Comparison of Contracts on Business Cooperation on Maritime Domain in Nautical Tourism Ports and Lease Agreements

Miho Baće[1], Nikola Mandić[2]

The paper discusses the contract on business cooperation on maritime property in the ports of nautical tourism in the context of named and unnamed contracts, the scope of freedom of contract in the context of the concession contract as a "fundamental" contract, as well as the method by which the contract on business cooperation is qualified in the Croatian legal system. This contract is apostrophised in the context of mixed contracts and sui generis contracts as types of contracts that are not regulated by law. The acceptance of the provisions of the lease agreement as a named contract in Croatian legislation in business practice when concluding a business cooperation agreement is examined, as well as the similarities of these two agreements. The aim of the paper is to use the comparative law method to complete knowledge about the positioning of business cooperation contracts on maritime property in nautical tourism ports in the context of named and unnamed contracts, i.e. mixed and sui generis contracts, and to determine the appropriateness and compatibility of the lease contract with the business cooperation contract.

KEY WORDS

~ Secondary activities
~ Business cooperation agreement
~ Concession agreement
~ Lease agreement
~ Maritime domain
~ Concessionaire
~ Business entity
~ Lessor
~ Lessee
~ Named and unnamed contracts

[1] University of Dubrovnik, Maritime Department, Dubrovnik, Croatia
[2] University of Split, Faculty of Maritime Studies, Split, Croatia
e-mail: miho.bace2@gmail.com

doi: 10.7225/toms.v12.n02.015
Received: 5 Aug 2023 / Revised: 6 Aug 2023 / Accepted: 13 Sept 2023 / Published: 21 Oct 2023

1. INTRODUCTION

1.1. Introductory considerations

In legal systems that belong to the civil law tradition, the regulation of contractual relations through the legal provisions of certain business and economic relations does not regulate all rights and obligations of the contracting parties in a specific relationship. Through the legislative framework, the basic mandatory legal aspects of such relationships are regulated, while enabling party dispositions as a fundamental principle of private law in the legislation of the civil law circle. Party dispositions replace dispositive legal norms in most contractual relationships. Nevertheless, the legislator, in the desire for a modern identity of the order, including comprehensive state and social interest, prescribes cogent legal norms only in rare, exceptional cases. This applies, for example, in relation to the protection of legal certainty, to confidence in transport, protection of vulnerable groups of contractors and the like[1].

Contracting parties in such relations deviate from dispositive legal norms through freedom of contract. Such deviations can be manifested in many ways through contracting; through the adaptation of contractual provisions in such a way that they do not depart from the legal regulation in terms of their scope; then through the diversity of the specific contractual relationship, which is more significant than the legal regulation of individual or several types of contracts, insomuch that the outlines of several legally regulated contractual relationships are recognisable; and finally, through the complete distancing the concrete contractual relationship from all elements of legally regulated contract types. This last relationship qualifies such contractual relationships or such contract as a sui generis contractual relationship or as a *sui generis* contract[2].

In the positioning of the discussion in this paper on the contract on business cooperation for secondary activities on maritime domain in ports of nautical tourism (further: contract on business cooperation), discussing named and unnamed contracts is very important. This determines the functions of the named contracts in the legal system, including the contract on business cooperation, which, through its position, facilitates the application of the norm, the security of the contractual relationship, which is broader than the contractual provisions. In this regard, one should approach the method of determining whether a contract on business cooperation is a named or unnamed contract, i.e. whether it is similar to a certain named or unnamed contract, and in this way limit or not the room for manoeuvre of applying the legal provisions of other named contracts to contractual relations from the contract on business cooperation.

In this discussion, the lease contract is specifically apostrophised as a named contract of commercial law in the context of comparison with the contract on business cooperation, because that contract has the most points in common with the contract on business cooperation. The aim of this paper is to determine whether a business cooperation agreement is an autonomous contract in the catalogue of contracts of Croatian legislation and practice, i.e. how similar and how different is a business cooperation agreement from a lease agreement.

It is important to emphasise here that during this scientific research, the procedure for voting the new Law on Maritime Domain and Sea Ports (hereinafter: ZPDML) was initiated[3]. Therefore, this paper will include newly adopted legal solutions related to this issue, as well as solutions from the old ZPDML.

---

[1] More about it: Tot. I., Type of contract regulated by law, mixed contracts and sui generis contracts , Liber amicorum Aldo Radolović, Faculty of Law in Rijeka, Rijeka, 2018.

[2] Ibid. p. 578.

[3] Law on maritime property and sea ports ("Official Gazette", no. 158/03, 100/04, 141/06, 38/09, 123/11 - Decision of the Constitutional Court of the Republic of Croatia, 56/16 , 98/19 and 83/23.) entered into force on

1.2. On the concepts of named and unnamed contracts, mixed and *sui generis* contracts in the context of business cooperation contracts

If a "concept" (German *Begriff*) is being discussed and a specific factual situation is to be subsumed under a "concept", this will only be possible if the existence of all characteristic features contained in the "concept" is established in a specific factual situation. If one is talking about a "type" (German *Typus*) and a certain factual situation is to be subsumed under a "type", this will be possible if in a certain factual situation the existence of the characteristic features contained in the "type" is determined to such an extent or with such intensity that by making a valuable judgment, after considering all the features of the factual situation in their totality, a certain factual situation can be subsumed under a "type"[4].

Starting from the distinction between "concept" and "type", "type of contract" can be understood as a set of characteristic features of a contractual relationship that give that contractual relationship its characteristic content and by which set of characteristic features this contractual relationship differs from another contractual relationship relationship, that is, from another type of contract[5].

At the beginning of the analysis, it should be pointed out that in Croatian legal theory, the types of contracts regulated by law are called named contracts[6]. The type of contract regulated by law is not necessarily the specific contract that is identical in its content to the legal regulation of that type of contract, but that it corresponds to the type of contract regulated by law in scope and characteristics. The named type of contract is not the type that is often concluded in business practice and that has its own name in the business environment. A named or legally regulated type of contract is a contract whose characteristic features are regulated by law.

However, it is necessary to include in this category those contracts that have an established content and name in economic relations, but are not regulated by law as special types of contracts. Relying on the foregoing on the named contracts, it can be pointed out that unnamed contracts are such contracts that are not legally regulated types of contracts. Given that unnamed contracts are created in economic relations and are formed as such in their name and contents, it is possible to determine them as characteristic and non-characteristic. Contracts whose characteristic contents and name are generally accepted in business practice

---

October 15, 2003, and during the nineteen years of application certain ambiguities were observed regarding some of the issues related to its content and application. The last amendment to the Law is more comprehensive.

[4] Honsell, H., and Mayer-Maly, T., Rechtswissenschaft – Eine Einführung in das Recht und seine Grundlagen , Springer-Verlag, Berlin – Heidelberg, 2015, p. 128-129; PETERSEN, J., Max Webers Rechtssoziologie und die juristische Methodenlehre , De Gruyter Recht, Berlin, 2008, p. 150.

[5] Thus: Tot, I., Operative leasing, doctoral dissertation, Zagreb, 2016, p. 306.

[6] "So named contracts are defined, for example, as: contracts which "laws specifically regulate and determine additional provisions for them in the event that the parties do not regulate their relationship" (CIGOJ, S., Comment on obligations ratios - I. book, Časopisni zavod Uradni list SR Slovenia, Ljubljana, 1984, p. 122); "those contract types regulated by the law governing contractual relations" (Goldštajn, A., Commercial contract law – International and comparative , Narodne novine, Zagreb, 1991, p. 12); contracts "whose content, form and legal effects are regulated by the regulations of positive law" (Horak, H., Dumančić, K., Preložnjak, B. and Šafranko, Z., Introduction to trade law, HDK and partners, Zagreb, 2011 , page 75); contracts "which, due to their importance and frequency in legal transactions, are specifically provided for and regulated by the law and whose name is determined by the law itself" (Perović, S., Obligaciono pravo - Knjiga priva , Službeni list SFRJ, Belgrade, 1981, p. 192.); contracts "which are expressly regulated by law, i.e. for which the name is determined and the most important content is prescribed" (Radišić, J., Obligaciono pravo - Opšti deo, Savremena administracija, Belgrade, 1990, p. 130)" taken from : ibid. p. 307.

would be characteristic, and contracts whose contents and name are not established in business practice would be non-characteristic.

On the other hand, unnamed or innominate contracts[7] are such contracts that are unsettled in their contents, but also in their name[8]. However, it is necessary to include in this category those contracts that have an established content and name in economic relations, but are not regulated by law as special types of contracts. Relying on the foregoing on the named contracts, it can be pointed out that unnamed contracts are such contracts that are not legally regulated types of contracts. Given that unnamed contracts are created in economic relations and are formed as such in their name and contents, it is possible to determine them as characteristic and non-characteristic. Contracts whose characteristic contents and name are generally accepted in business[9] practice would be characteristic, and contracts whose contents and name are not established in business practice would be non-characteristic.

