

Vojković, Goran

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Concessions on Beaches and Concessions on Demand in the new Croatian Law

Goran Vojković
University North, Croatia

Abstract

In 2023, after a full 20 years, the Republic of Croatia adopted a new legal framework for maritime domain with the enactment of the new Maritime Domain and Seaports Act. The new act addresses numerous technical issues related to Croatia's maritime domain and aligns concessions on maritime domain with the current European legal framework. However, this act regulates in a new way two important areas crucial for the hospitality industry. Firstly, it provides a very precise legal regulation of beaches, an exceptional strategic resource, which were inadequately regulated in previous legislation. Seaside beaches now have their own precise division, an organized method of management, concessions, and very precisely defined freedom of access to the beaches. Furthermore, for the first time, the new act allows concessions on request, specifying the type of concessions that can be sought by a hotel, camp, or tourist resort. In this article, we want to highlight the novelties brought by the new legal regulation, focusing on beaches and concessions on request - which could be significantly important for the further development of higher category hotel and hospitality businesses, as well as providing a greater variety of services on the Croatian seacoast.

Keywords: maritime domain, concession, beach regulation, tourism, Croatia, legislation

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Introduction

The Republic of Croatia follows the Roman tradition in which the sea and the seashore are considered common goods; thus, the seashore is beyond legal commerce (lat. extra commercium) (Aviani, 2009; Vojković, 2003). Ownership and other real rights cannot be acquired over it on any basis (Jelavić, 2012; Jug, 2013). Therefore, many economic activities at sea and on the seashore must be conducted according to special rules within the domain of administrative law – primarily through the institution of concessions (Vojković, 2023).

In Croatia, internal waters, territorial seas, their seabeds, subsoils, and the part of the land naturally intended for common use, and designated as such, form a special legal institute known as the maritime domain. Among the numerous economic and other activities on the maritime domain, this article will focus on two areas that are regulated differently and in more detail by the new Croatian Maritime Domain and Seaports Act (hereinafter: MDSP; *Zakon o pomorskom dobru i morskim lukama*, 2023) compared to previous legislation – the legal status of sea beaches and concessions on request. These two areas are exceptionally important for the development of high-category tourism.

Legal Regulation of the Maritime Domain in Modern Croatia

The maritime domain was first regulated in modern Croatia by the Maritime Code of 1994 (*Pomorski zakonik*, 1994). Subsequently, in 2003, this matter was regulated by a special Maritime Domain and Seaports Act (*Zakon o pomorskom dobru i morskim lukama*, 2003). Although this Act was amended and supplemented several times, those amendments and supplements did not resolve the shortcomings that appeared in its implementation. Additionally, the Act was not aligned with Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (hereinafter: Concessions Directive), which led not only to application issues but also discouraged potential investors. Even though Croatia enacted its Concessions Act in 2017 (*Zakon o koncesijama*, 2017), due to the specific legal regulation of the maritime domain, certain procedural issues are governed within the MDSP (Staničić and Bogović, 2017).

The new legal framework established by the MDSP in 2023, along with the bylaws adopted based on this Act, brings a new quality to the regulation of the maritime domain – the MDSP is of higher quality and more precise than its predecessor and is also aligned with European and national concession regulations. This sets the foundation for significantly better economic activities on the maritime domain, which in Croatia is exceptionally vast. Croatia has jurisdiction over 31,479 km² of the Adriatic Sea's waters, of which 40% are internal waters and 60% are territorial sea. The length of the Croatian coastline is 6,278 km, of which 1,880 km (29.9% of the total coastline) are mainland coast, and 4,398 km (70.1%) are island coast (Hrvatska, 2013-2024).

Scope of the Maritime Domain

According to Article 6 of the MDSP, the maritime domain consists of internal waters, territorial seas, their seabeds, subsoils, and the part of the land that is naturally intended for general use and designated as such, including all that is permanently connected to that part of the land on or below the surface, and comprises properties characterized by their natural features, appearance, purpose, location, and manner of use. This part of the land includes, among others, the seashore, sea beaches, shoals, shores, ports, breakwaters, quays, piers, berths, and structures permanently connected to the maritime domain and its dependencies.

In the same Article 6, it is stated that the land part of the maritime domain is a strip of land along the sea which is naturally in direct connection with the sea and serves the common use and utilization of the sea as a common good, with a width of at least six meters from the line of average higher high waters, measured horizontally (Jurničić Buljević, 2009) (Kundih, 2022) (Vojković 2022). Additionally, the port area (i.e., the part of the land proclaimed as a port by a special act), together with the properties in that area, is entirely included in the maritime domain (Ljubetić, 2021).

