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Specific traits of communal berths in ports open to public transport in Primorje-Gorski Kotar County

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ABSTRACT

Primorje-Gorski Kotar County has eight county port authorities operating since 1999, which manage a total of 101 ports open for public transport, 27 of which are of county importance and 74 ports are of local importance. The focus of this article is directed on county ports communal areas open for public transport, i.e. on communal berths in such ports. The article processes a number of communal berths managed by each county port authority in Primorje-Gorski Kotar County, including the amount of compensation for such moorings. The number of requests for communal berths for each of the eight county port authorities was collected by field research to compare the current capacity with the required capacity of communal moorings. The problems which occur during the use of communal berths and possible solutions to those problems will also be presented in the article.

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1 Introduction

The research deals with communal berths in communal areas of ports open for public transport in Primorje-Gorski Kotar County. The research focuses on the lack of communal berths and other issues occurring during their use.

The basic purpose of the research is to establish how communal berths are managed in Primorje-Gorski Kotar County, then to find the number of existing and required communal berths and establish how to improve the management and monitoring over communal berths.

The research showed that there is a significant lack of communal berths (almost a third of the existing capacities) which requires further planning and finding funds for their construction in the future. The means necessary for building new communal berths should not be taken only as expenses as they generate significant profit through berth fees paid by the users, as well as all other expenses and fees that the boat owner needs to pay to the state, specialized stores, services, catering facilities, etc. The number of requests for communal berths may be reduced by proper management and planning, while stricter moni-

toring measures over communal berths may solve the problems incurred by their illegal use.

2 Legal regulations on using berths in the communal area of ports open for public transport

The basic act in the Republic of Croatia which governs maritime sailing and anything related to it is the Maritime Code [1]. As the Maritime Code covers a wide area, it does not contain many regulations referring to the communal area of the port open for public transport. Article 56 (2) states that port authorities, physical and legal persons and maritime objects using the port shall comply with or satisfy the regulations about the order in the port. The Article 673.o (1), (2) and (4) states that the berth user shall use the berth in accordance with the agreement and its intention and the berth user shall not let another person use the berth. It has also been stated that if the berth user uses the berth contrary to the agreement, particularly if he lets an unauthorized person use the berth, the service provider may terminate the agreement. In the chapter of the law regulating maritime offences, there are no explicit

regulations sanctioning the use of the berth contrary to the agreement.

Another important regulation is the Maritime Domain and Seaports Act [2]. Article 5 explicitly states that no ownership right or right in rem may be gained on any basis over the maritime domain. On the basis of this article, it is clear that ownership over a berth may not be gained nor can this be sold. Article 74 defines the way of determining a port area and its division. The Article also states that a part of the port open for public transport of county or local significance may be intended for a communal berth. According to this law, communal berth includes a berth for a vessel whose owner is a resident in the area of the local self-government unit or the vessel predominantly stays in the area and is listed in the ship registry or boat record book of the relevant harbour master's office or its branch office, for the use of which a permanent berthing contract has to be made with the port authority and on which no economic activities can be performed. Article 84 requires the port authority to have the Regulation on maintaining order in port, which among other things shall determine the purpose of a certain part of the port, whereas one part is intended for permanent berthing. The chapter of the law regulating offences does not explicitly provide for sanctions for using a berth contrary to the agreement.

According to the Regulation for determination of purpose of a particular part of a port open for public transport of county or local significance, the way of paying for the berth, conditions of use and determining the maximum fee and profit distribution [4], the articles 5, 6 and 7 refer to the communal part of the port. The mentioned articles clearly state that it is necessary to have a permanent berth agreement for using a berth in the communal part of the port, which regulates the basic rights and obligations of the permanent berth user. The agreement defines in particular the place of vessel berthing, the conditions of safety of navigation in port and order in port, the berth fee, way of payment and duration of the agreement.

According to Article 3 of the Ordinance on the terms and methods of maintaining order in ports and other parts of internal waters and territorial sea of the Republic of Croatia and the borders of navigation for ships and crafts outside ports [3], it is explicitly stated that the order in ports is maintained by the body managing the port, while the harbour master's office monitors the enforcement of order.

3 Capacity of communal berths in Primorje-Gorski Kotar County ports

The problem of undercapacity of berths in the communal part of the ports is well-known, so the Regulation for determination of purpose of a particular part of a port open for public transport of county or local significance, the way of payment, conditions of use and determining the maximum fee and profit distribution [4] was brought in

accordance with that in 2007. The mentioned Regulation enabled the County port authorities to widen the port area in order to ensure a greater number of berths in ports and to determine the purpose of certain parts of the port. Today, thirteen years after making this regulation, there is still a lack of communal berths in ports which triggers resentment in the local inhabitants.

