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MARITIME DOMAIN AS PUBLIC PROPERTY, THE RESULTS OF STRATEGIC PLANNING OF NATIONAL ECONOMY DEVELOPMENT, OR?

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Abstract

The management of the macroeconomic system and its management of the development of a transition economy should be oriented towards the development of a market-oriented economy. In this way, resources constitute an economic basis which needs to be valorised, protected and managed in an appropriate and sustainable manner. Of course, the systems and solutions of developed economies in Europe were reconciling the interests of all of the local population and all stakeholders. Strategic resource and legal regulation frameworks adapted to them, with an adequate vertical management system in which training and central government budgets play a central role, modelling a viable and efficient management system. Analysing the maritime domain, one of the fundamental resources of the Republic of Croatia is the issue of how to manage it. Frequent changes to legal regulations should be the result of a dynamic sustained and efficient model of maritime governance, but the question is whether Croatia has a sustainable and efficient management model. What management does this macro system do? What are the goals and how is the planning system developed? This is the issue the subject of research which will deal with this paper, and hypothesis should be that the reform of the “Maritime Domain and Seaports Law” result of deliberate strategic policy of the Republic of Croatia, and this policy that permeates and connects all stakeholders this development systems and models.

Keywords: maritime domain, a national model of management of the maritime domain, management of macroeconomic system

1. INTRODUCTION

In order for an industry to be able to achieve development, in addition to its financial and human resources, it is required to dispose of its material resources as well. Material resources are always limited, and they need to be preserved, ecologically sustainable, renewed, exploited until reaching the resource utilisation level so as to save them for future generations. This fact is of vital importance for each country and its economy, presenting the essential requirement for the management of resources of national importance. In order for this to be achieved, each country with its highest social and political institutions is required to take inventory of its resources of national importance and to legally regulate them in order to be able to develop a model of their exploitation in this regard.

When it comes to the maritime domain, it should be noted that it represents the resources of the highest level of importance for each country which owns them. It represents the potential, the possibility of coming into contact with the entire world, the fundamental resources for the majority of economic activities in the field of maritime affairs, shipbuilding, tourism and its accompanying services. With regard to this fact as the subject matter of this research, as well as with regard to specific proposals for the changes to be made to the existing system of the use of the maritime domain, the maritime domain and its management system have been established. The research objective is to assess the factors indicating the sustainable management system, as well as the factors which could jeopardise its sustainability. The research hypothesis states that the *reform of the Law on Maritime Domain and Seaports is the result of a deliberate strategic policy of the Republic of Croatia, affecting and connecting all the stakeholders of that development system and model*. In other words, the question arises as to the effectiveness of the transition of the maritime domain from the status of common good to the one of public property. To this end, for the purposes of this study were used methods of analysis and synthesis in desk research study of the essence of the legal terms and laws, and by which we entered the depth and consequences of changes in the maritime domain, as a social good, in the public domain. For a broader view of the subject matter, a comparative analysis was used to compare this problem with the major Mediterranean countries in relation to Croatia.

2. THE MARITIME DOMAIN AND ITS ECONOMIC SIGNIFICANCE

The Maritime Domain is one of the oldest legal institutions dating back to the Roman law, and in the Republic of Croatia its concept is defined in Article 3, paragraph 2 of the Law on Maritime Domain and Seaports (cro. *Zakon o pomorskom dobru i morskim lukama - ZPDML*): "*The Maritime Domain is constituted by the internal sea waters and the territorial sea, their bed and subsoil and part of the land which is by its nature intended for public maritime use or has been declared as such,*

and everything connected with this part of the land on the surface or below it“.

