

MARITIME LAW IN ROMANIA

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ABSTRACT

The Romanian maritime law consists of a set of legal rules contained in several acts. Among these are commercial code, ordinary laws, ordinances, government decisions, plus maritime usages. The Romanian maritime law also contains a number of provisions of international conventions ratified by Romania. Romanian maritime law is not a component of the transport law. Maritime law refers not only to transport by sea, but also to the status of property and persons involved in shipping. The study subject of maritime law is much diversified. Maritime law rules describe vessel ownership, maritime rights and transport-related activities. Another object of study refers to the status of seafarers, maritime security, rescue and assistance at sea, crew hiring and obligations, arrest, prosecution and forced sale of the commercial ships. Other topics of study relate to ship owners, shipmasters, charterers etc. Due to the dangers of the sea, maritime risk is found in almost all analyses and works on maritime law. The dangers of the sea transport justify the principle of the limitation of the liability. Because of this principle, the theoretical institutions of joint damage, maritime assistance and collision assistance have been established.

Keywords: *vessels, maritime safety, the European Union, maritime pollution;*

1. INTRODUCTION

According to the Romanian Commercial Code a ship is regarded as the movable goods. According to Art. 490 of the Code "vessels are movable goods". The following are considered vessels: craft vessels, gears, specific tools, weapons, ammunition, supplies and generally all things for the permanent use of the staff, even if the mentioned items are on the vessel for a specific period of time. According to Romanian legislation, the ship means:

- floating constructions are not normally intended for movement, such as floating docks, floating jetties, wharves, floating hangars for ships, drilling platforms and floating lights;
- floating plants such as dredgers, floating elevators, floating cranes, floating grips and others with or without power;
- maritime vessels and inland navigation vessels of any kind, propelled or non-propelled sailing vessels on the surface or submerged, for the carriage of cargo and/or passengers, fishing, towage or pushing;
- pleasure craft.

Each vessel must be registered in order to distinguish it from other ships. According to the Romanian law [1], there are four elements necessary to identify a ship: name, tonnage, port of registration and nationality. Vessels may be of two types: with or without propulsion. Ships, installations and constructions with propelled floating are distinguished by a name proposed by the owner and approved by the Romanian Naval Authority.

Ships, pleasure craft, floating installations and constructions which have propulsion, are given their own record numbers from Romanian authorities. These vessels could have the name proposed by the owner with the consent of the harbourmasters. The name or number of the ship is registered in the records of the authorities and on the ship's hull. Evidence of ships sailing under the Romanian flag is kept in the Register of the ships and

the Central Register of the ships. Accounts of the vessels under construction are kept by the harbourmaster of the whereabouts of the shipyard.

The Romanian flag can be hoisted by [2]:

- a) vessels owned or leased by the Romanian citizens or Romanian companies;
- b) vessels owned by persons who are citizens of the European Union or companies having headquarters in the European Union;
- c) vessels owned by foreign citizens or foreign companies having residency or headquarters in Romania;
- d) vessels owned by foreigners, rented for periods no less than one year, by the Romanian citizens or companies.

In any of the above situations, all the vessels registered in Romania must comply with the mandatory technical standards established by the Romanian Naval Authority. After granting the Romanian flag, harbourmasters will register the vessels in the special records and issue the Romanian nationality document. Ships acquiring Romanian nationality cannot sail under the flag of another state. Romanian flag ships have the right to suspend the right to use thereof for a period of two years, if the vessels are leased.

Withdrawal of Romanian flag is done in several circumstances:

- on the request of the ship-owner;
- as a penalty if the conditions to use the Romanian flag are not fulfilled. As well, if the owner-ship or shipmaster are violating the requirements of maritime international conventions;
- if the ship was destroyed as a result of a shipwreck, stranding, fire, sinking;
- the ship was abandoned by the crew;
- the ship was scrapped.

However, after the withdrawal of Romanian flag, the ship is removed from the maritime accounts. The flag importance result from the law applicable to the doings that occur on the ship and establish the territorial sea of

that vessel. Depending on the flag there are a number of legal consequences:

- the real rights and the guarantees of the vessel;
- the rights and the obligations of the shipmaster;
- the form of employment for seafarers;
- the liability of the ship-owner for the doings of shipmaster and crew;
- the issues related to injuries, assistance and salvage at sea.

