

Ratko BRNABIĆ, PhD., Full Professor,
Faculty of Law, University of Split,
ratko.brnabic@pravst.hr

Marija VIDIĆ, PhD., Associate Professor
University of Mostar, Faculty of Law
marija.vidic@pf.sum.ba

Miho BAĆE, PhD., Assistant Professor
University of Dubrovnik, Faculty of Maritime
miho.bace2@gmail.com

CONTRACTING THE SUPERVISION OF A YACHT OR BOAT IN A NAUTICAL BERTH AGREEMENT – PROPOSALS OF DE LEGE FERENDA

Summary: *By adopting the provisions on nautical berthing in the Maritime Code in 2019, the basic service in nautical business in the Republic of Croatia has finally been normatively demystified. This provides a legal framework for regulating rights and obligations during the duration of a nautical berthing agreement, with extensive normative coverage of all those economic and legal circumstances related to a nautical berthing agreement. The aim of this scientific research is to point out the legal framework within which the legislator should prescribe the provisions on a nautical berth agreement in which the supervision of a vessel is contracted. Therefore, to determine all those important circumstances, primarily on the side of the service provider, on the basis of which it is possible to ensure the determination of the basic relations in such an agreement in the provisions. The question is whether every nautical tourism port as a service provider is suitable for concluding such an agreement? This question arises primarily because the legal solution that regulates the issue of nautical mooring contracts stipulates that the service provider has a valid “legal basis for performing the activity of providing mooring services in accordance with the positive regulations on maritime property and seaports and on the provision of services in nautical tourism” and that the service provider must provide the service user with “a safe mooring and maintain the mooring with the care of a good expert so that it is correct and safe”. Therefore, are all moorings in nautical tourism ports suitable for supervision services from the aspect of safe fulfillment of the supervision obligation. It is clear from the analyzed nautical mooring contracts that by contracting the mooring, the service provider undertakes to provide the mooring, which means both in the contract and in practice that the location of the mooring is not permanent for the entire duration of the contract, i.e. the mooring provider has the right to move the yacht or boat from place to place. In the context of fulfilling the contract and the fact that the conditions for supervising a yacht or boat are not the same everywhere in the entire area of a nautical tourism port, the problem of contracting arises. Finally, it is necessary to distinguish the concept of supervising a yacht or boat at a mooring from the concept of guarding. Namely, by prescribing provisions on the nautical mooring contract in relation to supervision, the legislator undoubtedly provides broad provisions on the supervision of a yacht or boat from all harmful influences, except theft. The scope of supervision is not the focus of this research for several reasons. First of all, the technical characteristics of vessels that are moored are very different, and consequently it is impossible to legally standardize the scope of supervision for all yachts or boats equally. Defining the concept of supervision in this way, no matter how legally fluid and broad it may be in a possible legal solution, would be practically untenable. Therefore, all those legal and technical bases that can enable the contracting of supervision are investigated here first of all.*

Keywords: *nautical mooring contract, nautical mooring contract with vessel supervision, mooring location, theft.*