This brings us to the important question that arises in this paper: whether the content of the legal norms of the named contracts is applied to contracts that are not regulated by law, and if so, by what method are these legal norms applied? First, it is necessary to divide contracts into named and unnamed contracts and to add the division of contracts into mixed contracts and sui generis contracts. Mixed contracts are, as the name suggests[10], such contracts whose contents have the characteristics of two or more legally regulated contracts, along with the fact of depending on the dominance of a certain legally regulated type of contract, the implementer of the norm may decide to bring such a contractual relationship in its entirety under one type of contract regulated by law[11]. Equally, if in a 0073pecific contract there is no dominance of one type of contract regulated by law, it is possible to apply to the specific contractual relationship the provisions of several types of contract regulated by law. Contracts sui generis are contracts that, by their characteristics, are such that the application of the norms of one or more legally regulated contracts would be contrary to the goal of the

[7] "For unnamed or innominate contracts, it is often pointed out in the legal literature: that they "are concluded less often, have not been typified, and often do not have a special name"; (Gorenc, V., Trgovačko pravo – udvori , Školska knjiga, Zagreb, 1997. p. 42), that we are talking about contracts "in which neither the content nor the name have been established and typified" (Klarić, P. and Vedriš, M., Građansko pravo , Narodne novine, Zagreb, 2009, p. 110), "which have not yet been typed in circulation and do not have a special name of their own"; (Vizner in: Vizner, B., Kapor, V. and Carić, S., Contracts of civil and economic law , Rijeka tiskara, Rijeka, 1971, p. 20), whose content "is not yet sufficiently established and does not appear so often" (Vučković, M., Obligaciono pravo , Savremena administracija, Belgrade, 1989. p. 62)" taken from: ibid. p. 308.

[8] On "innominate" contracts in judicial practice, for example: Supreme court of the republic of Croatia, number: rev-x 258/14-2 of april 30, 2014; constitutional court of the Republic of Croatia, Number: U-III/3449/2014, dated October 3, 2018. Furthermore, the same term is used by competent bodies of the Republic of Croatia, for example: Ministry of finance, Tax Administration, Class number: 423-08/13- 01/136 , Order number: 513-07-21-01/13-2 from December 11. 2013.

[9] For example, Goldstein defines unnamed contracts as "typical" and "atypical". Goldštajn, A., Commercial contract law – International and comparative, Narodne novine, Zagreb, 1991, p. 13. On mixed contracts: Slakoper, Z., and Gorenc, V., with the collaboration of Bukovac Puvača, M., Obligatory law - General part - Conclusion, changes and termination of contracts , Novi informator, Zagreb, 2009, p. 238.

[10] On mixed contracts: Slakoper, Z., and Gorenc, V., with the collaboration of Bukovac Puvača, M., Obligatory law - General part - Conclusion, changes and termination of contracts , Novi informator, Zagreb, 2009, p. 238.

[11] "a contract whereby one or both parties simultaneously assume obligations characteristic not only of one type of contract but of several types of contract" ibid.

contracting parties[12]. From the above, it is possible to conclude that mixed contracts and sui generis contracts are not synonymous[13].

It can be concluded that mixed contracts and sui generis contracts are such contracts that represent the uniqueness of the rights and obligations of the contracting parties in relation to all other contracts. In the context of the analysis of contracts on business cooperation, that is, on the entrustment of secondary activities, it is also important to theoretically discuss the application of the provisions of legally regulated contracts to mixed contracts and *sui generis* contracts.

For mixed contracts, as well as for all types of contracts, it is important first of all to determine the will of the parties when concluding the contract. As a kind of "preliminary question", it is important to understand what the parties want to achieve with the contract. In a contractual relationship, i.e. a contract that has been created by combining different types of contracts regulated by law, so that the elements of two or more types of contracts regulated by law find their place in the concrete contract through the rights and obligations of the contracting parties, the implementer of the norm applies the provisions of different legally regulated contracts[14]. This is possible if the legal provisions allow such application of various provisions of legally regulated contracts. However, there are also provisions in Croatian legislation that direct the applicator of the norm to a specific type of contract established by law. Thus, the provisions of the Law on *Obligatory Relations* (hereinafter: ZOO)[15] refer to the absorption of mixed contracts under the contracts regulated by that law[16].

It is highlighted that sui generis contracts are such contracts where the main rights and obligations cannot be subsumed under any of the named contracts, i.e. types of contracts regulated by law. Thus, sui generis contracts, as well as other unnamed contracts, are those contracts that are designated by a specific name in the law but are not regulated in such a way that the rights and obligations of the parties in that contract are fully determined. Such contracts should be called unnamed contracts. Unnamed contracts include types of contracts not regulated by, law established in business practice and contractual relationships that occur in business practice with such specific contents that they cannot be assigned either to types of contracts regulated by law or to types of contracts not regulated by law, established in business practice. Unnamed contracts are best classified as mixed contracts and sui generis contracts. Mixed contracts are types of unnamed contracts that are not regulated by law, and whose characteristic content is composed of elements that are part of the characteristic contents of at least two types of contracts regulated by law. Certain types of contracts that are regulated by law can also be regulated by law in such a way that their characteristic contents are made up of elements of other types of contracts regulated by law, but in the case of such legal mixing, the named contracts will be referred to as special types of contracts regulated by law. Unnamed contracts, the content of which is so specific and inherent in itself that the direct application of the legal norms regulating certain types of contracts

---

[12] Also: Tot, I., Type of contract regulated by law, mixed contracts and sui generis contracts, Liber amicorum Aldo Radolović, Faculty of Law in Rijeka, Rijeka, 2018, p. 591.

[13] There are different opinions in Croatian legal theory. For example, a contract on a current account is labelled as both a mixed contract and a sui generis contract in: HORVAT, L., Legal nature of a current account, Proceedings of the Faculty of Law of the University of Rijeka, vol. 11, no. 1/1990, p. 97.

[14] Also: Oetker, H., and Maultzsch, F., Vertragliche Schuldverhältnisse , Springer, Berlin – Heidelberg – New York, 2004. p. 821.; Stoffels, M. , Gesetzlich nicht regülete Schuldverträge: Rechtsfindung und Inhaltskontrolle , Mohr Siebeck, Tübingen, 2001, p. 141.

[15] Law on Obligatory Relations, Official Gazette, 35/05, 41/08, 125/11, 78/15, 29/18, 126/21, 114/22, 156/22.

[16] The ZOO thus determines in the provisions: Article 301. Application of the rules on condition, Article 472. Application of the rules on purchase and sale with instalment payment of the price to other contracts, Article 851. Application of the rules on contracts on commission and commercial representation.

to such a contract would be contrary to the goal for which the contracting parties have concluded this type of contract, and not some unnamed contract or some mixed contract, are contracts *sui generis*[17].

1.3. On the concession contract as an administrative contract in the context of the business cooperation contract

Generally speaking, an administrative contract is a bilateral legal act that the state, or another public legal body, concludes with a third person (natural or legal) for the purpose of achieving a specific goal of wider social interest, under the conditions established by special regulations[18].

The first characteristic of administrative contracts is that one party is always a person under public law: the state, a unit of regional or local self-government and their bodies, but also legal entities that are financed entirely or to a certain significant extent from the state budget or another public budget (public institutions, public companies, etc.). Another characteristic is that by entering into such a contract, the public legal body wants to realise a certain public interest, which can be different, and basically boils down to the satisfaction of a certain public need. The third characteristic is that certain, perhaps the most important issues, are governed by the norms of public law - the procedure that precedes the selection of a private law entity, the very selection of the entity that will be offered the conclusion of a public contract, the issue of the legal protection of entities that are not offered to conclude such a contract, the procedure for amending the contract during the duration of the contractual relationship, etc.[19]

The provisions of the Law on General Administrative Procedure[20], which have standardised and determined the framework contents of administrative contracts, as well as the provisions of the ZPDML, unreservedly indicate that concession contracts are administrative contracts. The concession contract as regulated by the ZPDML meets all the conditions set by the Law on General Administrative Procedure for such contracts to be considered administrative contracts[21].

Thereby in the concession contract, on the one hand, there is always a public law body[22], [23] the contract is concluded based on the decision on the concession, made in an administrative procedure[24], and the

---

[17] Thus: TOT, I., Type of contract regulated by law, mixed contracts and sui generis contracts, Liber amicorum Aldo Radolović, Faculty of Law in Rijeka, Rijeka, 2018, p. 612.

[18] Thus: BORKOVIĆ, I., Administrative contracts , Proceedings of the Faculty of Law in Split, vol. 30., no. 2., 1993, p. 423.

[19] Aviani, D., and Đerđa D.: Current issues of the legal regulation of administrative contracts in Croatian law, Proceedings of the Faculty of Law in Split, Split, year 48, 3/2011, p. 474 – 475.

[20] Law on General Administrative Procedure, Official Gazette 47/09, 110/21.

[21] More about it: Đerđa, D., Concessions, Croatian legal review, no. 2, Zagreb, 2015, p. 55-64.

[22] Pursuant to Art. 7. According to the Law on Concessions (Official Gazette 69/17, 107/20), concession providers can be: 1. the Croatian Parliament and the Government of the Republic of Croatia, on behalf of the Republic of Croatia, 2. the state administration body, on behalf of the Republic of Croatia, 3. the competent authority of the unit local and regional (regional) self-government, on behalf of the unit of local and regional (regional) self-government, and 4. a legal entity authorised by special laws to grant a concession.

[23] The term public law body means: state administration bodies, other state bodies, bodies of local and regional self-government units, legal entities that have public powers when they act and resolve administrative matters within the scope established on the basis of the law (Article 1 of the Law on general administrative procedure).