Use and Economic exploitation of the Maritime Domain

According to Article 11 of the MDSP, the maritime domain is primarily for common use (Nakić, 2016). This means that everyone has the right to use the maritime domain according to its nature and purpose (Popovski 2016). For any other use beyond the usual, the maritime domain must be given for special use or economic exploitation as explicitly stated – in accordance with the provisions of the MDSP itself. The economic and political significance of this issue (public use of the seashore in Croatia is a very sensitive political issue that attracts significant public attention) requires that any restrictions on public use be based on statutory authorization.

According to Article 13 of the same Act, on parts of the maritime domain, public use can be restricted or exceptionally excluded for a certain period based on a concession for special use of the maritime domain by awarding the right to temporary economic exploitation of the maritime domain (Tasić, 2018) or by granting ports open for public transport to port authorities for management (Batur, 2010).

Article 11 further states that special use of the maritime domain is a time-limited right to use the maritime domain for performing activities that are (emphasized!) not carried out for profit, with or without the right to use buildings and interventions in space. In contrast, economic exploitation of the maritime domain is a time-limited right to use the maritime domain, with or without the right to use buildings and interventions in space. Given the scope of this article, we will focus on the economic exploitation of the maritime domain, i.e., its use for commercial purposes.

Prohibition of Unauthorized Use and Exploitation of the Maritime Domain

The protection of the maritime domain in Croatia goes beyond legal categorization – general use has been part of the social heritage for centuries, so it is not surprising that it is directly mentioned in the Constitution of the Republic of Croatia (Ustav Republike Hrvatske, 1990). Article 52 of the Croatian Constitution states that "the sea, seashore, and islands (...) have special protection" (Babac, 2009).

Article 11 of the MDSP explicitly states that no one has the right without a legal basis prescribed by this Act to: 1. special use of the maritime domain; 2. economic exploitation of the maritime domain; 3. performing activities on the maritime domain; 4. construction and/or carrying out other works and/or interventions in the space of the maritime domain; 5. restricting and/or excluding general use of the maritime domain; and 6. occupying the maritime domain in any way for oneself or others. Additionally, the same article prescribes that a person who has acquired the right to special use and/or economic exploitation of the maritime domain based on an act representing a valid legal basis must use that right in the manner, scope, and limits determined by the act through which the right was acquired.

We would like to point out that due to the sensitivity of this issue in public life in Croatia, a violator who misuses the maritime domain (e.g., by illegal occupation or fencing) would be exposed not only to prosecution by public authorities but also to very direct criticism from the media, public, and non-governmental organizations.

There are numerous examples in Croatia of organized protest actions against investors who illegally used the maritime domain (Poslovni.hr, 2023). An investor who engages in such activities risks incalculable damage to their business reputation.

Concessions on the Maritime Domain

Economic exploitation of the maritime domain, as discussed in this article, is carried out based on a concession as explicitly prescribed by Article 44 of the MDSP. The fundamental concepts in the concession awarding process are defined in the MDSP glossary. A concession on the maritime domain is the right to economic exploitation of the maritime domain (Degan, 2017) acquired through a concession agreement, and the concessionaire is the economic entity with which the concession provider has entered into a concession agreement (Đerđa, 2016).

The issue of awarding concessions in the Republic of Croatia is regulated by a general regulation – the Concessions Act (Zakon o koncesijama, 2017) aligned with the Concessions Directive. However, it should be noted that the MDSP, in addition to material regulations governing the maritime domain, also contains certain procedural provisions concerning the awarding of concessions, and in such cases, the standard legal rule that a special regulation derogates a general one (*lex specialis derogat legi generali*) applies. Since the concession awarding process is an administrative procedure, the General Administrative Procedure Act (Zakon o općem upravnom postupku, 2009) will also apply. Therefore, a potential investor in the maritime domain should be aware that they are entering one of the most complex legal areas of Croatian law.

An important provision of the MDSP related to awarding concessions is that the boundary of the maritime domain towards the land must be determined in the area where the concession is planned to be granted (Ilčić, 2005). There are only a few very strict exceptions to this rule (for example, if it is unequivocally established that it is a maritime domain). According to the explicit provision of the MDSP, the registration of the maritime domain in the land registry is a prerequisite for issuing a notice of intent to grant a concession.

Concession for Economic Exploitation of Common Goods

According to Article 48 of the MDSP, a concession on the maritime domain is a concession for the economic exploitation of common goods. This article also defines a concession on the maritime domain as a time-limited right to economic exploitation of the maritime domain, with or without the right to construct, acquired through a concession agreement (Šikić and Staničić, 2011). A concession on the maritime domain is granted based on public bidding, and exceptionally, it can be granted upon request (Vojković and Milenković, 2023). It is also stated that a concession agreement on the maritime domain is an administrative agreement (Crnković, 2014), which is consistent with the general Concessions Act.