2. OWNERSHIP OF THE MARITIME VESSELS AND RIVER VESSELS

Ownership of the vessel is acquired in two ways:

- main ways (by construction of the ship or sales and purchase);
- derived modes (dissolving company by owner, abandonment, maritime outlet, seizure etc.).

The contract for the construction of a ship is a contract that manufacturer undertakes to build a ship or to provide a service to the beneficiary, in exchange of a certain price. The manufacturer is required to deliver the ship upon a deadline and to ensure that the ship has adequate quality. Delays will attract monetary penalty. Also, if the ship has faults that make the good improperly, the manufacturer will pay damages. The main obligation of the beneficiary is to pay the agreed price. The price must be fixed before between parties and to be serious. The price is paid upon delivery or in multiple rates at the completion of each stage.

Sales and purchase contract of a ship. It is a bilateral contract (concluded between two parties), pecuniary (involves payment of a sum of money), consensual (it is concluded as a result of the will of both parties) and ownership transfer (it transfers the ownership from the seller to the buyer). To be valid, a contract must meet several conditions:

- ability to contract of the parties (legal capacity of exercise);
- valid consent of the parties (except for vitiated consent);
- a specific object to be sold (a ship, a boat, a floating dock, etc.);
- legal cause (contractual refer to lawful cause);
- concluded in written form (to be enforceable against third parties);

Unlike ordinary civil law, in maritime law, if there are more co-owners, the decision of the majority shall apply. I mean, majority decisions (the shareholders who own more than half of the vessel) are required for the other co-owners. This rule applies to the possible sale of the vessel.

3. RULES APPLICABLE TO CREW

Seafarers represent all persons who possess patent or capacity certificate, entitling them to perform functions on board. Evidence of the crew will be kept by the National Romanian Authorities using special registers. Besides seafarers on board every ship may use additional staff (especially administrative staff). All crew members must be adults, have a good health condition and specific training stipulated by law. As we

previously mentioned, the specific training is proved by official documents issued by Romanian authorities.

Ship's crew consists generally of the following members:

- Captain (shipmaster);
- Second deck officer;
- Chief engineer;
- Deck officers;
- Officers mechanics;
- Other officers;
- Administrative staff.

Inland waterway vessel crews consist of the following members:

- Captain;
- Helmsman;
- Chief engineer;
- Engineer;
- Other staff.

The legal labour rights of the crew members are set by:

- international agreements and conventions concluded by Romania;
- the national labour law;
- the concluded collective agreements;
- the individual labour contracts.

According to national and international law, each member of a crew has the following rights:

- free accommodation and food on the ship or the daily food allowance. The costs are borne by the employer and are not included in taxable wages;
- the payment of daily allowance in hard currency during the international voyage;
- to redress the damage they suffered during the service or because of a navigation event without guilt;
- the additional compensation for navigation in war zones.

The captain is the one who gives orders on the ship and is vested with authority to all persons and goods on the ship. He performs the duties incumbent in accordance with national law and instructions ship-owner. Captain ensures compliance with international agreements and conventions signed by Romania. He also is the representative of the ship-owner for the authorities. A sea captain (also called a captain or a master or a shipmaster) is a licensed mariner in charge with the command of the vessel. The captain is responsible for its safe and efficient operation, including cargo operations, navigation, and crew management and ensuring that the vessel complies with the flag state policies. All persons on board, including officers and crew, other staff members, passengers, guests, custom officers and pilots, are under the captain's authority.

The master of a ship shall have, by law, three types of privileges available:

- privileges related to navigation;
- commercial privileges;
- privileges of public authority (police officer, notary etc.);

Privileges related to navigation. Ship is the responsibility of the captain who piloted and administrated during the voyage. Navigation-related privileges allow the captain to lead several activities [1]:

- could perform any actions necessary to save the persons on board;
- could act providing protection to the vessel and cargo;
- protects the vessel's documents in different ways;
- provide assistance to any vessel in distress;

According to the rules, the captain is responsible to the ship-owner or carrier for his mistakes in piloting and for any ship management doings.