[24] "The process of awarding a concession is considered to have started on the day of the publication of the grantor's notice on the intention to grant the concession." This notice must be published in the "Narodne novine", and after that it can be published in its unchanged contents in other means of public communication and on the grantor's website. The deadline for submitting the offer must not be shorter than thirty (30) days from the date of publication of the notice in the "Narodne novine". Administrative proceedings can, in accordance

conclusion of the contract is prescribed by law[25]. The ZPDML expressly determines that it is an administrative contract[26] and that all the prerequisites for the concession contract to be characterised as an administrative contract are fulfilled. Certainly, placing the provisions on the concession agreement on the maritime domain from the ZPDML as lex specialis on the *Law on Concessions*[27] as *lex generalis*, is one of the basic goals of the Government of the Republic of Croatia[28] when it proposed the amendment to the ZPDML. The legislator wants the provisions from the Law on Concessions to be fully linked with the provisions on concessions from the ZPDML[29].

Therefore the contract on the concession on the maritime property is an administrative contract[30] that is vitally and inextricably linked to the decision on the concession on the maritime domain. It is the decision on the concession in the maritime domain that determines with which person the concession provider will enter into a concession contract and under what conditions, that is, the rights and obligations of the parties to the concession contract, are determined. With the termination of the validity of the decision on the concession in the maritime domain, the concession contract also ceases to be valid. This means that the concession decision and the concession contract are interrelated with the fact that the concession contract exists only if there is a concession decision on the maritime domain. The decision on the concession of the maritime domain has greater legal force than the concession contract, and must be in accordance with the decision. It is important to note that the decision on the concession in the maritime domain is preceded by a tender procedure, in which the content of the tender is actually the legal framework for the future decision on the concession and the concession contract. It may therefore be said that the tender procedure precedes the determination of rights and obligations determined by future acts; with the decision and agreement on the concession on the maritime domain.

The concession contract is concluded on the one hand, by a public legal body based on the authority it has for the concession on the maritime property for which it is competent, and on the other hand, by a legal or natural entity, as specified in the concession decision. Furthermore, the contract is concluded based on the decision on the concession on the maritime domain within a certain period (this period being usually determined in the concession decision of the grantor of the concession on the maritime domain). Most often, this period

---

with the provisions of the ZUP, be initiated in three ways: ex officio, at the request of a party, and by public announcement, in Split, year 48, Split, 2/2011, p. 433.

[25] "...that it is only necessary that the contract meets the necessary conditions and that its conclusion is prescribed by law. As we have explained earlier in the paper, we believe that the concession contract has met all the conditions analysed so far, thereby making it an administrative contract. Therefore, we are of the opinion that the necessity of an explicit legal prescription that a contract is an administrative contract is an unnecessary insistence on formalism, and we consider the concession contract, and ipso lege, an administrative contract." Ibid. p. 436.

[26] "A contract on a concession on a maritime domain is an administrative contract", ZPDML, art. 48, paragraph 5.

[27] Law on Concessions, Official Gazette, 69/17, 107/20.

[28] Government of the Republic of Croatia, Proposal no. 439 of the Law on Maritime Property and Sea Ports, Zagreb, 2022, p. 1.: "Furthermore, on July 22, 2017, the new Law on Concessions came into force ("Official Gazette", no. 69/17 and 107/20), which introduced a number of newspapers related to the process of granting concessions, concession contracts, concession termination, legal protection in concession granting procedures and concession policy in its entirety. Since the concession is the fundamental legal institute on the basis of which maritime assets are economically used, the need for significant changes to the current Act has arisen, therefore it has been decided to create a new Act in order to avoid ambiguity in application and legal uncertainty."

[29] Government of the Republic of Croatia, Proposal no. 439 of the Law on Maritime Property and Sea Ports , Zagreb, 2022, p. 4.: "Basic issues regulated by the Law: - the procedure for granting concessions on maritime property is changed in order to comply with the Law on Concessions..."

[30] The Law on Concessions in Article 3, Paragraph 3 also expressly stipulates this.

starts from the adoption of the decision on the concession on the maritime domain and can vary from fifteen (15) days up to several months, depending on the previous actions necessary to conclude the contract on the concession on the maritime domain[31].

The contents of the contract, as well as all questions about the concession on the maritime domain, are determined in such a way that the ZPDML[32] refers to the Law on Concessions[33]. As business practice shows that the vast majority of business cooperation contracts are concluded for closed and open business premises in the concession area, which are either buildings or arranged open spaces, based on the principle of superficies solo credit (the building follows the legal fate of the land), which is also prescribed by the [34]ZPDML in such a way that it determines that: "buildings and other objects on the maritime domain that are permanently connected to the maritime domain belong to it."[35] , that is, the connection between the concession contract and the business cooperation contract is inseparable[36].

This fundamental approach represents the framework in certain segments of contracting outside which the parties to the contract on business cooperation cannot contract (lat. *Nemo plus iuris ad alium transferre potest quam ipse habet*)[37].

2. GENERAL REMARKS ABOUT THE CONTENT OF BUSINESS COOPERATION AGREEMENTS IN THE CONTEXT OF COMPARISON WITH LEASE AGREEMENTS

A contract on business cooperation[38] concluded by a concessionaire and an economic entity[39], regardless of the economic activity in which the contract is concluded, is always a bilaterally binding contract in

---

[31] General about the legal nature of the concession contract in the literature: Đerđa, D., Legal nature of the concession decision, Croatian public administration, no. 1. Zagreb, 2006, p. 92.; Đerđa, D., Concession Agreement , Croatian Public Administration, no. 3., Zagreb, 2006, p. 105th; Žuvela, M., Concessions , Croatian Law Review, no. 1 Zagreb, 2001, p. 107.

[32] Article 2 paragraph 1. ZPDML: "To all questions related to preparatory actions, concession granting procedure, concession contract, amendment of concession contract, termination of concession, transfer of concession, legal protection in concession granting procedures, concession policy, and supervision over the execution of obligations in accordance with the concession contract and special lists apply the provisions of the regulations governing concessions."

[33] The Law on Concessions regulates the contract on concessions in Chapter V of the Law, i.e. from Articles 54 to 69.

[34] About it: Marin, J., Concession and the right of ownership of buildings built on maritime land, Law in Business, Zagreb, 1998, vol. 37, p. 246-257.

[35] ZPDML, Art. 5th paragraph 3.; Art. 6. paragraph 1.

[36] Thus: "The service provider is the authorised concessionaire who, based on the "CONTRACT on the concession of maritime property for the purpose of economic use of the port of nautical tourism ..., concluded on ... with the Government of the Republic of Croatia, acquired the right to economically exploit ... m2 of land space and ... area of the port of nautical tourism - ..., and everything as shown in the graphic attachment of ... Mr. which forms an integral part of this Agreement and is given in its attachment (Attachment 1).", Article 1. paragraph 1. MARINA PUNAT dd , Agreement on business cooperation with the right to use business premises, Punat, 2023;

[37] The principle according to which no one can transfer more rights to another than he has himself.

[38] A contract on business cooperation is a contract that does not have a definition in the ZPDML. Article 2 of the Act defines the meanings of thirty (30) expressions. Among there is no contract on secondary activities. Later in the text of the Law, the legislator also does not determine the definition of this contract.

[39] The concept of the other contracting party, in addition to the concessionaire from the contract on business cooperation, is defined by the ZPDML in Art. 61, paragraph 4.

which obligations are assumed by both contracting parties. As a rule[40], the contract on business cooperation[41] is a complete or synallagmatic contract[42], in which both the concessionaire and the economic entity assume the main obligations that stand in the relationship of action and counteraction[43]. As with any other bilaterally binding synallagmatic contract, the main obligations of the concessionaire and the economic entity are bound to each other by both the genetic synalagm and functional synalagm. [44]The connection of the main obligations of the contracting parties to the business cooperation agreement by a genetic synalagm means that the emergence of the main obligation of one contracting party, the concessionaire, which is the transfer of space for use, depends on the emergence of the main obligation of the other contracting party, the business entity, which is the payment of monetary compensation[45]. They condition *each other*, they stand in relation to each other, and the purpose of assuming the main obligation of one contractual party is to assume the main obligation of the other contractual party. The connection of the main obligations by a functional synalagm means that, in principle, each of the contractual parties must fulfil its main obligation, at the same time as receiving the fulfilment of the main obligation of the other contractual party. As with the conclusion of any other bilaterally binding synalagmatic contract, the conclusion of a contract on business cooperation between the concessionaire and the economic entity as contracting parties to the contract on business cooperation creates a binding relationship in a broader sense, as the totality of various obligations and duties of the contracting parties arise from the same source, i.e. from the contract on business cooperation. Obligatory relationship, in the broadest sense, which is created by a contract on business cooperation, is composed of a series of individual mandatory relationships that are interconnected by the same source and common purpose, that is, of a series of mandatory relationships in the narrower sense, as legal relationships in which one of the contracting parties to the contract on business cooperation obligates the other to some action[46]. Therefore, within the framework of the contractual relationship between the concessionaire and the economic entity as an obligatory relationship in a broader sense, it is

---

[40] On bilaterally binding contracts in general, see, for example, in the literature: Slakoper in: Slakoper, Z. and Gorenc, V., with the collaboration of Bukovac Puvača, M., Obligatory law – General part – Conclusion, changes and termination of contracts , Novi informator, Zagreb, 2009, p. 236.; Bydlinski, P., Bürgerliches Recht – Band I – Allgemeiner Teil , Springer, Wien – New York, 2007, p. 102.; Kolmasch, W., Von Verträgen und Rechtsgeschäften überhaupt , in: Schwimann, M. (ed.), ABGB Taschenkommentar , LexisNexis Verlag, Wien, 2010, p. 519.; Medicius, D., Grundwissen zum Bürgerlichen Recht , Carl Heymanns Verlag, Cologne – Berlin – Munich, 2004, p. 25.