It is worth mentioning that according to Article 49 of the MDSP, a concession can be granted for already constructed and/or performed structures and/or interventions in space that are not considered construction according to special regulations governing construction (for example, mariculture facilities, permanently placed or moored vessels, floating docks), and it can include construction and economic exploitation of structures on the maritime domain and performing and economic exploitation of interventions in space that are not considered construction according to special regulations governing construction.

Under the somewhat unusual phrase "interventions in space that are not considered construction" fall the interventions specified in the Ordinance on Interventions in Space

that are not Considered Construction, but for which a Location Permit is issued (Pravilnik o zahvatima u prostoru koji se ne smatraju građenjem, a za koje se izdaje lokacijska dozvola, 2017).

Preparatory Actions for Awarding Concessions

As mentioned, the MDSP contains some specific procedural provisions regarding the awarding of concessions compared to the general Concessions Act. Article 50 states that preparatory actions, in addition to those specified in the general Concessions Act, include all actions conducted by the competent authority defined by the MDSP to determine the needs and interests for initiating the concession awarding process.

For potential investors and entrepreneurs in the tourism and hospitality sector, a very important provision of Article 50 of the MDSP specifies that there are two ways to initiate preparatory actions for awarding a concession on the maritime domain. Preparatory actions can be independently initiated by the competent authority according to planning documents or based on an expression of interest by an interested economic entity. In this latter case, the interested economic entity submits documentation expressing interest in the economic exploitation of the maritime domain. This documentation includes data on the alignment of the concession grant with spatial plans, financial impacts, and compliance with the principles of maritime domain management, as well as all other necessary data for deciding on initiating the concession awarding process. The competent authority, based on the received expression of interest, within the preparatory actions, checks whether the formal prerequisites are met, namely: 1. if the concession includes construction or placement, that the intervention in space subject to the concession is in accordance with spatial planning documents; 2. compliance of the concession subject with the concession awarding plan; and 3. whether the maritime domain boundary is determined and/or the maritime domain is registered in the land registry. However, the competent authority is not obliged to initiate the concession awarding process based on the received expression of interest and must notify the interested entity of its decision. We consider that this possibility of initiating preparatory actions for awarding a concession based on an expression of interest is very important for potential investors in Croatian tourism. The concession awarding process is handled by a special body – the Expert Commission for Concessions, which each concession provider is required to establish (Article 51 of the MDSP). The concession provider is obliged to prepare a Concession Feasibility Study in accordance with the general regulation governing concessions, namely the Concessions Act (LE Europe & Spark Legal Network, 2023). This study determines the concession period, taking into account that this period does not restrict market competition, the method of payment for the concession fee which is determined based on the subject of the concession, the estimated value of the concession, the risks and costs assumed by the concessionaire, the expected profit, the equipment and value of the property, and the area of the maritime domain being granted in concession (Article 52 of the MDSP).

After the decision to grant a concession is made, a concession agreement, which as previously mentioned, is an administrative contract, is concluded with the concessionaire (Tolić, Tokić and Blažević, 2009).

Legal Protection in the Concession Awarding Process

Legal protection in the concession awarding process is prescribed in a significantly different manner than in the previous Maritime Domain and Seaports Act of 2003. The previous Act prescribed that the ministry responsible for maritime affairs was competent for discussing all issues and resolving all disputes regarding the awarding,

execution, revocation, or amendment of concession decisions on the maritime domain (Jelčić, 2018). Appeals against the ministry's decision were not allowed, but an administrative dispute could be initiated. This provision, especially considering the long duration of administrative procedures in Croatia, gave significant arbitrary powers to the competent ministry, which is part of the executive branch and thus under political influence. Such a solution was not only legally questionable but also discouraged potential investors.

The legal protection model introduced by the MDSP is significantly more modern and aligned with the general regulation and European legislation (Ljubanović, 2010). Appeals against the decision to grant a concession made by regional self-government units and local self-government units (which will typically grant concessions for beaches) can be filed with the State Commission for the Supervision of Public Procurement Procedures (Article 52 of the MDSP) (Zakon o Državnoj komisiji za kontrolu postupaka javne nabave, 2013). This is an important and welcome change, where the possibility of appeal to a specialized and independent body – the State Commission for the Supervision of Public Procurement Procedures, as provided by Article 96 of the Concessions Act – has finally been introduced in the concession awarding process on the maritime domain. We believe that this change is extremely important and can encourage higher-quality investments in the maritime domain because it significantly strengthens the position of the economic entity interested in obtaining a concession and the legal certainty of the entire process.

Concessions on Sea Beaches

Sea beaches are an extremely valuable resource, especially for tourism-oriented countries like Croatia (Ministarstvo turizma i sporta Republike Hrvatske, 2023). The MDSP allows for the awarding of concessions on sea beaches but under very strictly defined conditions. Additionally, a novelty in Croatian law is the very precisely defined division of sea beaches. This matter would nominally fall under bylaw regulation, but due to political sensitivity, it is regulated by the Act itself.