Commercial privileges. Captain conducts commercial legal acts using the indications of the ship-owner. He is liable to the ship-owner liable for any misconduct. Hague rules of law, establish that the ship-owner and the carrier shall be liable for the acts of the master trade. If he improperly operates loading, stowage and delivery of goods and causes damage, the carrier and the ship-owner has to pay.

Privileges as public authority. In special situations, the captain of a ship shall be entitled to decide on board exceptional measures to ensure public order and peace:

- to isolate a persons on board, if his actions endanger the safety of the vessel, persons and cargo carried by the ship;
- investigating of an offense that was committed on board;
- granting to the accused person the right to defence;
- providing protection to the accused person and its property;
- surrender of the accused person and the papers concluded during the investigation to the competent authorities of the nearest port;

Captain has powers conferred by law as notary:

- in the logbook he records births, marriages and deaths that occur on board;
- certify the will of a person on board;
- may conclude marriages between persons on board.

4. SPECIFIC CONTRACTS FOR MARITIME AND RIVER NAVIGATION

Merchant ships carry out two types of transport activities: irregular navigation (tramp) and regular (freight) navigation. Irregular navigation is called this way because there is no predetermined route transport for the ship voyage. There is no need for the vessel to reach certain ports predetermined. The vessels used for irregular navigation scour the seas and oceans of the world in search of the most convenient freight to transport. Such ships dock in those ports where the master of the harbour provides more favourable conditions for transport. From the action of scouring the seas and oceans of the world follows their name *tramp* (from English language). Every journey of a tramp ship is based on a contract of maritime law. This contract is an prior agreement concluded between the ship-owner and the charterer (person who rented the ship). This type of contract is called *charter party*. The charter party stipulates the conditions of the carriage. Charter contracts may appear in different forms:

- Rental of the ship per voyage (voyage charter- party);
- Rental of the ship per time (time charter party);
- Rental of the ship part (booking notes);
- Rental of the ship according to the transported quantity (affreightment);

Voyage charter-party is a contract whereby the ship-owner undertakes to carry goods for an amount of money called freight. Charterer is renting the ship for an indefinite period of time. If time is determined (there is a period of time firmly stipulated in the contract) the charter contract is classic. If time is not determined and there is only a date in the future we will be dealing with a "charter trip contract". There are also so-called partial charter party (booking notes) that uses the regular and the irregular navigation aimed at filling up the capacity of the ship. In irregular navigation there are often situations when a charterer does not have enough cargo to fill up the ship at full capacity. Therefore, the charterer will collect goods from other persons using charter agreements. The freight carrier often takes goods from many clients to cover the entire capacity of the vessel. The lease depending on quantity (affreightment) is used where the volume of cargo charterer is not enough to make a voyage.

The freight navigation. The so called regular navigation is carried out by moving a ship in a regular and permanent manner on a certain route. The ship has a fixed itinerary, from which it cannot deviate. The ship route is established before, having a movement zone known to all potential clients. The ship will sail only between the ports of dispatch and destination. The freight ships are usually used to transport goods in small quantities. The owner is looking for more and more customers to cover the entire carrying capacity of a ship. In maritime law, this type of contract is called "booking note" (letter of booking a space transport ship) or bill of lading.

5. GENERAL ASPECTS CONCERNING CHARTER-PARTY CONTRACTS

As mentioned above, the sea charter-party contract is an agreement whereby the ship-owner undertakes, for a sum of money called freight, to transport chartered goods by sea and deliver them to a specific port to a certain person.

The Charter- party contract has certain legal characters:

- it is commutative – it is determined by the extent of the obligations of the parties with the conclusion of the contract;
- it is consensual - there is agreement between the parties on the terms and conditions mentioned in the contract.
- it is pecuniary – upon the conclusion of the contract the parties pursue certain goals of material nature;
- it is reciprocal – the ship-owner and the charterer have interdependent and reciprocal obligations. If a party does not fulfil its obligations, the other party may request the termination of the contract;
- successively achieved - contract goals cannot be achieved in a single step.
- substitution possibility - the owner could replace the ship during transportation process;

