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The Issue of the Ukrainian Maritime Law Transformation in the Context of the European Integration

Since the beginning of the 1990s Ukraine has gone through many changes of economical and political character. New challenges that Ukraine met on the way to the democratic transformation demanded creating a new system of law. Although it was made on the basis of the old law system in the Soviet Union, a considerable part of it was created during the years of independence. In this situation our main purpose is to build such a system of law that will be in harmony with the law systems of our neighbours, and mainly with the law system of the European Council. It will give us the best possibilities to develop a partnership relationship between the different state subjects belonging both to private and public levels. The achievement of this purpose requires an adoption of such laws that will be in harmony with analogical laws of the European countries. The unification of the approaches of law to the relationship regulation is also extremely necessary in the context of the European integration of Ukraine, since the legislation of a candidate to the entry must be close to the legislations of the member states of the European Union.

Among different fields of cooperation where the laws must be uniform the most important one is the branch of transportations as the one stimulating the growth of the international trade and as a result of different countries' improving economies. It is well-known that the maritime transportations are the ones most often used recently. Being a maritime country, Ukraine seeks to create such kind of a maritime legislation that will give the most effective regulation of the relationships the field of maritime transportations. Unfortunately, during a long period of time this important scope was on the periphery of the attention of legislators and scientists. Only on May 20, 2008 the Decree of the President of Ukraine carried into effect the Decision of the National Security and Defence Council, in which numerous problems and shortages of the state regulations in the maritime field were recognized.

One of them is the lack of implementation of the norms of the international treaties that were signed and agreed with the Ukrainian Parliament, the Verkhovna Rada of Ukraine[1].

Unfortunately, the existing Ukrainian laws in the sphere mentioned above are out of date. We can say that they were already obsolete at the stage of their adoption. For example, the main act of legislation in the maritime field – the Merchant Shipping Code of Ukraine 1995 – was created on the basis of the Merchant Shipping Code of the USSR 1968. Many of its rules copy the rules of the Code of the USSR almost without any transformation and adaptation to the contemporary realities. The worst thing is that during the fourteen years that have passed after its adoption they did not make the significant changes in it.

The obsolescence of this code is not its only problem. It is not less important to put the law in accordance with the international obligations of Ukraine. Although Ukraine did not join many international merchant shipping treaties, there are some that were signed. In 2002 Ukraine accessed the International Convention on Maritime Liens and Mortgages 1993, but the rules of the Merchant Shipping Code of Ukraine were not adapted until now. For example, Article 1 of the Convention states that mortgages and charges must be effected and registered in accordance with the law of the State in which the vessel is registered. Article 366 of the Code of Ukraine establishes that the contract of mortgage of a sea vessel must be certified by the notary in the place of the registration of the vessel. The duty of mortgage registration in this article was not prescribed, though. This duty of the owner of the vessel that was charged with the mortgage, arises indirectly from the Resolution of the Cabinet of Ministers of Ukraine that concerns the order of maintaining the State Vessel Register and the Vessel Book of Ukraine 1997. In this case we see the lack of correspondence between the norms of the different legislative acts in the Ukrainian law, and also the inadequacy of the Ukrainian law norms to the norms of international law.

We can find the same situation comparing other articles of the Convention we mentioned with the corresponding articles of the Merchant Shipping Code of Ukraine. According to Article 4 of the Convention 'Maritime liens', each of the following claims against the owner, demise

[1] The Decree of the President of Ukraine "About the Decision of the National Security and Defence Council, May 16 2008 "About the measures of developing Ukraine as a maritime country" May 20, 2008, http:// www.portal.rada.ua.

charterer, manager or operator of the vessel shall be secured by a maritime lien on the vessel:

(a) claims for wages and other sums due to the master, officers and other members of the vessel's complement in respect of their employment on the vessel, including costs of repatriation and social insurance contributions payable on their behalf;
(b) claims in respect of the loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the vessel;
(c) claims for reward for the salvage of the vessel;
(d) claims for port, canal, and other waterway dues and pilotage dues;
(e) claims based on tort arising out of physical loss or damage caused by the operation of the vessel other than the loss of or damage to cargo, containers and passengers' effects carried on the vessel.

No maritime lien shall attach to a vessel to secure claims as set out in subparaghraphs (b) and (e) of paragraph 1, which arise out of or result from:

(a) damage in connection with the carriage of oil or other hazardous or noxious substances by sea for, which compensation is payable to the claimants pursuant to international conventions or national law providing for strict liability and compulsory insurance or other means of securing the claims; or
(b) the radioactive properties or a combination of radioactive properties with toxic, explosive or other hazardous properties of nuclear fuel or of radioactive products or waste[2].

But in article 358 of the Code we can find a different rank of claims that can be secured by maritime lines that take priority over other claims secured by registered mortgages. They mentioned as:

(a) claims that derive from the labor relations, claims for health injury or death compensation and, after its satisfaction, claims for social insurance since all these claims concern the vessel;

(b) claims for compensation for the radioactive damage and the pollution of sea, and also the removal of the consequences of the pollution;

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[2] The International Convention on Maritime Liens and Mortgages 1993 // http://www.jus.uio.no.

(c) claims for port and canal dues;
(d) claims for the reward for the salvage of the vessel and general average dues;
(e) claims based on the collisions of vessels or other accidents at sea, on damage of the port constractions, other properties in the port and the navigation equipment;
(f) claims arising from the actions of the captain on the basis of the statutory powers with the purpose of the vessel saving or to continue the voyage;
(g) claims for the compensation for cargo and bagage damages;
(h) claims for freight and other payments due to cargo shipping[3].

It is obvious that the list of the maritime liens of the article is in the contradiction with the analogical list of the Convention. It is worth mentioning that article 6 of the Convention states that each State Party may, under its law, grant other maritime liens on a vessel to secure claims other than those referred to in article 4, against the owner, demise charterer, manager or operator of the vessel, provided that such liens shall rank after the maritime liens set out in article 4, and also after registered mortgages, "hypothèques" or charges which comply with the provisions of Article 1.

According to the international law, approching such a situation leads to breaking the obligations of Ukraine that arose from signing the Convention. This is an unacceptable practice in the international relationship as it represents the violation of one of the fundamental principles of international law – the principle of the fulfilment in good faith of obligations under international law. Due to this principle, in exercising their sovereign rights, including the right to determine their laws and regulations, the states must conform to their legal obligations under international law.

The problems of the transformation of the Ukrainian maritime law, that we have discussed in this article, are the only ones from the huge body of this kind of problems. There are many others, that concern the status of the ports of Ukraine, the social and pension securities of the seamen, the arrests of sea-going vessels etc. It is needed to say that the presence of these problems is not only making it more difficult to regulate the corresponding relations, but it's seriously hampering the growth of the maritime branch of the Ukrainian economy. In this connection

[3] Кодекс торгового мореплавания Украины от 23 мая 1995 г. – Одесса, 2008 – 136 с.

it is essential to adopt a new Merchant Shipping Code of Ukraine or at least a new edition of the existing code, that will include necessary amendments in conformity with the effective national civil law and the international obligations of Ukraine.