Therefore, the Maritime Domain is a *common good* (lat. *res extra commercium*) under the constitutional protection (Art. 52 of the Constitution of the Republic of Croatia) ; it is not owned by any legal entity nor by the Republic of Croatia that manages it as a governing authority (in a direct or an indirect manner) with the care of a good manager and is responsible for it (Art. 3, paragraph 3 of the Law on Ownership and Other Property Rights – cro. *Zakon o vlasništvu i drugim stvarnim pravima - ZVDSP*); , comprising the following: 1) the land (coast); 2) the sea, and 3) the underwater world. The municipalities and towns take care of the regular management of the maritime domain, while the counties take care of its extraordinary management (Art. 11 of the Law on Maritime Domain and Seaports - cro. *Zakon o pomorskom dobru i morskim lukama - ZPDML*).

There are three different uses of the maritime domain: the general, special and commercial use (Art. 6 of the Law on Maritime Domain and Seaports - ZPDML). The general use is related to its legal status. The special use of the maritime domain regards any use which is not considered to be part of a general or a commercial use of the maritime domain. The special use of the maritime domain comprises the construction within the maritime domain which is not performed for profit-making purposes (such as the infrastructure). The commercial use of the maritime domain regards the use of the maritime domain for the purposes of pursuing economic activities, with or without the use of the existing buildings and other structures on the maritime domain, and with or without the construction of new buildings and other structures within the maritime domain.

As for the special or commercial use of the maritime domain, granting the concession, i.e. the concession approval is required, which is the only legal means to use a part of the maritime domain for commercial purposes.

The concession regards the right to exclude a part of the maritime domain completely or in part from general use and is made available to physical and legal persons for special or commercial use, in accordance with spatial plans. The concession approval is an act based on which the maritime domain is made available to physical and/or legal persons for their use for the purpose of pursuing economic activities not excluding or limiting the general use of the maritime domain (Art. 2 of the Law on Maritime Domain and Seaports - ZPDML). The concession for the commercial use of the maritime domain is provided through a public bidding. The concession for the special use of the maritime domain is granted upon request (Art. 7 of the Law on Maritime Domain and Seaports - ZPDML).

The economic potential of the maritime domain for the Republic of Croatia is based on the three following elements: 1) the maritime domain is the most attractive part of the national territory; 2) the maritime domain also represents the most valuable natural resources, since the total length of the Croatian coastline amounts to 6.278 km, with the coastline including the 1244 islands, islets, reefs and cliffs; 3) out of the total area of the Republic of

Croatia, comprising 87.661 km², the internal sea water and the territorial sea (the maritime domain) extend along an area of 31.479 km² (the internal sea water comprising an area of 12.498 km² and the territorial sea an area of 18.981 km). The question arises as to the way in which such economic resources are to be rationally managed.

First of all, it should be noted that the maritime domain requires an integrated and comprehensive management, since it reconciles divergent interests, such as the commercial, and public interests, as well as the interests of its protection. The fundamental reason for the surge of interest in the maritime domain by the macroeconomic policy holders stems primarily from the strategic importance all the activities performed on it or in relation with it have for the Croatian economy, which also affect the GDP. This, first of all, implies the new recruitment policy, private investment in the further development of activities related to the maritime domain, and the compliance with environmental regulations. Economic interests, at the microeconomic level, are reconciled by the concession agreement between the concession provider (cro. *koncedent*) and the concession holder (cro. *koncesionar*). Upon determining the concession deadline, the purpose, scope and amount of investment needed are considered, as well as the overall economic effects achieved through concession, taking into account the interest of the investor to obtain a return on the capital invested into the maritime domain within a reasonable period of time. The agreed amount of the concession fee consists of a fixed and a variable part, with the variable part depending on the revenues generated from the activity performed within the maritime domain. For example, the concessions comprising the construction of new buildings of major importance for the Republic of Croatia, which require heavy investment, and the economic effects of which cannot be achieved within the next 50 years are granted by the Croatian Government for the period of over 50 years with the consent of the Croatian Parliament.

However, it is legally questionable whether the granting of the concession for such a long period of time actually presents a circumvention of regulations, since it *de facto* represents a divestment of the property given in concession?