Division of Sea Beaches

Article 76 of the MDSP thoroughly regulates the division of sea beaches. According to this article, sea beaches are divided into *public sea beaches* and *sea beaches of special purpose*. Public sea beaches are further divided into *natural sea beaches* and *developed sea beaches*. Article 76 of the MDSP also regulates the management of sea beaches – they are managed by local self-government units, public institutions for protected parts of nature (e.g., public institutions managing national parks for beaches within national parks), or concessionaires in accordance with the decision and concession agreement. Local self-government units, public institutions for protected parts of nature, and concessionaires are obliged to protect and maintain the beach and ensure the satisfaction of the public interest in its use. We emphasize – the obligation to satisfy the public interest also binds the concessionaire, so the concession on the beach cannot be viewed narrowly commercially (Popovski, 2017) (Mooser et al., 2023).

The MDSP thoroughly describes these categories of beaches. It states (Article 78 of the MDSP) that a *natural sea beach* is a beach located within or outside a settlement, infrastructurally unequipped, with completely preserved natural features, whose land part comprises natural material (stone, sand, gravel, their combination, etc.). Construction is not allowed on a natural beach. Concessions cannot be granted on natural sea beaches if the natural sea beach is outside the construction area.

A *developed sea beach* (Article 79 of the MDSP) is a sea beach located within or outside a settlement that is accessible to all under equal conditions, including persons with reduced mobility, with modified natural features, and infrastructurally and content-wise arranged land space directly connected to the sea. The person managing such a beach is obliged to mark and protect the seaside of the beach and display an information board at visible places with data on sea water quality, whether access for pets is allowed on the marine and land parts of the beach, and information on possible extraordinary events on the sea beach.

Prohibition of Restricting and Charging Access to Beaches

It is explicitly prescribed and reiterated in several articles that sea beaches must be accessible to all under equal conditions, and sea beaches (including those under concession!) cannot be excluded from general use. The local self-government unit or concessionaire managing a public sea beach must not fence off the beach or otherwise restrict access to the beach. Furthermore, entry to the beach cannot be charged.

All the provisions limit the concessionaire – they cannot restrict or fence off access to the beach or charge entry to the beach. Of course, the concessionaire can charge for various services offered on the beach as part of their tourism and hospitality offer – but entry and stay on the beach itself cannot be charged. The concession does not limit the right of common use, and no private beaches or beaches "for guests only" are allowed in Croatian law. There are two very strict exceptions to this rule that fall under a special category – sea beaches of special purpose.

A *sea beach of special purpose* is a sea beach that meets the requirements of specific user groups and their specific needs. A sea beach of special purpose is used based on a concession that can be granted only in two cases: 1. to a public health institution founded by the Republic of Croatia or a regional self-government unit (i.e., not a private person) whose users are in the institution for treatment and/or rehabilitation; 2. to a legal entity that is a concessionaire on a sea beach whose users are natural tourists. Only in these two cases can access to the sea beach be restricted, i.e., it can be excluded from general use.

Special Provisions on Concessions on Public Beaches

The maritime domain is of special interest to the Republic of Croatia and is under its protection. Therefore, broader public interests must be considered when conducting economic activities, not just the economic interests of the concessionaire. Article 81 of the MDSP explicitly states that the concession provider for the economic use of a public beach is obliged to ensure and protect the public interest in using the beach when deciding on the area of the beach where the concessionaire can conduct economic activities. This provision is not detailed in the Act, but the concession provider should certainly consider spatial plans and the actual situation at the location. In our opinion, the issue of awarding concessions on a public beach needs to be regulated differently in a tourist place with one large common beach than in a place with several spatially separated beaches.

Article 81 of the MDSP specifies only two concrete restrictions: The first restriction is that a concession for a public beach in a settlement must be granted in such a way that the entire beach is accessible to everyone, and up to a maximum of 40% of the land and 20% of the sea part of the beach can be used for economic activities for which the concession is granted. The second restriction is that a concession for a public beach outside a settlement must be granted in such a way that the entire beach is accessible to everyone, and up to a maximum of 60% of the land and 40%

of the sea part of the beach can be used for economic activities for which the concession is granted.

Mention should also be made of the duration of the concession (Article 55 of the MDSP). According to this article, the concession provider determines the duration of the concession in accordance with the provisions of the MDSP based on financial data and indicators (Zakharchenko, 2017) from the Concession Feasibility Study (Mezak et al., 2019).

The maximum durations are specified in Article 52 of the MDSP: the Government of the Republic of Croatia grants concessions for concession subjects of interest and significance for the Republic of Croatia for a period of up to 50 years. The regional self-government unit grants concessions for concession subjects of interest and significance for the regional self-government unit for a period of up to 20 years. This authority can be delegated to local self-government units. Generally, concessions on sea beaches will be under the jurisdiction of regional or local self-government, so they can be granted for a maximum period of up to 20 years. Exceptionally, according to the special provision of Article 55 of the MDSP, a concession for natural sea beaches can be granted for a period of up to five years.