[41] Croatian business practice and legal solutions called business cooperation contracts, as defined by ZPDML, differently. For the purposes of this scientific paper, the difference in the legal and business names of this contract is not decisive.

[42] It is also called a reciprocal contract. Such are certainly the contracts on business cooperation in ports of nautical tourism; for example: ADRIATIC CROATIA INTERNATIONAL CLUB dd, Agreement on lease of premises , Rijeka, 2023; MARINA SIGNUM dd, Business Cooperation Agreement , Sutomiščica, 2023; MARINA PUNAT dd, Agreement on business cooperation with the right to use business premises , Punat, 2023.

[43] On complete or synalagmatic contracts in general, see, for example, in: Slakoper in: Slakoper, Z. and Gorenc, V., with the collaboration of Bukovac Puvača, M., Obligatory law - General part - Conclusion, changes and termination of contracts , New informant, Zagreb, 2009, p. 237.; Bydlinski, P., Bürgerliches Recht – Band I – Allgemeiner Teil , Springer, Wien – New York, 2007, p. 102.; Kolmasch, W., Von Verträgen und Rechtsgeschäften überhaupt , in: Schwimann, M. (ed.), ABGB Taschenkommentar , LexisNexis Verlag, Wien, 2010, p. 519.; Medicius, D., Grundwissen zum Bürgerlichen Recht , Carl Heymanns Verlag, Cologne – Berlin – Munich, 2004, p. 5.

[44] On genetic and functional synalagma in contracts, see, for example, in: KOLMASCH, W., Von Verträgen und Rechtsgeschäften überhaupt , in: Schwimann, M. (ed.), ABGB Taschenkommentar , LexisNexis Verlag, Wien, 2010, p. 519.

[45] Analysing business practice, and on the principle of In concetionibus contrahentium voluntatem potius quam verba spectari placuit , the interdependence of these main actions of the concessionaire and the economic entity has been undoubtedly established.

[46] On the obligatory relationship in the broad sense and the obligatory relationship in the narrow sense in general, see, for example, in: Kolmasch, W., Von Verträgen und Rechtsgeschäften überhaupt, in: Schwimann, M. (ed.), ABGB Taschenkommentar , LexisNexis Verlag, Wien, 2010, p. 518.

necessary to distinguish between main obligations and secondary obligations, as well as other rights and obligations that do not represent main and secondary rights and obligations, and are part of the contractual relations from the business contract cooperation.

The main obligations of the contracting parties to the business cooperation agreement include such obligations of the contracting parties, as well as for some other type of contract characteristic obligations that are, as a rule, the reason why the contracting parties enter into a contract of a certain type of contract, and secondary obligations of the contracting parties that can be independent in relation to the main obligations of the contracting parties and are not dependent on the main obligation, as well as secondary obligations that are dependent on the existence of the main obligation, existing only with the existence of the main obligation[47]. Secondary obligations arise as a result of the non-fulfilment of some of the main obligations, and a typical example of a secondary obligation is the obligation to compensate damages suffered by one contractual party as a result of a complete non-fulfilment, or some other form of non-compliance with the main obligation of the other contractual party. When discussing other rights and obligations that do not represent main and secondary rights and obligations and are part of the contractual relations from the business cooperation agreement, these represent unenforceable rules of conduct, the non-compliance of which does not lead to a request for fulfilment or a request for compensation for damages, resulting only in a worsening of one's own legal position[48]. Furthermore, rights that do not belong to the main and secondary rights and obligations pertain to the right to change the legal relationship by a unilateral declaration of will, and typical examples of such rights are the rights to cancel the contract and the right to terminate the contract[49]. The mandatory relationship between the concessionaire and the economic entity, understood as the totality of all relationships (rights and obligations) arising between the concessionaire and the economic entity, based on the business cooperation agreement as a bilaterally binding synallagmatic contract, is usually a more permanent mandatory relationship. More permanent binding relationships can be entered into for a fixed or indefinite period of time, and as a rule, obligations are contracted that last continuously for a certain period of time or obligations that are repeated, as a rule, at monthly intervals.

In order to be able to determine whether a contract on business cooperation is a special type of contract, it is necessary to determine the main obligations of the concessionaire and the business entity, because certain types of contracts differ primarily in terms of the main obligations of the contracting parties. It is for this reason that the main obligations of the concessionaire and the business entity in the business cooperation agreement will be discussed below.

Secondary obligations, as well as other rights and obligations that do not represent main and secondary rights and obligations, and are part of the contractual relations from the contract on business cooperation, arising for the contracting parties, differ in principle, depending on the business logic and strategy of the concessionaire of the nautical tourism port.

By contracting certain secondary obligations, such as the obligation of one of the parties to maintain the facility agreed upon in the business cooperation agreement, as well as other rights and obligations that do not represent main and secondary rights and obligations, and are part of the contractual relations from the business

---

[47] On main obligations and secondary obligations, see also: Slakoper in: Slakoper, Z., and Gorenc, V., with the collaboration of Bukovac Puvača, M., Obligatory law – General part – Conclusion, changes and termination of contracts , Novi informator, Zagreb, 2009 g., p. 228 - 229; Kolmasch, W., Von Verträgen und Rechtsgeschäften überhaupt , in: Schwimann, M. (ed.), ABGB Taschenkommentar , LexisNexis Verlag, Wien, 2010, p. 518 - 519.

[48] Also: Kolmasch, W., Von Verträgen und Rechtsgeschäften überhaupt, in: Schwimann, M. (ed.), ABGB Taschenkommentar, LexisNexis Verlag, Wien, 2010, p. 519.

[49] Ibid.

cooperation agreement, are entered into the contents of the contract on business cooperation, elements characteristic of other types of contracts. Therefore, in principle, a more detailed analysis of secondary obligations, as well as other rights and obligations that do not represent main and secondary rights and obligations, and are part of contractual relations from a business cooperation agreement, is not suitable for determining the characteristic contents of a business cooperation agreement and its comparison with a lease agreement.

3. DISTINCTION OF BUSINESS COOPERATION AGREEMENT WITH LEASE AGREEMENT

3.1. Basic characteristics of lease agreements and business cooperation agreements

Leasing business in the economic sense is understood as work undertaken between two participants, the lessor and the lessee, which has the purpose of handing over the object of the lease to the lessee for paid use, understood in the economic sense, and not the sense of civil law, and which is legally realised through a contract about the lease.

Business from the contract on business cooperation in nautical tourism ports[50] is understood as such business, according to its real, factual and economic characteristics in Croatian business practice. After determining the characteristics of the business from the business cooperation agreement in comparison with the leasing business, the analysis of the adequacy of the legislative arrangement of the business from the business cooperation agreement in Croatian law with the provisions of the ZPDML will be started.

A lease agreement is, along with a sale or purchase agreement, probably one of the most common contracts that appear in practice, and according to Croatian legal theory, it belongs to contracts on the temporary transfer and use of goods[51]. The contract on business cooperation in the concession area is a relatively common legal occurrence on maritime property on the Croatian coast. The state-owned company ACI, which has twenty-two (22) ports of nautical tourism on the Croatian coast, has left almost all secondary activities of the marine business to third parties through a business cooperation agreement[52]. Other ports of nautical tourism perform some secondary activities themselves, and, as far as others are concerned, they conclude contracts on business cooperation.

---

[50] Here it is important to distinguish between the term "work from the contract on secondary activities" and the "contract on secondary activities" itself. These are two terms that cannot be synonyms, but which are sometimes equated in business practice. Certainly, the business from the contract on secondary activities is a set of actions and procedures undertaken by the participants in the business, which, in addition to the main and main actions related to the conclusion of the contract on secondary activities, also include other activities. In addition to contracting, the work from the contract on secondary activities also assumes various negotiations, information, possible tenders, and all those procedures that are closed by concluding a contract on secondary activities. On the other hand, the contract on secondary activities represents the final acts of the work, which is conceptually narrower than the work from the leasing contract. It represents the totality of all procedures by which the parties regulate mutual rights and obligations.

[51] Gorenc, V., and others, Commentary on the Law on Obligatory Relations , Narodne novine, Zagreb, 2014, p. 869 - 908.

[52] https://aci-marinas.com/hr/ (visited on 18.7.2023)

The general regulation of the lease agreement[53] is prescribed by the provisions of articles 519 to 549, with the fact that according to the provision of article 520 of the ZOO, the general provisions of the ZOO on the lease contract shall not be applied to special types of leases, except as secondary. This means that the provisions of the ZOO on leases will apply to special types of leases unless otherwise prescribed by special regulations. ZPDML regulates secondary activities in Article 61, with the additional provision concerning misdemeanour, as stated in Article 203 of the same Act.