3. MACRO-MANAGEMENT AND STRATEGIC PLANNING

From a theoretical and practical perspective, there should be a distinction between management and governance. There are numerous definitions of management, but Robert Kreitner's definition is probably the most appropriate for a simple interpretation of management, stating the following: *management is the process of working with and through others to achieve organizational objectives in a changing environment. Central to this process is the effective and efficient use of limited resources.*

Therefore, the very definition stresses the importance of resources, which means that they are to be managed sustainably, establishing governance at all

the management levels for this purpose, from a micro level to a macro level. Such a communication is to be bidirectional, both as a top-down and a bottom-up communication, the functioning of which is controlled by the organisation's management through various management functions. As Rick Griffin suggests correctly, there are four management functions, with the first one and the last one standing out among them: (1) planning and decision making, (2) organising, (3) leading, and (4) controlling.

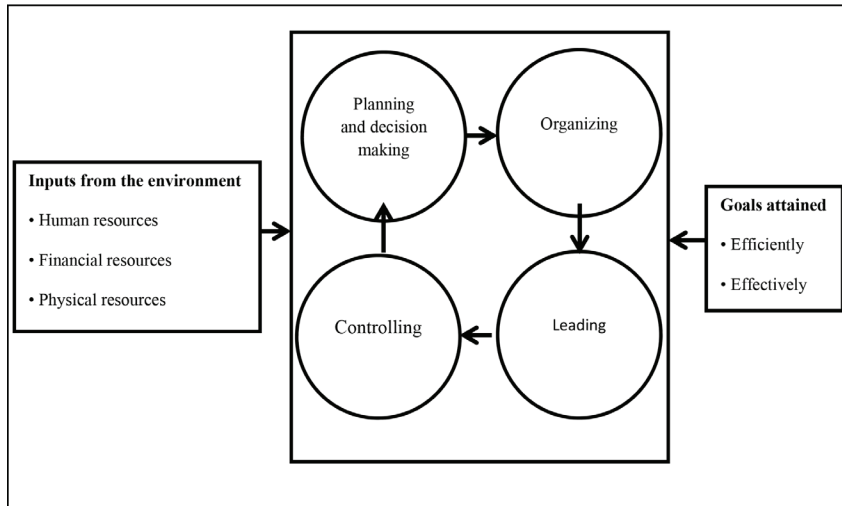


Figure 1 Griffin's P-O-L-C model of management organization through functions

Source: Griffin, R. W.: „Management“, 10th edition, South-Western Cengage Learning, Mason, 2008. p. 5.

In accordance with the European model of management, or the German School of Management, to be more precise, planning and controlling are central functions, and are also closely linked. The degree and form of their correlation are directly dependant on the success rate of the management as a whole. The European Management Model promotes the two aforementioned functions, constituting a separate system which needs to be adjusted to each management in terms of the level at which it is performed, such as a macro or a micro level.



Figure 2 P-O-L-C framework in the German management school

Source: Made by autor Luković, T.

What Griffin states are also to be emphasised, which is the following: “planning and decision making”, which particularly indicates the establishing of a goal. In other words, the plan and the goal form a unity, and one does not make any sense without the other one. Accordingly, the question arises as to what is a plan. There are many definitions of planning, but all the definitions may be reduced to the following statement: the *plan is the way towards a goal*, and the goal cannot be reached, presenting the *conditio sine qua non* of the management.¹ However, while the goal is the essential and invariable prerequisite, the plan is a variable one, meaning that it can be changed in order to find the fastest and the easiest path towards the goal. Therefore, in order for the planning to make sense, it is necessary to set the goal which stems from the mission, i.e. from the following set of questions:²

1. Diagnosis – Where are we today?
2. Plans and goals (*objectives*) – Where do we want to arrive?
3. The implementation of objectives – How are we going to arrive there?
4. Evaluation – How will we know when we will arrive there?

In order to establish realistically the four mentioned strategic areas, all the entities in the chain pertaining to the field of planning need to participate, achieving *commitment* at each step. In so doing, they need to be guided by the fundamental strategic formulation consisting of the system which includes all the participants in the *top down* model, providing answers to the crucial question as to what kind of plan, in what way and when is used to achieve the goals and *objectives*.³ This includes the strategies, tactics and action plans of the participants, on the basis of which the strategic plan of a higher level is developed.