Regarding the duration of the concession – "maximum" does not mean that the concession should always be granted for the longest period. The MDSP itself states in Article 55 that the concession is granted so that the duration does not restrict market competition more than necessary to ensure the amortization of the actual investment value of the concessionaire and a reasonable return on invested capital, considering the costs and risks borne by the concessionaire during the concession period. Similar provisions are stated in the general Concessions Act and are based on recital 52 of the Concessions Directive, from which we highlight: "Consequently, for concessions with a duration greater than five years, the duration should be limited to the period in which the concessionaire could reasonably be expected to recoup the investment made for operating the works and services together with a return on invested capital under normal operating conditions, taking into account specific contractual objectives undertaken by the concessionaire in order to deliver requirements relating to, for example, quality or price for users." When preparing a specific Concession Feasibility Study, the Concessions Directive, which extensively explains this issue, should certainly be considered.

Concession on Request

Another important part of the new MDSP, which we consider extremely important for the development of tourism and hospitality activities on the seashore, is the possibility of obtaining concessions on request. Concessions on request are a novelty in the legal regulation of concessions on the maritime domain. According to the 2003 Act, only a concession for special use of the maritime domain (various non-commercial activities and infrastructure facilities) could be granted on request. The strict exception where a concession for the economic exploitation of the maritime domain could be granted on request was for port activities and concessions for performing other economic activities in ports that did not require exclusive use of existing or construction of new structures. Thus, a concession on request for economic exploitation for various tourism and related activities could not be obtained. This has now changed.

According to Article 63 of the MDSP, a concession for the economic exploitation of the maritime domain can exceptionally be granted on request for a total of seven activities, of which we highlight three related to tourism. A concession on request can be granted for performing economic activities on a public developed sea beach but under strictly regulated conditions. Such a beach cannot be fenced off, entry cannot

be charged, and it cannot be excluded from general use. Such a concession can be obtained by a hotel, camp, or tourist resort with a minimum categorization of four stars or higher, which is built outside the maritime domain and with which the developed sea beach is infrastructurally connected, and where investment in infrastructure has been made by the hotel, camp, or tourist resort with which it is directly connected. Furthermore, a concession on request can be obtained for a temporary pontoon berth that is infrastructurally connected with only one hospitality facility, to which access is not possible in any other way except by sea or where road access is not possible for supply or guest access. It is also worth mentioning that a concession on request can be obtained for a sports port within the high-performance sports system.

The MDSP further regulates the procedure for awarding a concession on request and the content of the request in Article 64. In addition to the documentation prescribed by the general regulation governing concessions, a request for a concession on request must include an economic feasibility study, in which the applicant demonstrates the economic feasibility, profitability, and profitability of the economic exploitation of the maritime domain, proposes the amount of the fixed and variable part of the concession fee for the economic exploitation of the maritime domain, the amount of the proposed total investment, including environmental protection investments, and submits a business and financial plan to the authority conducting the preparatory actions for awarding the concession.

Based on the request, the authority conducting the preparatory actions for awarding the concession will prepare a Concession Feasibility Study and, according to the data from the Study, may accept the request in whole or in part or reject the request as unfounded with an explanation.

To ensure that concessions on request do not affect market competition and to prevent any other misuse of the possibility of obtaining a concession on request, it is prescribed that the amount of the concession fee for performing economic activities on a public developed sea beach and for a temporary pontoon berth infrastructurally connected with only one hospitality facility is determined by the Concession Feasibility Study. Additionally, it is stipulated that the concession fee for performing economic activities on a public developed sea beach cannot be lower than twice the fee achieved in the tender for such or similar concession subjects within five years from the date of submission of the request.

Concessions on request enable a high-category hotel, camp, or tourist resort to obtain a concession on the maritime domain area that forms a functional unit with the tourist facility, allowing it to provide various services on the maritime domain, thereby increasing the overall quality of tourist services (e.g., using hotel infrastructure for preparing drinks and beverages offered on the beach) and encouraging investments in maritime domain infrastructure – the tourist facility can plan long-term operations on the maritime domain and the public beach in front of the hotel. This also prevents possible disputes where a third party would obtain a concession or permit on the public beach in front of such a tourist facility.

Permits on the Maritime Domain

To emphasize the importance of the new regulation of concessions on the maritime domain, we will briefly mention the other model of economic exploitation of the maritime domain – permits, which have replaced the former concession approvals (Čović, 2020). A permit on the maritime domain is an administrative act that grants the holder a time-limited right to perform activities on the maritime domain that do not restrict or exclude general use of the maritime domain. Activities based on a permit can only be performed with simple structures.