The ports analyzed in the article are the ports defined by the Ordinance of classification of ports open for public transportation in the area of Primorje-Gorski Kotar County [5]. According to the Ordinance, 27 ports in Primorje-Gorski Kotar County were classified as county ports while 74 ports were classified as local ports.

A total of eight County port authorities were established in the area of Primorje-Gorski Kotar County, which manage a certain number of ports and harbours open for public transport and almost each of them has a communal area intended for berths for local inhabitants.

As mentioned, the goal of the paper was to find the number of communal berths in the ports from all eight Primorje-Gorski Kotar County port authorities, as well as the number of requests for permanent berths received by port authorities to compare the numbers and determine the lack of communal berths in the areas of the port authorities. The research did not include the area of the City of Rijeka as it is managed by the National Port Authority and the paper covered only the ports managed by the County port authorities.

The data in Table 1 about the number of existing communal berths were taken from the official web pages of County port authorities. As there are no official, public information about the issues researched in the paper, a field research had to be conducted. To be more specific, the data that were officially, publicly issued in eight analyzed port authorities in the County were ambiguous, whereby the data could not be compared. Therefore, the target data were collected by field research, thus enabling a clear comparison/analysis. Furthermore, the data about the number of insufficient communal berths were not officially, publicly issued by any of the port authorities in Primorje-Gorski Kotar County or any other body. Owing to that, the field research was conducted by sending an enquiry to eight county port authorities to obtain the data necessary for the research. All of them responded and the necessary data were obtained, although some port authorities did not provide all requested data as they simply did not keep the records as it was requested. Therefore, in some parts of the paper it was necessary to analyze/calculate the necessary data to compare them with other port authorities. The research was conducted during May 2019 via e-mail, while the executive directors of port authorities were additionally contacted by phone.

When we sum up all the communal berths of all Primorje-Gorski Kotar County port authorities, we get 9671 berths. It should be emphasized that this is an approximate number as there are no exact data for a smaller

Table 1 Total number of communal berths and requests for communal berths in Primorje-Gorski Kotar County

	County PA	NO. of berths 05/2019	NO. of requests 05/2019	NO. of berths in 2018
1.	Crikvenica	1141	388	1129
2.	Rab	1722	197	1245
3.	Novi Vinodolski	400	200	457
4.	Cres	457	166	534
5.	Opatija – Lovran – Mošćenička Draga	1053	300	922
6.	Mali Lošinj	1286	140	930
7.	Bakar – Kraljevica – Kostrena	1059	461	854
8.	Krk	2553	1158	2553
Total		9671	3010	8624

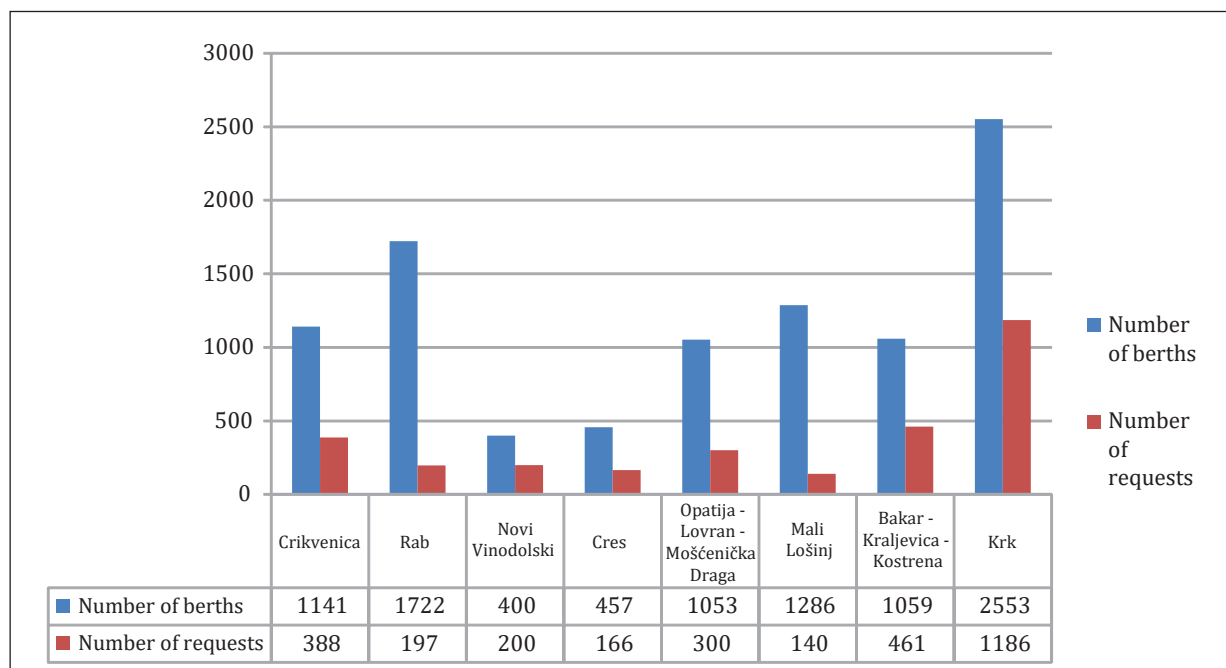
Source: Authors according to the data by the Primorje-Gorski Kotar County port authorities