¹ Luković, T. & Lebefromm, U.: “Controlling, with a plan to reach the goal - the second book“, University of Dubrovnik, Dubrovnik 2014. p 27.

² Ibid, p. 263

³ Ibid, p. 269

It is evident that Croatia lacks all of the aforementioned, and since the strategic planning is performed at a higher level, its functionality is minor.

The question arises as to how to achieve efficiency and functionality of the strategic planning at all the levels, as the planning starts at a macro level, and this is exactly where the goal is missing, that is Drucker's *management by objectives*. The answer lies in the motivation and knowledge. In order to achieve motivation within the system of the strategic controlling planning, all the management steps are to be carried out, which passes through the system of *commitment*. Therefore, it is to be done in the following order: reconciliation, the use of the professional practice, confrontation, and then *commitment* and implementation in order to set the goal and devise a realistic plan with the accompanying documentation, and in this case it is the regulation of the management of the maritime domain as a valuable national resource.

4. THE MARITIME DOMAIN FROM THE PERSPECTIVE OF THE DRAFT LAW, THE LEGAL ASPECT

The Government of the Republic of Croatia has partially fulfilled its function and has finally adopted the Strategy of the Maritime Development and Integrated Maritime Policy of the Republic of Croatia for the time period from 2014 to 2020 (the Maritime Strategy).⁴ The said strategy contains the following strategic goals: 1.) sustainable development and the competitiveness of the maritime industry in the following areas: a) maritime shipping and maritime transport services, b) port infrastructure and port services, c) education, and d) living and working conditions of seamen. Furthermore, as evident in the Section 2) a safe and ecologically sustainable maritime transport, maritime infrastructure and maritime space of the Republic of Croatia.⁵ The Maritime Strategy stresses the following: a) the value of capital investment in the construction and modernisation of infrastructure in the ports of particular (international) economic interest for the Republic of Croatia, and b) the value of the co-funding of the construction of infrastructure in the ports of importance for the County and in fishing ports, amounting to more than 600 million euro in total. It is also emphasised, and this is particularly important, that its goal is the development of port specialisation which “does not prevent economic entities that have already acquired or are to acquire a valid concession for the

⁴ The Ministry of Maritime Affairs, Transport and Infrastructure. Available at: <http://www.mppi.hr>

⁵ The Republic of Croatia owns 409 ports open to public transport, among which there are 95 ports with at least one shipping line. The six main ports (Rijeka, Zadar, Šibenik, Split, Ploče and Dubrovnik), are located along the mainland coast, and all the ports have been declared ports of special (international) economic interest for the Republic of Croatia. Today, in Croatian ports approx. 19 million tonnes of cargo are transhipped each year, with more than 12 million passengers transported (in 2012). In Croatian ports, the majority of cargo traffic is generated in the ports of Rijeka, Ploče, and lately in the Port of Split as well, accounting for almost 90% of the total cargo traffic of the Croatian ports of a particular economic interest, thus being the main cargo ports of the Republic of Croatia. On the other hand, the majority of the passenger traffic is generated through the ports of Split and Zadar, while the main port in which the cruise ship traffic is generated is the Port of Dubrovnik.

commercial use of the port from developing the port in some other form in the future. However, the specialisation of such a port will be primarily the obligation of the concession holder, not the port authorities nor is to be charged to the State Budget of the Republic of Croatia.” The question remains as to the monitoring of the development and specialisation, which should be the result of the State supervision model which has not been developed so far. In other words, the mere adoption of strategies, as well as of laws, has no impact if there are no executive and supervisory functions established by the State itself.