According to the provisions of Art. 519 of the ZOO, a lease agreement is a contract by which one contracting party - the lessor - obligates the other contracting party - the lessee, to hand over a certain thing for use, and that other contracting party is obliged to pay monetary compensation or rent for it. From the provision of the ZOO, it is evident that the parties to the lease agreement are the lessor and the lessee, that the subject of the contract is the delivery of certain things by the lessor for use by the lessee, and that there is an obligation of the lessee to pay the lessor a certain fee (rent) for that use. The nomotechnique of regulating side activities from Article 61 ZPDML is different. The law does not define the concept of a contract on business cooperation. The law defines the concept of secondary activity in such a way that it is "an activity in the field of services that are carried out in the area given in the concession by legal entities or craftsmen as supplementary and related to the basic purpose of the concession that does not require the construction of buildings and is governed by a contract on business cooperation."[54] Croatian business practice also does not define the concept of a contract on business cooperation. Namely, no provisions have been noticed in the observed contracts that would even indirectly define the contract.

According to different criteria, the lease agreement is a designated (type regulated by law) agreement because the name and its contents are determined and prescribed by the ZOO, but also by other regulations. Therefore the lease agreement is a payment agreement, because, for the action of the lessor (providing things for use), a counteraction of the lessee is given in the form of him paying the rent. The lease agreement is a bilateral binding agreement because the interdependent obligation arises for both the lessor and the lessee. A lease contract is a commutative contract because the actions and counter-actions are already known to the parties at the time of the conclusion of the lease contract. Finally, the lease agreement is an informal and consensual agreement, which means that no special form of agreement is prescribed for the validity of the agreement, that is, the rights and obligations of the parties are created by their agreement[55].

On the other hand, the contract on business cooperation as a concept[56] is included in the legal provisions of the ZPDML, but its content is not determined by the ZPDML or other regulations. This contract, like the lease contract, has been charged because a monetary countermeasure is required for the transfer. Furthermore, the contract on business cooperation is a bilaterally binding contract because, as in the case of a lease, there is an interdependence of obligations. A contract on business cooperation is also a commutative contract because at the time of signing the contract, the obligations are known to the parties to the contract. A contract on business cooperation is both an informal and a consensual contract because a special form of contract is not prescribed for the validity of the contract, that is, for the conclusion of the contract, the parties

---

[53] Lease relationships are regulated by other regulations, but for the purposes of this analysis, i.e. comparison with the contract on secondary activities, they are not relevant.

[54] ZPDML Art. 61, paragraph 1.

[55] Thus: Gorenc, V., and others, Obligatory law, Special part I., Individual contract, Novi informator, Zagreb, 2012, p. 152-181.

[56] Croatian legislation throughout the past period of passing regulations regulating this issue, as well as business practice, has called this contract differently. However, we believe that to fulfil the goal of this work, it is irrelevant to consider the different names of contracts, both in Croatian legislation and in business practice, based on the principle *De nomine proprio non est curandum in substandia nonerratur; quia nomina metabilia sunt, res autem immobiles* (One should not worry (too much) about the exact name when there is no error in the essence of things, because names are impermanent, and things are permanent).

have previously agreed on the essential components of the contract. Therefore, it can be clearly concluded that the essential components of the contract on business cooperation are the subject of secondary activity and the amount of monetary compensation, so the contract is formed when the contracting parties agree on these essential elements.

In the context of this analysis, it is important to analyse the duration of the lease agreement, that is, the business cooperation agreement. ZOO has no provisions on the duration of the lease agreement[57]. This is logical considering that the right of ownership as a real legal institute has no time limit[58]. On the other hand, the concessionaire and the economic entity, as parties to the business cooperation agreement, are limited in the provisions of contracting the duration of the business cooperation agreement, by the concession agreement between the grantor and recipient of the concession, that is the concessionaire from the business cooperation agreement. Therefore the concessionaire is limited in terms of the duration of the contract in concluding a contract on business cooperation by the term of the concession from the concession contract. The concessionaire cannot conclude a contract on business cooperation for a longer term than the duration of the concession, i.e. the validity of the concession contract.

The subject of the contract on business cooperation itself, as with the lease, can be real estate, movable property, but also law[59]. For the purposes of this scientific paper, the analysis is focused on the contract on business cooperation for closed business premises, because they represent the majority of contractual relationships in Croatian business practice. In this case, it is necessary that the concessionaire has a valid concession contract, in contrast to a lease in which the right of ownership is not a necessary precondition of the subject of the lease[60]. On the other hand, when discussing the rent, i.e. the compensation paid by the business entity to the concessionaire, then, as a rule, the rent and compensation are determined in a monthly amount, but it is possible for the parties to determine it in other time periods (quarterly, semi-annually, annually, or shorter: daily or weekly). In this case, the amount of the rent can be determined, based on the element that the parties have agreed, and it is also possible to agree that the amount of the rent will change, for example, depending on the movement of retail prices, on the level of the inflation rate, and the like. In practice, however, one often comes across cases where the amount of rent is fixed, in a fixed monetary amount.

One of the essential characteristics of a lease agreement and a business cooperation agreement as an agreement on the temporary transfer of the use of things is that the lessee, i.e. a business entity, does not acquire the right of ownership on the subject of the lease, i.e. on part of the concession area, in contrast to, for example, a loan where he acquires the right of ownership of borrowed things. Likewise, the fact that the lessee

---

[57] On the permanent binding relationship in general, see, for example, Markesinis, Sir B., Unberath, H. and Johnston, A., The German Law of Contract – A Comparative Treatise , Hart Publishing, Oxford – Portland, 2006, p. 534.; Bassenge, P., Brudermüller, G., Diederichsen, U., Edenhofer, W., Heinrichs, H., Heldrich, A., Putzo, H., Sprau, H., Thomas, H. and Weidenkaff, W. (ed.), Palandt - Bürgerliches Gesetzbuch , 62nd edition, Verlag CH Beck, Munich, 2003, p. 718.

[58] In Croatian literature, the same: Ćesić, Z., Lease contract , in: Gorenc, V. (ed.), Commentary on the Law on Obligatory Obligations , RRiF Plus, Zagreb, 2005, p. 835.; Kačer, H. and Slakoper, Z., Lease contract , in: Gorenc, V., Kačer, H., Momčinović, H., Slakoper, Z., Vukmir, B. and Belanić, L., Obligatory law - Special part I. - Individual contracts, Novi informator, Zagreb, 2012, p. 156.

[59] The concept of real estate and movable property is governed by the Law on Property and Other Real Rights, Official Gazette, no. 91/96, 68/98, 137/99, 22/00, 73/00, 129/00, 114/01, 79/06, 141/06, 146/08, 38/09, 153/09, 143/ 12, 152/14, 81/15, 94/17, in Article 2, Paragraphs 3 and 4 and Article 9 (hereinafter: ZV)

[60] "Therefore, the auditor's repeatedly repeated assertion during this procedure that the plaintiff is not the owner of the tourist and hospitality complex M.Š., is not relevant to the outcome of this dispute. The fact that the plaintiff is not the owner, but possibly a third party, could be relevant in the procedure in which the auditor (lessee) would emphasise a certain claim against the plaintiff (lessor) on the basis of his responsibility for legal deficiencies." Supreme Court of the Republic of Croatia, Number: Rev. 663/1998-2 of April 3, 2004.

from the lease agreement, or the business entity from the business cooperation agreement, has obtained possession of an item, means that they are the direct owners of the leased space, i.e., part of the concession area (things), but on the other hand, he is not an independent owner of the[61] said thing.[62] It is important to point out that the lessee, as a non-independent owner, does not have the conditions to acquire ownership of the subject of the lease by succession[63], as well as the economic entity from the business cooperation agreement, on any real legal basis. [64]In addition to the payment of rent from the lease agreement, i.e. financial compensation from the business cooperation agreement, as a rule, the lessee, i.e. the business entity, also bears some other costs, for example, the costs of electricity, water, taxes, common reserves, and in practice such provisions are included in the contracts on lease and contracts on business cooperation.

3.2. Form of the lease agreement and business cooperation agreement

ZOO is based on the basic informality of the contract, so these general provisions also apply to the lease contract. Relying on the provisions of the ZPDML that prescribe the written form of the concession contract, and do not prescribe the form of the business cooperation contract, it should be noted that the written form in the practice of nautical tourism ports is unambiguous in the sense that contracts are always concluded in written form. Finally, this is directly referred to by the provision of Article 61, Paragraph 2, which reads: "The concessionaire is obliged to submit the contract on business cooperation, together with proof that there are no reasons for the exclusion of the business entity from the concession award procedure, to the body referred to in Article 52, Paragraph 7 of this Act for the purpose of granting consent." From this provision, it is clear and legally logical that the concessionaire must contact the concession grantor in such a way as to physically deliver the business cooperation contract to the concession grantor for approval. [65]An important consequence of such an obligation is that the contract on business cooperation "comes into force on the day of obtaining the consent" of the concession provider[66], while in the case of a lease, the contract comes into force when the parties agree on the essential components of the contract[67].

In some cases of leases, and the business practice from the business cooperation agreement does not comply with this, it is also required that the signatures of the contracting parties are certified[68]. In this case, the written form should be distinguished from the certification of the signature, because the written form is a condition for the legal validity of the contract when it is prescribed.

It is important to conclude that, unlike the lease agreement, which does not have a default written form, in the case of the business cooperation agreement, it follows from the legal provisions that the written form is mandatory.