According to Article 71 of the MDSP, permits are granted based on a public tender according to the Maritime Domain Management Plan, and they are issued by local self-government units, public institutions for protected parts of nature, and state and county port authorities. Based on received offers in the public tender, a decision on awarding a permit on the maritime domain is made in favour of the most favourable bidder. (Baće, 2023)

The same article of the MDSP states that a permit can only be granted for performing activities and using the maritime domain of minor importance, which is entirely understandable – permits should not restrict general use of the maritime domain. The decision to grant a permit on the maritime domain is an administrative act. It is also mentioned that permits on the maritime domain are granted for a period of two to five years, and exceptionally, there is the possibility of awarding permits for up to 20 days for various activities such as cultural, commercial, sports events, and similar. This allows for the organization of various usually summer events lasting several days.

Permits, therefore, are not concessions but serve to perform simpler activities that do not restrict or exceptionally slightly restrict general use, such as setting up ice cream kiosks, souvenir stands, offering umbrellas, deck chairs, paddleboards, pedal boats, jet skis, and similar. As the permit holder receives it for a shorter period of up to five years and is not allowed to perform interventions in space, it is not intended for more complex activities requiring significant investments – after the permit period expires, someone else can always apply. This is why it is important to enable and legally regulate concessions on the maritime domain, which the new MDSP has facilitated.

Discussion

In 2023, the Republic of Croatia significantly reformed its model of managing the maritime domain as a strategically important economic resource. The new regulation is an example of a compromise between two opposing principles – general use, where everyone is allowed to access the maritime domain and thus the seashore and use it according to its purpose, and the necessary restrictions for the economic exploitation of the maritime domain.

Performing certain economic activities on the maritime domain partially or completely excludes general use – for example, swimming is prohibited in a port, and some areas of the port or shipyard cannot be freely accessed. In these cases, no one questions the restriction or complete exclusion of general use.

However, a compromise was needed regarding beaches. The previous regulations allowed the awarding of concessions on beaches that restricted common use, although such concessions were not numerous, and some of these concessions still exist and are valid until the end of the period for which they were issued. The public was against restricting access to beaches, fencing off, and charging entry. However, if concessions on beaches were completely banned and only permits were allowed (remember, permits are granted for activities that do not restrict general use of the beach), economic activities on the beach would be limited to simpler ones. The permit holder receives it for a maximum of five years, is not sure if they will receive a new one and is therefore not interested in providing more complex tourist services. The permit holder is also not allowed to affect beach infrastructure. They cannot be responsible for other activities such as publishing sea water quality data and similar. They have an ice cream stand, rent out deck chairs, or provide similar simple services.

The legislator made a compromise – concessions on beaches are allowed, but the exclusion of general use is prohibited except in two very strict exceptions – beaches used for therapeutic and rehabilitation purposes and those used by natural tourists.

The concession can be granted for a longer period than a permit – generally up to 20 years, and the concessionaire can commit to maintaining and arranging such a beach, for example, beach nourishment (beach nourishment is the transport and spreading of stone material, sand, or gravel to replace the amount of material permanently lost due to natural processes) (Vuković, 2024), thereby ensuring the survival and quality of beaches. It is a compromise between the needs of tourism development, the concessionaire's interest in profit, and the public and political desire for public access to beaches.

The introduction of the possibility to appeal the concession decision to the State Commission for the Supervision of Public Procurement Procedures is also considered a significant step forward in better regulation of the maritime domain and attracting quality concessionaires.

Conclusion

The Croatian model of managing sea beaches has so far suffered from numerous shortcomings – beaches could (albeit in a small number of cases) be given for exclusive use, meaning fenced off and closed. On most beaches, only concession approvals (now permits) were granted, which were flawed in several segments. They were mostly given for one year and not through a public tender but on request – leading to numerous irregularities. The fees paid by concession approval holders were extremely low, so local governments, when considering the costs of cleaning and maintaining beaches, incurred losses rather than profits from numerous generally very lucrative economic activities on the coast. Additionally, concession approval holders, due to the short duration, were not interested in significant investments.

The introduction of beach concessions allows for longer-term planning of economic activities on them, and the concessionaire also takes on the obligation to care for the beach. If the model proves successful, it could increase the quality of tourist services and the revenues of state and local budgets in the form of concession fees.

We particularly emphasize that the introduction of concessions on request is a significant step forward – it allows high-category accommodation facilities to provide integrated services on the beach in front of the facility, which forms a natural and economic unit with the facility. We also welcome the possibility of concessions on request for a temporary pontoon berth, as it enables an even higher level of services in facilities typically visited by high-spending tourists.

The new MDSP came into force in the summer of 2023, and its full implementation awaited the adoption of related bylaws. We believe that the proposed solutions, although not yet confirmed in practice, are good. They simultaneously ensure general use of the maritime domain and free access to the coast while allowing for greater investments and the provision of more complex services on the seashore, for which permit holders who primarily provide simple services are not interested.

