Aspects of Juridical Liability in the Maritime Arrangement

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Abstract: The evolution of navigation has led to the establishment of international maritime laws through conventions concluded between states and their ratification at national level by the signatory states. The aspects of this research relate to the maritime approach, starting from the historical perspective, its definition in the legal doctrine, the application of the legislation in case of collision or approaching ships. Establishing the causes of the approach, which party is at fault or at non-compliance with the navigation rules, leads to the commission of criminal, contravention or administrative deeds. Competence in research into the occurrence of maritime approach events belongs to the authorities. These are specified in national legislation and international provisions with the task of ascertaining the facts, gathering evidence, taking the necessary measures. The solutions given by the courts are enforced on ships, goods, and crew and ship owners. We have identified the need for legal and normative regulations by unifying maritime rules into a Romanian Maritime Code.

Keywords: *approach; fortuitous case; force; accountability; collision; convention; fault.*

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Introduction

Maritime approach is considered in the theory of maritime law as the material collision between seagoing ships. The Romanian legal practice appreciates the presence of the approach when a single ship enters a collision with a dyke, railing, pontoon, crane, buoy, etc., and it has caused material damage to the ship, cargo, death, injuries of bodily integrity, health, in distress of navigation (Alexandrescu, 2005, p. 17). The notion was regulated by the Romanian Commercial Code where the legislator concluded that the approach means "the collision between two or more ships" (Petrescu, 1980, p. 18).

The development of commerce and, implicitly, the transport of goods or persons at sea have led to the development of accountability in the event of accidents among which the approach lies. The evolution of the maritime approach as a legal institution has made its presence felt since antiquity being regulated by the Rhodian laws.

In the eighteenth century and the beginning of the nineteenth century maritime law acts were adopted, implicitly about approach. In 1865, the rules of prevention were established. And in 1907 the approach institution is governed by the French Commercial Code. 1910 is a revolutionary year for navigation rules and regulations; in this respect, the Convention on Unification of Approach Rules is adopted in Brussels.

Romania ratified in 1913 the convention for the unification of the rules of approach by Law 231/1913 (Law 231/1913). The provisions of this normative act consider that "the approach is governed by the provisions of the Convention, whether the approach has taken place between seagoing ships and inland waterway vessels" (Cristea, 2001, p.246).

The XX century brings to the prevention of the approach a series of international regulations and conventions, adopted at national level by the signatory states. Among these are: the 1960 SOLAS Convention and the 1973 COLREG International Regulation.

I. Causes of Maritime Food Production

Analyzing the causes of the approaches, we find that these situations arise by breaking or ignoring the navigation rules, the commander's or crew's fault, in certain circumstances.

In order to prevent collisions it was necessary to standardize navigation rules at international level. The International Maritime Organization convenes a London conference in London in 1972 to approve

the International Regulation for Preventing Disarmament at Sea. These were amended in 1983 and in 1987.

The production of the approach can be determined by committing criminal offenses in Romanian law, facts related to the production of material or moral damages. According to the legislator, they affect the safety of navigation and are collision-generating.

Making offenses can be the cause of the approach. Of these, the legislator according to Government Decision no. 441 of 21 June 1995 (GD No. 441/1995), which regulates the establishment and sanctioning of contraventions, rules on transport on national waterways and in ports, considers to be contraventions: the failure to notify the harbor captain of the deterioration or movement of the means of movement; towing by vessels of objects other than those admitted to towing, pushing or coupling; anchoring or stationing of ships near ships carrying dangerous goods; failure by shipmasters to observe the lanes and navigation areas; anchoring or operating vessels outside port boundaries, except for cases of force majeure; failure to secure the ships; the execution of unmanned maneuvers, where piloting is mandatory; exploitation of ships not adequately equipped, etc.

The risk of producing the approach is due to violations or non-compliance with the provisions above. Contraventions fall on the commanders of ships, ship owners or port officials.

The causes behind the possibility of tackling are also the technical causes of equipment malfunctions, repairs of the ship, crew members who are at fault for incorrect exploitation, cause can also be considered as the fault of the ship owner.

The causes of the collisions expressly mentioned by international law and most of the national laws are: fortuitous case and force majeure.