In practice, standard contracts are used. These forms are developed by international organizations, such as BIMCO. This organization has developed the most common variant of standard contracts, respectively GENCON CHARTER PARTY 1994. BIMCO is a

shipping association providing a wide range of services to its members who have interests in the shipping industry, including ship-owners, operators, managers, brokers and agents. The objective of the organization is to feature the commercial standard developing contracts and operations by standard clauses and providing quality information, advice, and education. BIMCO favours optimal business practices, free trade and open access to markets. BIMCO, as an international organization provides a plenty of services in the maritime domain. The organization is ready to provide assistance and guidance on problems encountered in daily activities, by ship-owner, captain, charterer and shipping companies [2]

Information about companies. This information is very appreciate in the maritime trade area allowing different actors involved in maritime transport to avoid scams and frauds. BIMCO provides trustable information about potential business partners. Among the information there is some information about non-payment of freight, demurrage, commission or other amounts due, for late payment, for not honouring arbitration awards or legal decisions or for otherwise failing to honour contractual commitments.

Costs and taxes related to naval transport. This kind of costs includes port cost estimates, information on freight taxes, verification of requests for advance funds etc. Restrictions, including details of boycotts, embargoes and other restrictions as well as ice conditions (seasonal).

Documentary problems, including interpretation of clauses in charter parties and other contract forms, objective opinions on charter party disputes, recommendations of forms to be used, warnings on objectionable terms etc.

Intervention to collect outstanding amounts. BIMCO may assist at request to collect outstanding freight, demurrage, commission, hire or other amounts due, provided the amount in question is undisputed.

Port information, including specifics on berthing delays, strikes and lock-out warnings, holidays and working hours, availability of cargo handling equipment and other details on ports.

Issues related to security. BIMCO may inform at requests on problems related to drug smuggling, piracy, armed attacks on ships and stowaways and as a security-risk warning centre.

Technical issues, including information on stowage of cargo, hazardous cargo regulations, port state control regulations, pilotage requirements, bunker quality, fumigation, reception facilities, garbage removal, safety and anti-pollution regulations etc. Details of international, regional and national rules and legislation are also available from BIMCO.

BIMCO is a strong advocate for the harmonization and standardization of the shipping activities. BIMCO is a Non-Governmental Organization who actively promotes the application of International Cooperation in the area of maritime commerce. Standardized contract consists of two parts. The first part consists of 26 boxes to be filled. In the second part of the form there are 19 contractual clauses that describe the contract. In this clause, it may be added other clauses required by the contracting

parties. If it is wished, the parties may remove certain clauses and may use alternative clauses.

6. CONCLUSIONS

The maritime law is one of the most important branches of the Romanian law. Maritime law subscribes to international law, allowing the settlement of disputes between firms and other foreign and Romanian ships in accordance with the interests of the Romanian state. One of the most important issues in operating a ship or developing a maritime project is the capacity to implement international conventions and legal tools adopted by relevant international organizations. For this reason, all countries of the world need to have appropriate legal maritime system to incorporate the provisions of the adopted international law into national juridical system and to establish procedures for applying and enforcing the legal provisions in all situations. Each state should have the possibility to review and change the maritime legislation of that legislation, according to the international maritime law and the latest developments in marine technology and shipping practices. In this respect, there is a constant need for well-trained legal staff specialized in maritime and shipping law. There is a need, as well, for persons with relevant experience and skills in the drafting, preparation and checking of legislative instruments. The maritime law specialists are not always available and there is a constant need of specialist in this domain. International Maritime Organization has developed, as an important part of its activity issuing of specific programmes, projects for technical advice and assistance in maritime law and legislation [5]. There is not just a need for an efficient maritime legal regime, but also a constant request for specialists available to oversee, permanently, the implementation of existing law. It is necessary to evaluate the legal provisions for an appropriate implementation and to prepare suitable texts to be applied. The maritime law has been used since ancient times by inhabitants of the country to solve problem related to fishing and navigation of commercial vessels but also the sensitive problem of the stationing of the warships. This branch of law will be used to resolve disputes on exploitation of international maritime zone, protecting of the living resources of the sea, marine environmental protection and scientific research of the sea. The freedom of movement at sea, the possibility of the resources exploitation and joint ownership of marine resources are mentioned in Romanian maritime law and has to be reflected in the future.

7. REFERENCES

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