---

[61] Article 10, paragraph 2, ZV.
[62] Article 11. ZV.
[63] Article 159. ZV.
[64] Article 5 paragraphs 1 and 2 ZPDML
[65] ZPDML prescribes misdemeanour provisions in Art. 203, Paragraph 1. t. 2." if he does not submit a contract on business cooperation, together with proof that there are no reasons for the exclusion of the economic entity from the concession awarding procedure, to the authority referred to in Article 52, Paragraph 7. of this Act for the purpose of granting consent (Article 61, Paragraph 2)"
[66] ZPDML, Art. 61. paragraph 3.
[67] "... consensual contract - the rights and obligations of the parties are created by their agreement," thus: KONTREC, D., Lease as an Institute of Obligatory and Real Law, Proceedings of the Faculty of Law of the University of Rijeka v. 37, no. 1, 2016, p. 646.
[68] In order for the lease agreement to be registered in the land register, as a special prerequisite for registration, with a special clause allowing the registration of the lease right in the land register. Thus: GORENC, V., and others, Obligatory law, Special part I., Individual contract, Novi informator, Zagreb, 2012, p. 159.

3.3. Obligations of lessor and concessionaire

As has already been pointed out, the lease and business cooperation contracts are bilaterally binding contracts, which means that there are obligations for both contracting parties. When discussing the basic obligations of the lessor, that is, the concessionaire, it can be said that they are: the obligation to hand over the subject of the contract to the lessee, that is, the economic entity, the obligation to maintain the subject of the lease or the subject of the business cooperation agreement, the obligation to refrain from making changes to the subject of the lease, that is, the subject of the contract on business cooperation.

The first and most important obligation of the lessor or concessionaire is to hand over the object of the lease or business cooperation agreement to the lessee[69] or business entity in a correct condition (a condition in which the lessee or business entity can use the object for the purpose for which the contracts were concluded), together with all belongings[70]. If the object of the lease, i.e. the contract on business cooperation, has not been handed over to the lessee, i.e. the economic entity in a correct condition[71], then the lessor and the concessionaire would be liable to the lessee, i.e. the economic entity for the material defects of the thing[72].

A further obligation of the lessor or concessionaire is to maintain the leased object in a proper condition[73], a condition that is suitable for the agreed way of using the leased object. In this case, the lessor is obliged to reimburse the lessee, and the concessionaire to the business entity, the costs incurred by the latter in connection with the maintenance of the subject of the lease agreement and business cooperation, which the lessor or the concessionaire should otherwise do[74]. If it is about the costs of small repairs caused by regular use of things, such costs are borne by the lessee and the business entity (for example, the costs of changing electrical sockets, water taps, repairs, and similar costs)[75],[76]

---

[69] Art. 521. ZOO.

[70] For example: "The contracting parties agree that the Service Provider hands over to the Service Recipient the business premises described and specified in Article 7 of this Agreement in a condition in which the business premises can be used unhindered to perform the activities described and specified in Article 9 of this Agreement.", Art. .10., Marina Punat dd, Agreement on business cooperation with the right to use business premises , Punat, 2023; " The parties agree that the Lessor gives and the Lessee leases the real estate..." Art. 1. st. 2., Adriatic Croatia International Club dd, Agreement on lease of space , Rijeka, 2023.

[71] "The contracting parties agree that the Tenant is aware of the condition of the premises described in Paragraph 1 (one) of this article and that he accepts it in the condition in which it is currently located..." Art. 1. st. 5., Adriatic Croatia International Club dd, Agreement on lease of premises , Rijeka, 2023.

[72] Putzo, H., Kauf, Tausch , in: Palandt, O. (ed.); Bassenge, P., Brudermüller, G., Diederichsen, U., Edenhofer, W., Heinrichs, H., Heldrich, A., Putzo, H., Sprau, H., Thomas, H. and Weidenkaff, W. (ed.), Palandt - Bürgerliches Gesetzbuch , 62nd edition, Verlag CH Beck, Munich, 2003, p. 648.

[73] On such an obligation of the lessor: the provisions of Art. 522, Paragraph 1, but also the lessor, Art. 553 Paragraph 1 and Art. 554, Paragraph 1 of the ZOO.

[74] For example: "If, during the term of this Agreement, it becomes necessary to maintain the business premises in question in the condition in which the Service Provider is obliged to maintain them, i.e. in a condition suitable for performing the contracted activity...", Article 11. Paragraph 1, Marina Punat dd, Agreement on business cooperation with the right to use business premises, Punat, 2023.

[75] Art. 522, Paragraphs 2, 3 and 4 of the ZOO.

[76] For example: "Costs of all repairs in the business premises that are necessary for its ongoing maintenance (regular maintenance, minor repairs of installed equipment, devices and internal installations, cleaning of the leased premises, self-painting works, repairs of all damages caused by his own fault, as well as other costs of minor modifications in the business premises that do not change the construction, arrangement, surface, purpose or external appearance of the business premises) shall be borne by xx...", Art. 8. Paragraph 5. Marina Signum dd, Business Cooperation Agreement, Sutomiščica, 2023.

Likewise, the lessor and the concessionaire are obliged to refrain from making any changes to the object of the lease, which would cause the lessee, that is, the business entity to be hindered in the use or use of that object[77]. If the changes, to which the parties have agreed, should reduce the possibility of using the subject of the contract, i.e. business premises, then the lessee, i.e, the business entity, would have the right to reduce the rent, that is, monetary compensation in the appropriate proportion[78].

3.4. Obligations of the lessee and business entity

On the other hand, the basic obligations of the lessee and business entity represent the obligations to use the items from the lease agreement and the business cooperation agreement in accordance with the contractual provisions, the obligation to bear the costs of regular use of the object of the contract, the obligation to bear the costs of minor repairs to the object of the contract, the obligation to pay rent or monetary compensation, the obligation to return the object of the contract, the obligation to inform the lessor or the concessionaire about unforeseen dangers.

It is completely clear that the lessee, or business entity, has the right to use things in accordance with the contract and as a good businessman, or as a good host, [79]depending on the characteristics of the lessee[80]. A tenant who performs a registered activity, e.g. a craftsman, must use the object of the lease as a good businessman, i.e. with increased attention, while for other persons it is required to use it in accordance with the attention of a good householder, i.e. in the way the tenant would use it if he were to use his own property[81]. It is important that the lessee uses the thing in accordance with the agreed purpose, so if he uses the thing contrary to the purpose or contrary to the contract and someone is damaged, the lessee is responsible for the same[82].

It is also completely understandable that the costs of using items from the lease agreement and the business cooperation agreement, for example, the costs of energy and water used in the business premises, are borne by the lessee, i.e. the business entity, just as they bear the costs of minor repairs[83]. Whether a repair

---

[77] Of the observed business cooperation contracts, not a single contract has this kind of provision, but according to the logic of leaning this contract on the lease contract, it can be concluded that the concessionaire must also refrain from making changes during the duration of the business cooperation contract.

[78] Art. 524, Paragraphs 1 and 2 of the ZOO.

[79] For example: "... undertakes to use and properly maintain the business premises in perfect functional and safety condition with the attention of an orderly and conscientious businessman and host", Art. 8. Paragraph 1. Marina Signum dd, Contract on business cooperation, Sutomiščica, 2023

[80] "Accidental" destruction or damage to things is understood as such destruction or damage to things for which the participants of that legal transaction are not responsible, i.e., which they did not cause with their own intention or carelessness, which includes destruction or damage to things that cannot be attributed to the fault of any person, as well as destruction or damage to things that can be attributed to the fault of a third person who is not a participant in that legal transaction and whose fault cannot be attributed to the fault of one of the participants in that legal transaction. Thus: Gorenc, V. (ed.), Commentary on the Obligatory Obligations Act, RRiF Plus, Zagreb, 2005, p. 583.; Gorenc, V. (ed.), Commentary on the Law on Obligatory Relations, Narodne novine, Zagreb, 2014, p. 639.

[81] Gorenc, V. (ed.), Commentary on the Law on Obligations , RRiF Plus, Zagreb, 2005, p. 831.

[82] Momčinović, H., Obligatory law contracts – First book, Narodne novine, Zagreb, 1987, p. 3rd; GORENC, V. (ed.), Commentary on the Law on Obligations , RRiF Plus, Zagreb, 2005, p. 582.; Gorenc, V. (ed.), Commentary on the Law on Obligatory Relations , Narodne novine, Zagreb, 2014, p. 639.; Vedriš, M. and Klarić, P., Civil Law , Narodne novine, Zagreb, 2003, p. 477. Also in the literature from the area of the former SFRY: Slavnić, J., Contracts in the economy (according to the Law on Obligations), Scientific book, Belgrade, 1979, p. 42.; Sultanović, A., Commercial law , IRO Veselin Masleša, Sarajevo, 1980, p. 134.

[83] For example: " The tenant undertakes to bear overhead costs (utility fees, electricity, water, garbage collection, water management fees, etc.), concession costs, and public duties (tax obligations, other duties to

is minor or not is determined by other propositions of the contract, namely the amount of rent, i.e. monetary compensation, the amount of the repair costs, the importance of the repair for the continuation of the contract on lease and business cooperation, and the like.

