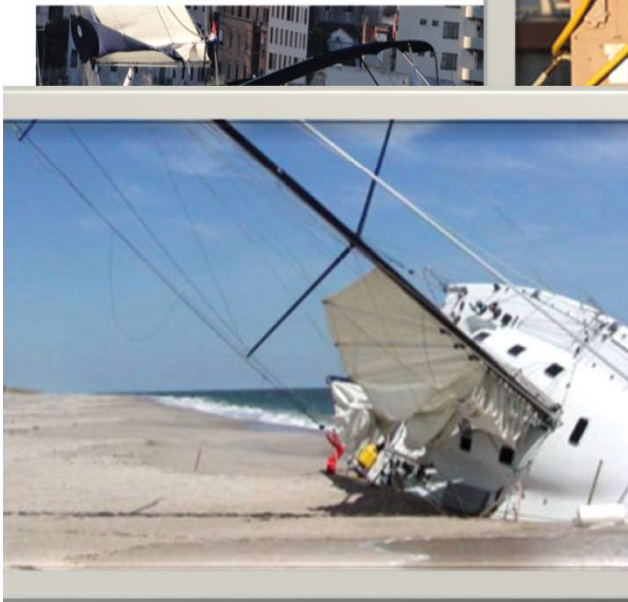
marina is authorized to move the vessel/the berth of the vessel
- if it's necessary for any work or in an

marina is of the main
co

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

by insurance damage that may occur third parties regarding use of vessel

for damage caused by burglary and damage to third parties arising in connection with the use of berths
must be covered and which is the responsibility of the agency



In general terms and conditions of the marina there are usually cases and damages for which the marina is not responsible:

damages to the equipment or the disappearance of the equipment of the vessel

damages or disappearance of technical equipment on the vessel

damages to the equipment of a vessel that are not included in the inventory list

damages due to loss or damages to works of art, objects made of precious metals, money

damages due to loss or damages to the personal belongings of the users of berths, crews or other persons on the vessels

damages due to force majeure, war, strike, civil unrest, political risks, terrorism and similar events

CONCLUSION

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

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

which goes in favor of the marina.

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**thank you for your
attention**

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