References

1. Aviani, D. (2009). Zasebno korištenje opće-uporabljivih dobara u Hrvatskoj: dometi i ograničenja. *Zbornik radova Pravnog fakulteta u Splitu*, 46(1), 123-150.
2. Babac, B. (2009). Vrednovanje javnih dobara - o protutočjima i proturječjima Hrvatskog pojma "dobara od interesa za Republiku Hrvatsku". *Zbornik radova Pravnog fakulteta u Splitu*, 46(1), 27-70.
3. Baće, M. (2023). Dozvola na pomorskom dobru kao novi pomorskopравни institut u hrvatskom zakonodavstvu. *Zbornik radova Pravnog fakulteta u Splitu*, 60(4), 691-715. <https://doi.org/10.31141/zrpf.2023.60.150.691>

4. Batur, T. (2010). Pravni status morskih luka i lučka politika u Republici Hrvatskoj. *Zbornik radova Pravnog fakulteta u Splitu*, 47(3), 677-692.
5. Čović, S. (2020). Sporni aspekti dodjele koncesijskih odobrenja na pomorskom dobru u upravnosudskoj praksi. *Zbornik radova Pravnog fakulteta u Splitu*, 57(1), 211-237. <https://doi.org/10.31141/zrpf.2020.57.135.211>
6. Crnković, M. (2014). Upravni ugovori u posebnom zakonodavstvu Republike Hrvatske. *Hrvatska i komparativna javna uprava*, 14(4), 1035-1056.
7. Degan, V. (2017). Pravna narav pomorskog dobra. *Poredbeno pomorsko pravo*, 56(171), 5-18. <https://doi.org/10.21857/y26kecvgx9>
8. Đerđa, D. (2016). Ugovor o koncesiji u hrvatskom pozitivnom pravu. *Pravo u gospodarstvu*, 55(2016), 1123-1167.
9. European Parliament and Council. (2014). Directive 2014/23/EU on the award of concession contracts. ELI: <http://data.europa.eu/eli/dir/2014/23/oj>
10. Hrvatska. (2013-2024). *Hrvatska enciklopedija, mrežno izdanje*. Leksikografski zavod Miroslav Krleža. <https://www.enciklopedija.hr/clanak/26390>
11. Iličić, V. (2005). Suvremene metode određivanja granice pomorskog dobra. *Ekscentar*, (7), 71-74.
12. Jelavić, A. (2012). Pravni položaj pomorskog dobra. *Naše more*, 59(1-2), 22-35.
13. Jelčić, O. (2018). Proturječnosti u primjeni zakona u postupku davanja koncesija na pomorskom dobru. *Stručni portal Pomorsko dobro*. <https://www.pomorskodobro.com/proturjecnosti-u-primjeni-zakona-u-postupku-davanja-koncesija-na-pomorskom-dobru/>
14. Jug, J. (2013). Stvarna prava na pomorskom dobru?. *Zbornik Pravnog fakulteta Sveučilišta u Rijeci*, 34(1), 277-303.
15. Jurničić Buljević, J. (2009). Određivanje granice i razvoj GIS-a pomorskog dobra. *Ekscentar*, (11), 36-41.
16. Kundih, B. (2022). Određivanje pomorskog dobra ili circulus vitiosus. *Stručni portal Pomorsko dobro*. <https://www.pomorskodobro.com/odredivanje-pomorskog-dobra-ili-circulus-vitiosus/>
17. LE Europe, & Spark Legal Network. (2023). *Study on the implementation of the Concessions Directive: Final Report*. European Commission. <https://doi.org/10.2873/026744>
18. Ljubanović, B. (2010). Upravni ugovori i upravno sudovanje. *Zbornik radova Pravnog fakulteta u Splitu*, 47(1), 37-52.
19. Ljubetić, S. (2021). Granice pomorskog dobra i lučkog područja - Legislativno uređenje i problematika u praksi. *Poredbeno pomorsko pravo*, 60(175), 173-204.
20. Mezak, V., Jugović, A., Schiozzi, D., & Lapov, F. V. (2019). Issues in determining the real value of concession fees when granting concession for commercial use of maritime domain. *Pomorstvo*, 33(2), 255-263. <https://doi.org/10.31217/p.33.2.17>
21. Ministarstvo turizma i sporta Republike Hrvatske. (2023). *Turizam u brojkama 2022*. https://www.htz.hr/sites/default/files/2023-07/HTZ%20TUB%20HR_%202022.pdf
22. Mooser, A., Anfuso, G., Pranzini, E., Rizzo, A., & Aucelli, P. P. C. (2023). Beach scenic quality versus beach concessions: Case studies from southern Italy. *Land*, 12(2), 319. <https://doi.org/10.3390/land12020319>
23. Nakić, J. (2016). Pomorsko dobro - opće ili javno dobro. *Zbornik radova Veleučilišta u Šibeniku*, 10(1-2), 7-34.
24. Pomorski zakonik (no longer in effect), Narodne novine, 17/94.
25. Popovski, A. (2016). Pravna priroda opće uporabe javnoga dobra. *Pravni vjesnik*, 32(3-4), 183-200.
26. Popovski, A. (2017). Zaštita javnoga interesa u raspolaganju javnim dobrom u općoj uporabi. *Zbornik Pravnog fakulteta Sveučilišta u Rijeci*, 38(1), 275-299. <https://doi.org/10.30925/zpfsr.38.1.9>
27. Poslovni.hr. (2023). Prosvjedi urodili plodom, počelo rušenje bespravno izgrađenih objekata u uvali Vruja. <https://www.poslovni.hr/hrvatska/foto-prosvjedi-urodili-plodom-pocelo-rušenje-bespravno-izgrađenih-objekata-u-uvali-vruja-4392849>
28. Pravilnik o zahvatima u prostoru koji se ne smatraju građenjem, a za koje se izdaje lokacijska dozvola, Narodne novine, 105/17, 108/17