number of ports, therefore, the number for these ports was estimated (the estimate was made based on data on the number of vessels in the port in May 2019, available photographs of the port and the surface of the port basin). The sum of all communal berth requests was about 3010.

For the purpose of comparison, Table 1 lists all Primorje-Gorski Kotar County port authorities, together with the current number of available communal berths and the number of requests for communal berths in each of them. Another column was added with the number of communal berths in 2018, taken from the *Financial Report of County Port Authorities in Primorje-Gorski Kotar County for 2018* [17].

If we take the number of berths in Primorje-Gorski Kotar County as a whole, the total capacity of the communal part of the ports should be increased by a bit more than a third, i.e. $\approx 31\%$.

If we compare the data on the current communal berths and the number of communal berths for 2018, it can be established that the capacity has increased in most port authorities. If we assume that the data about the current number of communal berths obtained by each individual county port authority at the time of the research are valid, then the total capacity of communal berths in Primorje-Gorski Kotar County has increased by 1047 communal berths in 2019 in relation to 2018.

**Diagram 1** Number of communal berths and requests for communal berths in Primorje-Gorski Kotar County

Source: Authors according to data from previous tables

Diagram 1 shows a comparison of the current number of communal berths and the number of requests for communal berths for all Primorje-Gorski Kotar County port authorities.

The diagram shows that the County Port Authority Mali Lošinj and the County Port Authority Rab have the best ratio of the number of communal berths and the number of requests for communal berths. As these port authorities have a large number of communal berths and a relatively smaller number of requests for communal berths, it may be concluded that these port authorities have less problems with insufficient number of communal berths in relation with other port authorities. The reason for this condition may be the subject of some future research.

In general, the County Port Authority Krk has the greatest number of requests for communal berths, as many as 1186, while the County Port Authority Mali Lošinj has only 140 requests.

Regardless of the ratio of the number of available permanent berths and the number of requests for berths, the capacities in all Primorje-Gorski Kotar County port authorities are insufficient and there is a need for an increase of permanent berth capacities. The demand for permanent berths is great, and capacities cannot be increased to approve all the requests, especially in such a short time.

It should be mentioned that such analysis of the necessary number of communal berths is not completely accurate as it is based on the requests for berths received by port authorities. It is a well known fact that the potential boat buyer buys a boat only after securing a berth, therefore, it can be expected that there may be more potential berth users, but considering the real condition of available berths, they have not submitted a request. Furthermore, a large number of existing berth and boat users are interested in buying a larger boat, but as they cannot berth a larger boat, they do not buy one. If that would be a possibility, berthing larger boats on the same port surface would result in the reduction of berthing possibilities in port.

4 Profit from communal berth fees in Primorje-Gorski Kotar County ports

The amount of port dues is determined by the relevant port authority. The maximum price for communal berths is defined by the Regulation for determination of purpose of a particular part of a port open for public transport of county or local significance, the way of paying for the berth, conditions of use and determining the maximum fee and profit distribution (Appendix 3) [4], as follows:

- Vessel/boat according to the indivisible linear meter over all HRK 200.00 in the first zone.
- Vessel/boat intended for economic activities, especially economic fishing and passenger transport pay maximum amount of 50% of the fee from indent 1.