In Brussels on September 23, 1910, the Convention for the Unification of Laws in the Maritime Approach is considered to be the cause of the navigational accident: the fortuitous case.

The conditions of the event following the approach to which force is to be met are: to be unmanageable, to be unforeseen, and to have no connection with the ship as a result of being outside it.

In order to better fix the situations in the production of the maritime approach, we will enumerate other causes that determine or are consequences of it. These are: fire on board, failure, water hole and explosion.

The causes of the approach produced in the Romanian maritime waters by the involvement of the vessels registered under the Romanian flag are subject to the Romanian legal norms and the captains have the obligation

to carry out investigations into the circumstances in which the approach was taken.

According to the legal practice, port captains can be heard *ex officio*, or through the notification of the institutions with the attributions of both administrative research and the notification of the criminal investigation bodies (NCPP, article 288).

The competency of the marine approach research is as stated in the previous paragraph to the competent authorities, which, in order to determine the circumstances in which the event took place, are required to take the necessary steps to gather evidence, identify the perpetrator and extent liability.

The bodies competent to investigate the event are: port captains, police investigators, prosecutors and shipmasters.

Where marine research is involved, a foreign flag vessel is treated differently depending on where the approach occurred. By Decree 443/1972 in Chap. VII, "Special Procedures," research on ships flying the flag of a foreign State is a regulated research which together with Romania is signatory to the same convention.

II. Normative Regulatory Acts in the Sea Maritime

Romanian Criminal Code in article. 8 (NCP Article 8) provides that the Romanian judicial authorities may conduct the investigation of the maritime approach under the national common law. The provisions of the criminal code should be corroborated with the provisions of the international conventions art.12, art. 8-11 shall apply unless otherwise provided by an international treaty to which Romania is a part (NCP, Article 12).

The main conventions on criminal-law approach are: the Paris Conference of 1937, the International Maritime Committee, where 2 projects on criminal and civil jurisdiction are dealt with and the adoption of the convention on 10.05.1952 in Brussels where rules on criminal and civil jurisdiction were unified. This latter convention regulated in criminal matters the principle of exclusive jurisdiction of the flag State.

The necessity of correlating the Romanian criminal legislation with international norms has as its headquarters Decree no. 443/1972 Chapter VI where 15 offenses are grouped in three sections. These are based on the legal nature of the offense, such as: crimes against water safety, offenses against discipline and order on board, and offenses related to civil navigation (Decree 443/1972, Cap.VI).

After 1990, due to changes in national and international law in the field of maritime law, these are repealed by O.G. no. 42/1997 the provisions of the Decree no. 443/1972 with the exception of VI generically called "Offenses" (OG No. 42/1997 Art 104). Based on article 107 of the Constitution (Constitution of Romania, article 107) and article 103 of Ordinance no. 42/1997 (Ordinance 42/1997, article 103) regarding the shipping, modified according to the Law no. 412/2002, the Government of Romania adopts by Decision no. 245 of 25 March 2003 the Regulation for the application of the Ordinance no. 42/1997 which states in art. Article 2 (1) "All ships irrespective of the flag to be approached while they are sailing or staying in the national waterways of Romania shall be subject to the provisions of national law and shall comply with the ANRP rules approved by the Ministry, (Decision No 245/2003). As a result, norms concerning maritime law are abrogated both by the regulations of GO 42/1997 and by regulations of the Commercial Code, which makes it possible to identify the legal means in the field of civil and criminal law. That is why we consider it appropriate to have a Romanian Maritime Code that envisages a legal regulatory basis that unifies and deals with maritime law as a whole.

II. Juridical Liability in the Maritime Arrival

The maritime approach to the criminal side is not incriminated distinctly by the legislator, which is distinctly mentioned only as an aggravating command of the ship's commander and in the exercise of his duties.

The production of the navigation event - the approach - leads to the authorities being notified about its production. The legal ways to refer to the maritime approach are: complaint, denunciation and ex officio referral.

Moving from the criminal side to civil liability in the maritime approach, we make a difference regarding damages caused by common and particular damages governed by civil law.