Probably the most important obligation of the lessee and business entity is the payment of rent or monetary compensation within the terms set by the contract or the law, or if it is not agreed between them, then, as has been customary, the place in question is handed over to the lessee. Rent and monetary compensation are paid as countermeasures for handing over the object of the lease agreement and business cooperation agreement for use and suffering from the use of the object of the agreement during a certain period of its use[84]. Both the rent from the lease agreement and the financial compensation[85] from the business cooperation agreement are paid *pro usu rei*, and not *pro rei*[86], as the price in the purchase agreement is paid. Therefore, instalments of rent and compensation in the business of leasing and the business of secondary activities on the maritime property have the function of compensation for the use of things. The ZOO contains dispositive provisions and gives the possibility that, unless otherwise agreed or not customary, the rent is paid semi-annually when the thing is leased for one or more years, and if it is leased for a shorter period, the rent is paid after the end of the stated time[87]. Non-payment of rent and compensation is at the same time a reason for the cancellation of the lease agreement, that is, the business cooperation agreement.

The lessee's further obligation is to return the leased item to the lessor undamaged, provided that the return is made in the place where the leased item has been handed over to the lessee. In this case, the lessee is not responsible for the normal wear and tear of the leased object caused by regular use, as well as for damages resulting from wear and tear. From the above, it could be concluded that the lessee's obligation is to keep the object of the lease during the entire duration of the lease until the object of the lease is returned to the lessor. It is the lessee's right to take away certain accessories of the leased object, which can be separated from it without destroying the leased object or damaging it[88]. The same obligation is on the part of the economic entity in the contract on business cooperation[89].

---

the local community and state administration bodies), and which are tied to space..." Art. 5. paragraph 1., Adriatic Croatia International Club dd, Agreement on lease of premises , Rijeka, 2023.

[84] Art. 3. Paragraph 2., Adriatic Croatia International Club dd, Agreement on lease of premises, Rijeka, 2023; Art. 4, Paragraph 1. MARINA SIGNUM dd, Contract on business cooperation, Sutomiščica, 2023.

[85] From the business cooperation contracts analysed, the term "compensation" is the one most frequently used.

[86] Art. 3. paragraph 2., ADRIATIC CROATIA INTERNATIONAL CLUB dd, Agreement on lease of premises, Rijeka, 2023; Art. 4, Paragraph 1. MARINA SIGNUM dd, Contract on business cooperation, Sutomiščica, 2023.

[87] None of the business cooperation contracts observed has such a provision.

[88] Kontrec, D., Lease as an Institute of Obligatory and Real Law, Proceedings of the Faculty of Law, University of Rijeka, v. 37, no. 1, 2016, p. 650.

[89] For example: "After the expiration of the agreed period from Article 2 (two) of this Agreement or in case of unilateral termination, the Tenant is obliged to return the space entrusted to him for use by this Agreement to its original state, and to free it from all persons and his belongings and hand over to the lessor immediately upon termination of the Agreement, with the payment of all due fees and current costs charged to the premises.", Art. 15. Paragraph 1., Adriatic Croatia International Club dd, Agreement on lease of premises, Rijeka, 2023; "The contracting parties agree that no later than the expiration of this Agreement, i.e. the expiration of the notice period from Article 11 of this Agreement, LA is obliged to hand over the business premises in orderly condition, free of persons and things that he brought into that premises and with all associated documents and evidence on maintenance and keys, about which the parties will draw up a handover record signed by both parties." Art. 12. Paragraph 1. MARINA SIGNUM dd, Contract on business cooperation, Sutomiščica, 2023.

The last important obligation of the lessee, or business entity, is to inform the lessor, or concessionaire, of defects and dangers. Thus, the lessee and the business entity are obliged to inform the other party of any lack of space without delay, unless the other party knows about this lack. The same applies if there is an unforeseen danger that would threaten the leased item so that the lessor and the concessionaire could take timely actions to eliminate that danger[90]. If the lessee has not informed the lessor of the observed defect or the danger, which the lessor was not aware of, then the lessee loses the right to compensation for the damage he would have suffered due to the existence of the defect or the danger, and at the same time, the lessee would be obliged to compensate the lessor[91].

4. SIMILARITIES AND DIFFERENCES BETWEEN LEASE AGREEMENTS AND BUSINESS COOPERATION AGREEMENTS

In the daily business life of marinas, a different nomotechnical approach to drafting contracts on business cooperation in nautical tourism ports, related to real estate, movable property or law, is evident. In addition, there are very few sources or practices on the legal nature of contracts on business cooperation on maritime property generally represented in legal literature and court practice, but as a rule, there are no doubts regarding the question of what the characteristic contents of contracts on business cooperation on the maritime domain in ports of nautical tourism are.

However, as the main obligations of the contracting parties of a business cooperation agreement are identical in their contents, or at least to a considerable extent similar to the main obligations of the contracting parties in certain other types of contracts regulated by law, and above all lease agreements, any doubts about the legal nature of the business cooperation agreement as an unnamed contract of Croatian law are therefore related to the following questions: can the characteristic content of a contract on business cooperation be fully subsumed under one of the types of contracts regulated by law, primarily lease contracts? Is a mixed contract the one to which the legal norms governing different types of contracts should be applied? And, finally, is it a sui generis contract the one to which the legal norms of a special part of mandatory law could be applied in a specific case only, by analogy to a limited extent?[92]

The point of view in this scientific paper on the legal nature of the contract on business cooperation is determined with regard to the elements of the legally regulated types of contracts, whose presence is determined in the contract on business cooperation, primarily the lease agreement; assessment of which of the elements of the contract on business cooperation represents the centre of gravity of the contractual relationship; and the method of applying the legal norms governing certain other types of contracts to the contractual relationship from the business cooperation contract[93].

---

[90] For example, it can be concluded that: "... is obliged to inform MS without delay in writing about the need to carry out those repairs which, in accordance with the provisions of this article, are the responsibility of MS, and to give him an appropriate deadline for their execution. An appropriate deadline is considered to be the deadline in which certain works can be carried out, taking into account the preparations, place, and circumstances and other objective circumstances under which the works must be carried out." Art. 8, Paragraph 6. Marina Signum dd, Business Cooperation Agreement, Sutomiščica, 2023.

[91] Kontrec, D., Lease as an Institute of Obligatory and Real Law, Proceedings of the Faculty of Law, University of Rijeka, v. 37, no. 1, 2016, p. 650 – 651.

[92] More about the analysis of unnamed contracts: Tot. I., Type of contract regulated by law, mixed contracts and sui generis contracts, Liber amicorum Aldo Radolović, Faculty of Law in Rijeka, Rijeka, 2018, p. 590-598.

[93] On the similarity of a lease and a contract on business cooperation, and judicial practice that defines a contract on business cooperation as a lease: "...in the way that he had a shop and earned income from a commercial space that is maritime property or leased that space and collected the rent, ...", "During the

The reasons for the clear determination of the position on the legal nature of the business cooperation agreement should be sought in the fact that, regardless of the fact that the business cooperation agreement is not regulated in Croatian law, the ZPDML as well as the entire Croatian legislative framework and the general principles of civil continental law provide very recognisable guidelines. Questions regarding the legal nature of business cooperation contracts that arise in the framework of Croatian business practice are also relevant in the context of Croatian law, despite the fact that certain aspects of business cooperation contracts are regulated by the provisions of the ZPDML, ZOO and the Law on Concessions.

The clear determination of the legal nature of business cooperation contracts can be established regardless of the number of different forms of secondary activities that are conditioned by marine business and the development of nautical tourism, undertaken on the market and the number of business cooperation contracts, which in the sphere of disposition of the contracting parties undoubtedly contain common elements. In addition, in Croatian business practice, the name business cooperation agreement has its own variations in the name, but it always represents a contract by which a concessionaire in the business of nautical tourism hands over an object, movable property or the right to use it, to an economic entity, regardless of the specific modalities of the contractual relationship, which are not decisive and do not determine the legal nature of the concrete concluded contract on business cooperation. Although this may seem notorious and banal, in the context of Croatian business practice it is necessary to emphasise that every contract concluded by a concessionaire is related to an activity in the field of services performed in the concession area by legal entities or craftsmen as supplementary and related to the basics for the purpose of a concession that does not require the construction of buildings, a contract on business cooperation.

4.1. The approach of determining the elements characteristic of a lease agreement and a business cooperation agreement

The approach that determines the legal nature of the business cooperation agreement by finding similarities between the business cooperation agreement and the lease agreement is the prevailing approach in this scientific paper. The basis of this approach is the focus of consideration on handing over the facility in the concession area for fee-based use to an economic entity.

In business practice, a business cooperation agreement is designated as a type of lease agreement, regardless of the existence of typical provisions and restrictions for a business cooperation agreement that are not typical for a lease agreement.

From this research, it is clear that the contract on business cooperation is actually an "atypical" lease contract. This opinion takes into account to a greater extent the specificities of business cooperation contracts that are not typical for a classic lease contract, such as the fact that the concessionaire is limited by the term of the concession contract[94] when concluding a business cooperation contract in terms of the length of the term for which he concludes the contract with the economic entity; furthermore, that the contract on business cooperation becomes valid not when the parties agree, but when the concession grantor gives his consent to such a contract, as well as the facts that the lease, the lease being an institution of real law, and ownership of

procedure, it was established:... - that the business was carried out in the contracted form, that is, by performing duty free shop activities, and after the cessation of that activity, by selling nautical equipment and leasing business premises,...", Supreme Court of the Republic of Croatia,

Number: Rev 636/2015-2, dated November 23, 2021; "As ACI dd is the user of the customs warehouse type E within its concession limits, and thus of the associated wharf G, which is leased by the plaintiff..." High Administrative Court of the Republic of Croatia, Number: Usž-2768/19-3 of June 10, 2021.