As part of the current practice, all the investment in the ports of a particular (international) economic interest for the Republic of Croatia has been implemented exclusively by the port authorities, which has proven insufficient for sustainable development and competitiveness. The introduction of private investors into this sector of the economy will be possible only when we change the existing institutional (legislation) framework pertaining to the Maritime Law, and when the economic model of implementation and management is developed. In other words, the macro system is to be shaped in a way that adequate control subsystems, without which the risk of introducing private investors would be too big, are incorporated into it. The risk would reach the level of the risk unacceptability, not only for the State administration and economy, but for the investor as well.

Namely, pursuant to Art. 5 of the Law on Maritime Domain and Seaports (cro. abbrev. ZPDML) “the buildings and other facilities built within the maritime domain permanently belonging to the maritime domain are considered affiliated to the maritime domain”. In addition to this, it is stated that “ownership or other rights in rem cannot be acquired within the maritime domain on any ground.” Such a rigid provision is to be replaced by the provision stating that the concession holder can acquire ownership on the facility built, the ownership of which lasts throughout the duration of the concession. This is also in accordance with Article 3, par. 4 of the Law on the Right of Ownership and Other Real Rights (cro. abbrev. ZVDSP), according to which “the buildings and other facilities built within the maritime domain based on the concession are not part of common property from the legal point of view, and therefore they form a separate property during the concession period.” It is expected that the new law on concessions will establish a balance between various, often conflicting interests, and that the new Maritime Domain and Seaports Act will comply with its provisions at last.

The Article 34 of the Maritime Domain and Seaports Act (ZPDML) introduces the possibility of pledging the concession as a right. The lien gives the lien creditor the right to benefit from the concession, provided that he meets the requirements of a concession holder, or he can cede the right to concession to third parties meeting the requirements of concession holders, provided they obtain the consent of the concession provider. This form of insurance has not met the expectations in practice, because it is not reliable enough for the bank and its operations unlike, for example, the existence of pledge on the property of the mortgage holder as traditional collateral. For this reason, the introduction

of the possibility of acquiring ownership rights of the superstructure facilities within the maritime domain is an important prerequisite for the increased interest of financial institutions in the investment into the development of the facilities within the maritime domain in the Republic of Croatia. Still though, it should be stressed once more that the increased interest of the investors can be realistically expected in case there is a model which may integrate the executive and the supervisory function at the macro level, thus making the investment risk more acceptable. This model is part of the system of all the developed European economies, and is not new to those countries, except for the economies in transition that are just starting to be market-oriented.

Another important question which arises is related to the changes in the legal status of the maritime domain pursuant to the provisions of the Law on Maritime Domain and Seaports. According to the theoretical analyses carried out in the Republic of Croatia, there is the opinion that the legal status of the maritime domain as *general good* needs to be replaced with a more flexible status of the *public good in general use* which is the unalienable property of the Republic of Croatia. Some authors claim that “it is high time” the maritime domain was approached in some other way, so as not to be considered general good anymore, but to become public property.”⁶ Their hypothesis is based on the comparative legislation (Italy, France, Spain, the Netherlands and Portugal), and they conclude that Croatia is “alone in determining the maritime domain as general good in its non-property system.”⁷ Other authors, who can be considered traditionalists, believe that the new law “does not challenge our centuries-old tradition of the maritime domain as general good which is of interest for the Republic of Croatia.”⁸

The authors of this paper add new arguments in support of the changes in the existing legislation. First of all, the status of the maritime domain, as a general good from the original Law on Maritime Domain and Seaports (ZPDML), has already been harmed, which completely fell into oblivion in 2006, when, for the benefit of new strategic investment in port superstructures, the transshipment equipment was shut down (individual devices, machines, process installations, cranes and other equipment which formed an integral part of the plant or were independently incorporated into the building and used in the technological process in the port). The cranes have become the property of the Republic of Croatia, which is also very important. Secondly, the State ownership of the port infrastructure has proven to be effective in case of the Port of Koper, in a way that the infrastructure owned by the Republic of Slovenia is entered into the equity of company Luka Koper d.d. from Koper, which is today among the largest cargo ports in Europe. Thirdly, the ownership scheme of, for example, the public water property is defined in Art. 11 of the Water Act⁹, in the following way: *The public water property is a public property in general*

⁶ For example, Nakić, Jakob: “The Maritime Domain – a common good or a public property“, University Authors’ Collection of the Faculty of Law in Split, vol.53, 3/2016, p.797-832

⁷ Ibid.