Table 2 shows the annual income realized by the Primorje-Gorski Kotar County port authorities from communal berths. A part of the data about the financial income from communal berths was obtained on the basis of information received from the port authority managers and a part of it was calculated based on the number and length of boats in ports and the published price list of an annual communal berth.

The County Port Authority Krk has the greatest annual income, which is logical considering the number of berths it has. The County Port Authority Cres has the lowest income with its 457 communal berths.

5 Problem of illegal sale of communal berths

The lack of communal berths in the communal parts of the ports brought about the illegal sale of berths. It should be emphasized that communal berths are a part of the maritime domain which pursuant to Article 5 of the Act on Maritime Domain and Seaports cannot be a subject of any ownership right or any other real rights on any basis. Therefore, the person granted a communal berth for use is not its actual owner, but only a user of the permanent berth, which according to the law does not authorize him

Table 2 Annual profit in all Primorje-Gorski Kotar County port authorities

	County Port Authority	Annual Income in HRK	
1.	Crikvenica	719 465	real income
2.	Rab	791 420	calculated income
3.	Novi Vinodolski	229 000	real income
4.	Cres	172 125	real income
5.	Opatija – Lovran – Mošćenička Draga	658 912	real income
6.	Mali Lošinj	661 908	calculated income
7.	Bakar – Kraljevica – Kostrena	545 135	real income
8.	Krk	1 465 600	calculated income
Total		5 653 795	

Source: Authors according to data from previous tables

to sell it. Although the law is clear, illegal sale of berths is common and most often based on the principle “*buying the boat, gets you the berth*”.

Such illegal sale of communal berths results from the lack of communal berths. In situations of a great lack of berths, boat owners are ready to “buy a berth” for a price significantly larger than the fees set up by port authorities for the use of the permanent berth. On the other hand, permanent users of communal berths offer the berth for sale as if it were private property. There are frequent examples where a significantly larger price is asked for a boat with low market value as the berth user is “selling” the berth with the boat.

According to the law of supply and demand, the price of a certain service may be greater if the demand rises and the supply remains the same. Therefore, great demand, i.e. small capacity of communal berths in ports means a high price of illegally sold berth. Besides demand, the price of berths sold in such a way depends on the position of the communal berth.

As this is illegal, the number of communal berths for sale and their price cannot be compared. However, on the internet and even in the printed edition of the nautical journal *Burza nautike*, one can easily find a large number of advertisements for berth sale.

The information about the advertisers from the previous figures have been cut out to protect personal data.

Such practice of berth sale is common; therefore, we may ask how it is possible that something which should be sanctioned still continues. It may be assumed that if the number of communal berths would increase, the number of illegal acts would definitely drop, along with the price of such illegally sold berth.

Regardless of these assumptions, the question is how such sale is performed. To be more specific, communal berths are given for permanent use for a certain period of time. The owner of the registered boat with the permanent right of using the berth may take his boat out to land, leaving his berth free. This communal berth is still under his permanent use as the boat owner, therefore, according to the permanent berth agreement, he cannot let or sell the berth, as the agreement explicitly states that the permanent berth is intended for use by the boat stated in the contract. However, it seems that monitoring is not efficient enough when illegal advertisements shown above are completely normal.

Furthermore, Figure 1 shows an advertisement in which the advertiser sells the boat along with the berth. Such combinations are also forbidden as the agreement clearly defines that the right of using the permanent berth is not transferred by selling the boat. However, such situations occur, also owing to insufficient monitoring. In case the new owner decides to buy a boat, during the transfer of ownership, he transfers a smaller share to his name, whereas the major share still remains with the old owner, thus the use of the communal berth for the new owner,

Figure 1 Advertisement for selling a boat and a berth

Source: <https://burza.com.hr/oglasi/primorku-dugu/127746> (4/9/2019)

Figure 2 Advertisement for selling a berth 1

Source: <http://www.chutku.com.hr/Camci/Prodajem+Vez/bjlk52> (4/9/2019)

Figure 3 Advertisement for selling a berth 2

Source: <https://www.njuskalo.hr/motorni-brodovi/vez-barku-10-m-trget-oglas-13719322> (4/9/2019)

or co-owner, becomes legitimate, as the permanent berth agreement says that the permanent berth user must have at least 51% share in the ownership over the boat.

Some people only borrow the communal berths given to them for use, but this is also illegal according to the permanent berth agreement, as it states that the berth is intended solely for that particular user and that particular boat, as entered in the agreement.