Civil liability seeks compensation for damage caused by an unlawful act. The injured party shall repair the damage. The perpetrator of the deed is essentially the culprit of the damage caused. In the maritime approach, the legislator in article 1349 paragraph 1 of the New Civil Code states that civil liability is an obligation, so "Everyone has the duty to observe the rules of conduct imposed by the law or custom of the place and not to harm his rights or actions through his actions or inactions or the legitimate interests of others, (NCC article 1439).

In such cases, the competence of the Romanian courts to resolve disputes concerning civil liability is settled in accordance with art. 1081 of the New Code of Civil Procedure paragraph (2) let. (7) "ship or aircraft collision processes as well as those relating to the assistance or rescue of persons or goods in the high seas or in an area beyond the sovereignty of a State if: (a) the ship or the aircraft is flying the Romanian flag or, as the case may be, is enrolled in Romania; b) the place of destination or the first port or airport where the ship or aircraft has arrived is on the territory of Romania; c) the ship or aircraft was seized in Romania; d) the defendant is domiciled or is a habitually resident in Romania, (NCPC, Article 1081).

States that have developed legal practice in dealing with the issue have the obligation to observe the regulations established by international conventions. The signatory states have ratified the international normative acts by implementing the international normative regulations at the level of each state. Differences in legal practice applied to internal waters and the territorial sea are the property of each signatory state, since law systems also differ from one country to another.

At international level, some rules have been unified in the area of civil liability for maritime access through the Brussels Convention of 1910 and the Geneva Convention of 15 March 1960 (Convention, 1960) - Convention on the Unification of Approach in inland navigation of states. Romania is a signatory; it had ratified and applied the two international normative acts in the approaches to which Romanian ships and crews are participating.

III. Jurisprudence in the Sea Maritime

We will exemplify the evolution over time with a view to presenting short solutions to some issues in the field of maritime tackling, considering vessels flying the flag of countries such as Italy, France, the United Kingdom and the United States of America.

Italy, by order of 23 March 1944 issued by the Rome Court by the Training Judge, considered in the case of a two-nautical sea approach that due to the liability factor held by the master, he could not be heard as a witness jointly and severally liable with the ship owner(see: Alexandrescu, 2005, p.166)

France, by decision of the Court of Cassation of 02.11.1953 in the case of the approach between two ships of which one is anchored and the second in the navigation decided that the fault is of the anchored ship

because it was not properly signaled in the mist (see: Alexandrescu, 2005, p. 168).

In the UK, the House of Lords by decision of 22.11.1946 decided, as a result of the collision that were a common fault between two ships, that the owners of the cargo can be directed against one of the ships, under its responsibility, to recover part of what they paid (see Alexandrescu, 2005, pp. 169-170).

The United States of America, by decision of August 1, 1949, issued by the Federal Court of Appeals, considers that by regulating the rules on maritime navigation, the ship is responsible for serious misconduct when it is not possible to prove the fault of the other ship (see: Alexandrescu, 2005, p.168).

From decisions on collisions and approaches to maritime affairs, we note that in practice, courts of varying degrees, from different states, with different law systems and distinct laws, have applied the international rules of approaching ships. These are tinted according to where the event occurred, settling the cases according to the law applicable to each ship. Important elements were the facts that led to the production of the maritime approach and, last but not least, the observance of the regulations, the provisions of the international conventions. They state the situations that stipulate the rules to be observed in order to avoid, or to solve, depending on the case, the occurrence of collisions and sea approaches.

Conclusions

Examining responsibility for maritime tackling and taking into account the evolution of Romania within the European Union, we consider the initiative to establish the rules of maritime law by a Romanian Maritime Code to be beneficial.

The Maritime Code regulates the legal relations with regard to the ship, cargo and seafarers. The initiative of a Romanian Maritime Code was proposed in view of the repeal of the Commercial Code, which requires the necessity of maritime norms that meet the European requirements.

The prerequisites for the statute of some Romanian normative regulations consider that they will lead to the re-launch of the Romanian navigation in the current economic reality, making the administrative system in the field of transport efficient. We believe that these will support the courts to solve the cases of maritime approach. The rules should provide clarity and rationality in resolving maritime affairs related to this matter, and finally by the subject of this study, the maritime approach.

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