⁸ For example, Kundih, Branko: The Maritime Domain – a specialised website for the maritime domain and seaports. Available at: <http://www.pomorskodobro.com>

⁹ Official Gazette nr.153/09.

use, i.e. in public use pursuant to Art. 14, par. 2 of this Law, and is owned by the Republic of Croatia (par. 4); The public water property is an alienable (par.5); On the public water property, third parties cannot acquire the ownership right or any other real right through maturity or in any other way, except the right of easement over property and the construction right as regulated by Art. 16 of this Law (par. 6); Legal transactions concluded contrary to par. 6 of this Article shall be void (par.7); The individual unlawfully using the public water property shall not be able to obtain the protection of property (par.8).

The authors believe that the section of the Water Act concerning the ownership scheme of the public water property may present a good model-act for the new Law on Maritime Domain and Seaports.

5. THE MARITIME DOMAIN FROM THE PERSPECTIVE OF THE DRAFT LAW, THE STRATEGIC ECONOMIC ASPECT

The sea and the accompanying maritime services have always acted as a generator of economic development worldwide. Coastal states, such as the Netherlands of the 17th century, as well as England in subsequent centuries, based their prosperity on a powerful maritime transport and sea trade. To this day, approximately 80% of the global trade takes place on the sea by volume, and some 70% by value. This share in the global trade is even bigger with the most developed countries. The passenger transport, and cargo transport by sea in particular is the most competitive industry in which the shipping companies from all over the world participate with no restrictions.

The sea and the seashore which, by its nature or purpose, regards the use of the sea or is used for other purposes related to the use of the sea (as a functional unit), represent the maritime domain, accounting for more than a third of the State territory of the Republic of Croatia. Unfortunately, our comparative advantage is still just the comparative advantage which has not been implemented in terms of resources. On the other hand, the Republic of Slovenia, with its coastline which is 46 km long, has recognised the Resolution on the Slovenia's Maritime Navigation (1991) in the development of the Koper cargo port, and a few nautical tourism ports, has achieved its strategic goal.¹⁰ A part of the strategy is the Maritime Law (2001) as well, according to which the port infrastructure is owned by the State or the local community, and the management of the infrastructure can be left to the port authorities.¹¹ Another part of the strategy is also the Water Act (2002), which declares the sea and the sea land (the bottom of the inland seawater and the territorial sea to the external borders of the coastline) as the maritime public property, with the sea land being

¹⁰ Počuča, Milojka: "Organizational and managerial structures, financing and other elements of the port system of Slovenia", Promet – Traffic & Transportation, Vol.19, 2007. No.1, 29-37.

¹¹ Ilešič, Marko – Pavliha, Marko: "The New Maritime Law of the Republic of Slovenia", Maritime Code nr. 38 (2000)1, 267-299.

owned by the State.¹²

The future of the maritime domain of the Republic of Croatia is to be built on a clearly set goal which actually supports the strategic plan of its development, i.e. of the maritime domain as the fundamental resource of national interest. The said strategy does not have the necessary attributions because the development of the maritime domain as part of it has been established through the port system, making it only one among several of its components. The strategy of development of the maritime domain should be a separate act based upon scientific knowledge and experience (the SWOT analysis is a common, though not the most significant strategy tool), supported by the control and implementation model. The strategy should be based on the solved accumulated issues on the transition from the privatisation and transformation of the social and private capital. Furthermore, the legal status of the maritime domain, i.e. the comparative advantages of the maritime domain under the sovereignty of the Republic of Croatia, in relation to other countries, must be focused on the competitiveness of the ports with respect to the world. Such competitiveness can be achieved through their specialisation, an adequate concession model, decentralisation of the governance of the maritime domain based on a powerful local government the main role of which is the sustainability of the economic system. The key question is the following: Is the State able to make changes? In other words, how is the strategic management to permanently determine the goal of the development of our most valuable asset in these times of transition? Economic policy holders have mostly reached contradictory decisions so far, making the already complex issue of the maritime domain even more complex. The starting point is the sovereign right of the Republic of Croatia to decide independently upon its territory.