29. Šikić, M., & Staničić, F. (2011). Pravna narav ugovora o koncesiji. *Zbornik radova Pravnog fakulteta u Splitu*, 48(2), 419-441.
30. Staničić, F., & Bogović, M. (2017). Koncesije na pomorskom dobru - odnos Zakona o koncesijama i Zakona o pomorskom dobru i morskim lukama. *Pravni vjesnik*, 33(1), 73-104.
31. Tasić, Z. (2018). Financiranje projekata na pomorskom dobru. *Poredbeno pomorsko pravo*, 57(172), 339-354. <https://doi.org/10.21857/yvjrdcqky>
32. Tolić, V., Tokić, M., & Blažević, I. (2009). Upravni ugovor prema Zakonu o općem upravnom postupku. *Praktični menadžment: stručni časopis za teoriju i praksu menadžmenta*, 4(2).
33. Ustav Republike Hrvatske, Narodne novine, 56/90, 135/97, 08/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 05/14.
34. Vojković, G. (2003). *Pomorsko dobro i koncesije*. Split: Hrvatski hidrografski institut.
35. Vojković, G. (2022). Utvrđivanje granice pomorskog dobra de lege lata i de lege ferenda. *Poredbeno pomorsko pravo*, 61(176), 527-558.
36. Vojković, G. (2023). Novi model koncesija na pomorskom dobru. *Pravo i porezi*, 31(10), 19-27.
37. Vojković, G., & Milenković, M. (2023). Concessions at request on the maritime domain in Croatian law. In P. Amižić Jelovčić (Ed.), *Book of proceedings of the 4th international scientific conference of maritime law* (pp. 237-253). Split: Faculty of Law, University of Split.
38. Vuković, A. (2024). Dohranjivanje plaže nije isto što i nasipavanje mora. *IUS-INFO*. <https://www.iusinfo.hr/aktualno/u-sredistu/dohranjivanje-plaze-nije-isto-sto-i-nasipavanje-mora-60333>
39. Zakharchenko, V., Merkulov, M., Balakhonova, O., Zakharchenko, N., & Laptieva, V. (2017). The development of methods of calculating the concession fees. *Problems and Perspectives in Management*, 15(3-2), 438-444. [https://doi.org/10.21511/ppm.15\(3-2\).2017.11](https://doi.org/10.21511/ppm.15(3-2).2017.11)
40. Zakon o Državnoj komisiji za kontrolu postupaka javne nabave, Narodne novine, 18/13, 127/13, 74/14, 98/19, 41/21
41. Zakon o koncesijama, Narodne novine, 69/17, 107/20.
42. Zakon o koncesijama, Narodne novine, 69/17, 107/20.
43. Zakon o općem upravnom postupku, Narodne novine, 47/09, 110/21.
44. Zakon o pomorskom dobru i morskim lukama (no longer in effect), Narodne novine, 158/03, 100/04, 141/06, 38/09, 123/11, 56/16, 98/19.
45. Zakon o pomorskom dobru i morskim lukama, Narodne novine, 83/23.

About the author

Assoc. Prof. Dr. Sc. Goran Vojković is an associate professor at the University North. He has over 25 years of experience working in government service and private sector, holding various positions as advisor in the Government office to a director of legal affairs in corporate management at an IT company. He was a two-term external member of the Legislation Committee of the Croatian Parliament and a two-term president of the Administrative Council of the Port Authority of Vukovar. He also has extensive experience working with EU projects in Croatia and Bosnia and Herzegovina. Author can be contacted at email: gvojkovic@unin.hr