Besides selling berths, the problem in communal ports are the boats that have not been used for years, but only stay at berth to "keep" it. Such boats additionally fill the already small capacity of communal berths in Primorje-Gorski Kotar County, thus withholding from those who would use their boats regularly if they had berths.

Therefore, berths are illegally advertised for sale, rent, they are even constructed, and such situations, although completely illegal, are no secret. The measures that should prevent this are not sufficient or efficient enough.

6 Possible solutions in managing communal berths

After presenting the said problems in managing and using communal berths, the question is whether there is some way of solving them. Managing and using communal berths is actually regulated by numerous regulations and statutes, however, public sale of berths proves that such laws and regulations are often broken.

The simplest and practically instant solution to the problem of communal berth sale or rent can be implemented through a stricter surveillance over berths by port authorities. Each boat has its berth and there should not be another boat with a different registry number located at its berth without approval by the port authority. If something like that happens, the responsible persons should be sanctioned on various degrees, from a warning, paying a fee in the amount of one berth fee to stricter punishments if continuous repeating of the described practice would result in depriving the person from permanent use of the berth.

As already mentioned, the demand for communal berths is extremely great, and the overall income from permanent berth fees certainly cannot be considered high. One of the possible solutions is to introduce a fee according to the law of supply and demand. Therefore, great demand and small capacities, as is the case with communal berths, would mean a higher price of the fee. If the prices of communal berth fees would be formed in that way, there would probably be less people "keeping" the berth, thus filtering and reducing the number of requests for communal berths. If the number of requests would reduce to a certain limit, the price of fees could again be reduced, according to the law on supply and demand. Such an approach is purely economic and definitely not applicable to communal berths. Communal berths are by definition intended for local inhabitants and are therefore much more

reasonable than marina berths, used mostly by foreign boat owners or charter companies. Such favourable arrangement is not found only in Croatia, but the most developed European countries also have similar conditions for their domicile population. Furthermore, the state should not evaluate the benefit from charging communal berths only according to total income from permanent berth fees. It is well known that the boat owner has far more expenses for other fees and boat maintenance besides the fee for permanent berth. A great part of all the fees and expenses imposed on the boat owner represents the income to the state.

Another great problem is the fictitious co-ownership over the boat, as in such cases the owner may sell the boat which is registered to a berth, but the title deed still lists him as the co-owner of the major share only to give the new owner the right of using the same berth. Such situation is perfectly legal as the contract stated that the owner has the right of using the permanent berth as long as he is the majority owner of the boat. The port authority cannot influence on such a way of gaining a berth, although the buyer takes a certain risk by paying for the boat in full, including the berth, legally speaking, the majority of the boat is not in his property and it is only a matter of the seller's morality whether he would require financial compensation for his share "on paper" at a certain moment. Partial risk from such a way of sale is taken by the seller as well, as in case of an accident, incident, pollution, etc., he may become a party to the proceedings, without taking any part whatsoever in the accident.

Therefore, the solution to the problem comes down to an active monitoring over the berths by port authorities and developing a strategy for increasing the capacities of communal berths in the future, which could be realized in a certain period of time.

7 Conclusion

A lack of communal berth is a major issue in the entire Primorje-Gorski Kotar County, and in general throughout the entire Croatian coast. One waits for a communal berth for years, even decades. Illegal activities performed with this kind of berths result in even longer waiting lists as individuals with all the preconditions for getting a berth do not obtain one for use as the berths are sold, rented or only kept without using the boat on such a berth, owing to insufficient monitoring and control. Some people even have financial benefits as they rent the berth, for which they pay a few hundred kunas a year, on the black market; they keep it or, as a last resort, they sell it. Communal berth fees are reasonable precisely to make them available to the local population and the ones who deserve them, the ones who would actually use such berths, including the boats on those berths, should get them for use. However, persons who are not local inhabitants sometimes get the communal berths for use by buying a boat from a person who has the right to a permanent berth and transferring a

part of the ownership to their name, so it is clear how such activities displease the local inhabitants.

Such illegal activities performed with communal berths are already well known, but they still remain unsanctioned, so it is no wonder that every now and then another illegal dock springs up or a buoy for the boats is built by the local population owing to the lack of communal berths.

Croatia is a tourist country, meaning that the care for the coast should be a priority, and ports should be regulated, without illegal docks, buoys, etc. If illegal activities would be reasonably monitored and then sanctioned, ports would be regulated and communal berths would be used only by those who would actually exploit them. By implementing a strategy of communal berth capacity development the number of communal berths would grow in time, thus reducing the waiting lists and consequently illegal activities

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