Furthermore, the strategy is to set a target and develop a plan as to the expected revenues of the budget for the utilisation of the maritime domain for commercial purposes. The concession fee consists of the following: (1) one third is paid to the State budget; (2) the other third to the counties; (3) and the remaining one to the municipality or town. The funds received through the fees the boat and yacht owners registered with the boat register or yacht register must pay for the use of the maritime domain are allocated to the county budget, and the funds received as an indemnification of damage caused by the pollution of the maritime domain are allocated to the State budget. The concession approval fee is allocated to the town/municipality budget (Art. 13 of the Law on Maritime Domain and Seaports - ZPDML).

From the Report on the implemented concession policy for 2014 and 2015 by the Ministry of Finance of the Republic of Croatia, it is evident that it slightly benefited the budget in principle. Namely, the total revenues from all the concessions in 2015 amounted to 1.544,6 mln. kunas. The State budget revenues as joint revenues of the State, county and the town/municipality from the maritime domain concession fees amounted to 31,6 mln. kunas; revenues

¹² Bolanča, Dragan: "The Legal Status of Seaports as the Maritime Domain of the Republic of Croatia", University of Split, Faculty of Law, 2003, p.286

of the counties as part of joint revenues amounted to 31.566.550,58 kunas; revenues of the towns/municipalities as part of joint revenues amounted to 31.566.676,18 kunas.¹³

Therefore, the overall revenues generated by the maritime domain utilisation fee in 2015 amounted to approx. 96 mln. kunas, based on the 861 concession agreements, which is considered insufficient with regards to the economic potential of the maritime domain. Therefore, we should seek the control by the public authorities of the management and the exploitation of the maritime domain (for example, to bring the action by the Republic of Croatia against individuals who use the maritime domain without authorisation, and thus acquire undue economic benefit).

Both the European and international literature provides research on the port system management and its development. The World Bank proves that the port functionality is based on the successful management that manages all the activities in the port area. In so doing, all the economic activities in the ports are taken into account, capital investment in the ports is planned, the environmental protection system is improved, marketing activities of the ports are promoted and improved etc. Most port managers believe that the only way to improvement is through the top quality operation of state-owned (public-owned) ports, through the process of privatisation, i.e. through the introduction of the private sector into the area which was previously designed exclusively for the State (public) sector.¹⁴

In the Republic of Croatia, the term “privatisation” has had a negative connotation for years. The privatisation was based on the stock, share, asset and right selling activities, the holder of which is the State, according to the Law on Privatisation. The privatisation regards primarily the stocks and shares acquired by the Croatian Privatisation Fund pursuant to the Law on the transformation of corporations.

The potential privatisation of the maritime domain should not be considered in the same way. Namely, the acquiring of ownership of the facility built within the maritime domain, based on the concession, does not necessarily mean the selling out of the most valuable State asset. The purpose and goal of the acquisition of ownership of the facility (not the land) is to promote investment in the development of seafaring by private investors. Public interest is sufficiently protected if the concession agreements contain the provisions that prevent any kind of misuse by the concession holder, if there is a high-quality system of State supervision and implementation. Such provisions exist in the current Law on Maritime Domain and Seaports – ZPDML, stating the following: the utilisation of a facility contrary to its purpose shall be the reason for the revocation of the concession (Art.30), and the concession shall terminate with its revocation by the concession provider (Art.31). Upon the termination of the concession, the ownership of the facility shall terminate as well. If the maritime domain is