[94] Ljubetić, S., Pomorsko dobro - current affairs and the position of concessionaires, Law in Economy, 2, 55, Zagreb, 2016, p. 205–227.

maritime property cannot be acquired nor can they acquire some other real rights[95]. Finally, the written form of the business cooperation agreement, which is not mandatory in the lease agreement, also makes a difference between these two agreements.

The current Croatian maritime law legislative framework prohibits the conclusion of lease agreements and lease agreements on the maritime domain. The consequence of accepting such a legal definition is that the legal framework for contracting, based on the principles of disposition of the parties, must still be applied to the contract on business cooperation "in the first place", but with limitations on the real legal effects of the contract, recognising the deviations from the legal framework for the lease contract, typical of a business cooperation agreement. In case of legal gaps in the contract on business cooperation, the legal dispositive provisions for the lease contract should be applied. However, when monitoring the validity of the provisions of specific contracts, contractual deviations from the dispositive model for the lease contract are considered permissible on the basis of the "atypicality" of the contract due to the prohibition of acquiring ownership rights on the maritime domain. Considering the peculiarities of the contract on business cooperation compared to the lease contract, Croatian business and legal practice has developed the contract on business cooperation as an independent type of contract in the group of contracts whose purpose is the temporary transfer of things for use.

5. CONCLUSION

Sui generis contract respects to the greatest extent possible the freedom of contracting that is present in the business practice of contracting in Croatian marinas. According to this point of view, the provisions of other types of contracts regulated by law, primarily lease contracts, cannot be applied in their entirety to a business cooperation contract, but only certain legal provisions can be applied by analogy, and only if their application is in a particular specific justified according to the purpose of those legal norms.

A contract on business cooperation in Croatian law is a contract that has its own name in the ZPDML, but in the context of this discussion, it cannot be defined as a named contract. However, the contract on business cooperation has a characteristic content that distinguishes it from other types of contracts. A contract on business cooperation in Croatian law is a contract by which the concessionaire undertakes to hand over the subject of the contract to the economic entity for a certain period of time, and the economic entity, in return, undertakes to pay the concessionaire a fee for use. The representation of concluded contracts on business cooperation in Croatian business practice is so great that the legislator did not have the need to regulate this contract in more detail in the new ZPDML so that it could be defined as a contract on business cooperation in the context of the named contract.

Therefore, a contract on business cooperation is a legally undefined, bilaterally binding, synallagmatic, formal sui generis contract under the Croatian law.

Its similarity to the lease agreement is unmistakable, primarily because the main actions and countermeasures are the same in both the lease agreement and the business cooperation agreements, with differences related to the restrictions determined by the fact that the business cooperation agreement is concluded on the maritime domain and limited by the basic contract, which is the concession contract.

Finally, with regard to the terminology used in the provisions of the ZPDML, it should be concluded that there is a justified need to label the new type of contract differently in the ZPDML in the catalogue of contracts of Croatian law. In accordance with the Croatian nomotechnical standard, a name could be used for this contract

[95] More about it: Bolanča, D., The problem of real rights to maritime property (important novelties of the Croatian maritime legislation), Comparative maritime law, vol. 54, Zagreb, 2015, p. 327-358.

that would more clearly refer to its essence, considering that the contract on business cooperation as a term has a very wide application outside the context of ZPDM.

CONFLICT OF INTEREST: Authors declare no conflict of interest.

REFERENCES

Adriatic Croatia International Club dd. 2023. Agreement on lease of premises Rijeka.

Aviani, D., & Đerđa, D. 2011. Current issues of the legal regulation of administrative contracts in Croatian law. Proceedings of the Faculty of Law in Split, 48(3), 475-486.

Bassenge, P. et al. Eds. 2003. Palandt - Bürgerliches Gesetzbuch, 62nd edition. Munich: Verlag CH Beck.

Borković, I. 1993. Administrative contracts. Proceedings of the Faculty of Law in Split, 30(2), 417-434.

Bydlinski, P. 2007. Bürgerliches Recht – Band I – Allgemeiner Teil. Wien – New York: Springer.

Ćesić, Z. 2005. Lease contract. In V. Gorenc (Ed.), Commentary on the Law on Obligations. Zagreb: RRiF Plus.

Constitutional Court of the Republic of Croatia. 2018. Number: U- III/3449/2014, dated October 3, 2018.

Đerđa, D. 2006a. Concession Agreement. Croatian Public Administration, no. 3, Zagreb.

Đerđa, D. 2006b. Legal nature of the concession decision. Croatian Public Administration, no. 1, Zagreb.

Gorenc, V. Ed. 2005. Commentary on the Law on Obligatory Relations. Zagreb: RRiF Plus.

Gorenc, V. Ed. 2014. Commentary on the Law on Obligatory Relations. Official Gazette, Zagreb.

Gorenc, V., and others. 2014. Commentary on the Law on Obligations. Official Gazette.

Government of the Republic of Croatia. 2022. Proposal no. 439 of the Law on Maritime Property and Sea Ports. Zagreb.

High Administrative Court of the Republic of Croatia. 2021. Number: Usž-2768/19-3 of June 10, 2021.

Honsell, H., & Mayer-Maly, T. 2015. Rechtswissenschaft – Eine Einführung in das Recht und seine Grundlagen. Berlin – Heidelberg: Springer-Verlag.

Horvat, L. 1990. Legal nature of the current account. Proceedings of the Faculty of Law, University of Rijeka, Rijeka, 11(1).

Kačer, H., & Slakoper, Z. 2012. Lease contract. In V. Gorenc, H. Kačer, H. Momčinović, Z. Slakoper, B. Vukmir, & L. Belanić (Eds.), Obligatory law - Special part I. - Individual contracts. Zagreb: Novi informator.

Kolmasch, W. 2010. Von Verträgen und Rechtsgeschäften überhaupt. In M. Schwimann (Ed.), ABGB Taschenkommentar. Wien: LexisNexis Verlag.

Kontrec, D. 2016. Lease as an Institute of Obligatory and Real Law. Proceedings of the Faculty of Law, University of Rijeka, 37(1), 645-683. Available at: https://doi.org/10.30925/zpfsr.37.1.23.

Law on Concessions. Official Gazette, no. 69/17, 107/20.

Law on General Administrative Procedure. Official Gazette, no. 47/09, 110/21.

Law on maritime property and sea ports. Official Gazette, no. 158/03., 100/04., 141/06., 38/09., 123/11, 56/16, 98/19.

Ljubetić, S. 2016. Pomorsko dobro - current affairs and the position of concessionaires. Law in Economy, 2, 55.

Marina Punat dd. 2023. Agreement on business cooperation with the right to use business premises.

Marina Signum dd. 2023. Business Cooperation Agreement, Sutomiščica.

Markesinis, Sir B., Unberath, H., & Johnston, A. 2006. The German Law of Contract – A Comparative Treatise. Oxford – Portland: Hart Publishing.

Medicius, D. 2004. Grundwissen zum Bürgerlichen Recht. Cologne: Carl Heymanns Verlag.

Ministry of Finance. 2013. Tax Administration, Class number: 423-08/13-01/136, Order number: 513-07-21-01/13-2 from 11 December 2013.

Momcinović, H. 1987. Obligatory Law Contracts – First Book. Zagreb: Narodne novine.

Obligatory Relationships Act. Official Gazette, no. 35/05, 41/08, 125/11, 78/15, 29/18, 126/21, 114/22, 156/22.

Oetker, H., & Maultzsch, F. 2004. Vertragliche Schuldverhältnisse. Berlin: Springer.

Petersen, J. 2008. Max Webers Rechtssoziologie und die juristische Methodenlehre. Berlin: De Gruyter Recht.

Šikić, M., & Staničić, F. 2011. Legal nature of the concession contract. Proceedings of the Faculty of Law in Split, 48(2), 419-441.

Slakoper, Z., & Gorenc, V. 2009. Obligatory law - General part - Conclusion, changes and termination of contracts. Zagreb: Novi informator.

Slavnić, J. 1979. Contracts in the economy (according to the Law on Obligations). Belgrade: Scientific book.

Stoffels, M. 2001. Gesetzlich nicht regülete Schuldverträge: Rechtsfindung und Inhaltskontrolle. Tübingen: Mohr Siebeck.

Sultanović, A. 1980. Commercial law. Sarajevo: IRO Veselin Masleša, Sarajevo.

Supreme Court of the Republic of Croatia. 2014. Number: Rev-x 258/14-2 of April 30, 2014.

Supreme Court of the Republic Of Croatia. 2021. Number: Rev 636/2015-2, dated November 23, 2021.

Tot, I. 2016. Operative leasing, doctoral dissertation, Zagreb: University of Zagreb.

Tot. I. 2018. Type of contract regulated by law, mixed contracts and sui generis contracts. Liber amicorum Aldo Radolović, Faculty of Law in Rijeka, Rijeka.

Vedriš, M., & Klarić, P. 2003. Civil Law. Zagreb: Narodne novine.

Žuvela, M. 2001. Concessions. Croatian Law Review, no. 1.