¹³ The Ministry of Finance of the Republic of Croatia. Available at: <http://www.mfin.hr>

¹⁴ The World Bank, Port Reform Toolkit, second edition. Available at: <http://ppp.worldbank.org/public-private-partnership/library/port-reform-toolkit-ppiaf-world-bank-2nd-edition>

legally deemed as public property in general use, the facility within it becomes the ownership of the Republic of Croatia. As so far, the concession provider will perform the supervisory function for the new legal scheme of the facilities built within the maritime domain as well. This function is yet to be established because for the time being it exists only in theory. With mere laws and strategies, with no macroeconomic system of supervision and development support, the maritime domain as the fundamental national asset is going to be exposed to excessive risk that might jeopardise its sustainability.

6. CONCLUSION

The issue of the maritime domain management is a current issue of the Croatian economy, though not the only one. The system of solving economic problems in Croatia is not developed yet, and is developing according to the trial-and-error principle. Its development is based on experience and the former Communist Yugoslav State system, in which the development strategies of specific industries were part of the vertical political system of commands. It must be admitted that the system operated well, it was established on the planning, but it was not market-oriented, which led to its economic fall in the long run, which occurred ultimately. Croatian economy adopted the crucial economic act immediately after the formation of the independent Republic of Croatia, the Corporations Act, which directed Croatian economy towards the capitalist system of thinking and economic activity. The market has become a training ground for economic and political confrontation. However, the inherited system of strategies as the fundamental document of the development has not been abandoned. Numerous strategies and strategic documents have been adopted, but Croatian economy was not developing; on the contrary, it took a step back. The question remains as to *what is to be done in order to bring about the development of the Croatian economy*, and the answer to this question should have been provided by theoreticians and the profession. A gap has been created between a deep economic and legal ignorance and disorientation, and the trial-and-error approach was adopted. Recently, the legal dominance has prevailed, and now when strategies have accumulated, attempts have been made to solve the economic issues with ever more new laws, as well as the modifications of the existing laws. The same occurred with the maritime domain. Its former status, the one of a general good, is now being considered public property. The question is whether its status should be such or not. Its comparison to the developed European economies which have granted the maritime domain the status of public property, have remained inconclusive, since the basic question has gotten in the way, which is the following: *Has Croatia developed the macro-management system of the maritime domain which contains the developed system of supervision and the promotion of development?* The economies which have granted the public property status to the maritime domain and have created the possibility of privatisation of one of its parts, have a well-developed macro-control and macro-management system resting on the long-term system, starting at the local self-government level. Unfortunately, in Croatia this still remains

unknown. Therefore, the question remains related to the objective possibilities and the appropriateness of the transformation of the maritime domain from the general good into public property. Therefore the research hypothesis which tells *the reform of the Law on Maritime Domain and Seaports is the result of a deliberate strategic policy of the Republic of Croatia, affecting and connecting all the stakeholders of that development system and model*, is not proven. In other words, it is clear that the system and model of management, containing a quality and an omnipresent supervisory function, as well as the development stimulating function, has not been developed yet in Croatia. Therefore, an answer is required to the following question: *Is it advisable to integrate the maritime domain into the existing trial-and-error model in order to learn from our mistakes how to responsibly manage the limited resources of national interest?* As for this question, i.e. answer, we hold the opinion that it is not advisable to expose the maritime domain to the role of a guinea pig in the current environment of the macro-management in Croatia, but to learn and build the macro system in some other way. Only when the system is developed at least at the level of the possible and acceptable risk, we can think about the maritime domain as public property, not before. Under the present conditions, it is important to understand and to admit, as difficult as this may be, the existence of a high level of ignorance and disorientation in the market-oriented economy, in order to be able to do as the President of the Republic of Croatia, Mrs. Kolinda Grabar-Kitarović says, which is the following: “Croatia should be running, not walking.” In order to do this, we should be learning and upgrading the system continuously, which represents the requirement for reducing the risk, as well as economic repercussions of legislative changes and annexes to legal acts.

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