



The Right of Navigation and Development in the Albanian Reality

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Abstract

Transport is an important phenomenon in the world and national economy and, as such, the need has long arisen for a better legal regulation with a tendency that goes towards uniformity due to the nature of the transport phenomenon as essentially international and, on the other hand, the traffic flow of goods cannot avoid the impact of legislation with special national characteristics. In this paper we will give an analysis of how transport and navigation law has developed in the Albanian legal reality, what were the principles that guided our legislator in the adoption of legislation in the field of sea and air navigation and how much has influenced the integration process toward EU and the approximation of legislation with the EU in drafting the transport codes. In addition, giving a description of the Albanian legislation in the field of transport, we will analyze the international conventions that Albania has ratified and how these have influenced during the process of drafting the Albanian domestic legislation in the field of transport.

Keywords: legislation, navigation law, harmonization of legislation, international conventions

1. Introduction to the Panorama of the Albanian Transport Law and the Latest Trends

The phenomenon of transport is governed by the Albanian Law by means of laws that have a specific character by disposing on road; maritime transport; railway; air transport. As part of the commitments made in the framework of the European integration process, the Albanian legislator has long begun a process of improving and regulating the phenomenon of transport, as one of the most important sectors of life in the country.

Maritime transport is one of the sectors that first had its regulation, at least in relation to the primary legislation, culminating with the approval of the Maritime Code with law 9251, dated 08.07.2004. To complete the regulatory landscape, we should also mention law 9130, dated 08.09.2003 "On Durrës Port Authority" and law 10109, dated 02.04.2009 "On the maritime administration of the Republic of Albania", together with the ratified agreements¹. However, there is a need for strengthening not only in terms of legal regulation of the sector, but also at the commercial-economic level, given that although Albania is in the middle of some maritime corridors, it feels the need to increase maritime traffic and transit in its ports.

The large number of activities in which the maritime world is involved requires regulation that is in line with uniform international law, so that these activities of international character can occur without any problems and do not constitute an obstacle to international trade.

1979, International Convention on Standards of Training, Certification and Watch keeping for Seafarers "STCW 78", emendate in 1995, Convention on the International Regulations for Preventing Collisions at Sea COLREGs 1972; Convention on Limitation of Liability for Maritime Claims, LLMC '76 and Protocol of 1996; International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND) e Protocols. International Convention on Civil Liability for Oil Pollution Damage (CLC '69) e CLC protocol '76; MARPOL convention 1973-1978; Athens Convention relating to the Carriage of Passengers and their Luggage by Sea (PAL) '74 and Protocols; Convention

for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf; Convention on Facilitation of Maritime Travel and Transport FAL 1965; United Nations Convention on Conditions for Registration of Ships 1986 and i Protocols; United Nations Convention on the Carriage of Goods by Sea 1978 the "Hamburg Rules" which entered into force in 1992. For the purposes of this thesis, we immediately emphasize that Albania approved the latter on 20/07/2006 and the Convention is in force since 01/08/2007.

Already "Sectoral transport strategy 2008-2013" approved by decision of the Council of Ministers no. 1214 in September 2008 noted that Albania's great efforts are being made in terms of the legality and adoption of national maritime law; harmonization of commitments made since the signing of international maritime conventions; ports; port and navigation security; maritime transport; environmental protection¹.

The harmonization process has continued in recent years with the adoption of various acts in the field of maritime transport, among which it is worth mentioning law no. 168, dated 31.10.2013 "On security in ships and ports"². However, work is still underway to implement and enforce bylaws implementing the Maritime Code, such as the adoption of government decisions and regulations on maritime safety, the ship register and the maritime administration so that this can fulfil its tasks regarding the improvement of the technical conditions of the ships sailing with the Albanian flag and consequently the reduction of the number of arrests of the ships sailing with the Albanian flag in

"On ship and port security" "

the ports of other countries¹, as well as to raise standards and ratings by the shipping classification society.

If on the one hand the process of integration and adaptation of community legislation continues in relation to public transport law², non the other hand they have a shortcoming in the proper treatment of the private part, both in the legal literature and in the jurisprudence regarding the correct interpretation of the rules and clauses of the transport contract, both for its legal nature in doctrinal elaboration, and for the single clauses and forms of interpretation of the law in the courts.

A sign of this neglect in this area is also seen in the lack of knowledge and doctrinal elaboration of the problem.

2. Regulation of Maritime Transport Discipline in Albania

Codification always brings difficulties given the fact that it must comply with an organic, complete system and, in principle, tend to be autonomous within the legal system.

Maritime law, due to its nature as a set of norms that aims to regulate a mainly international economic activity, is mainly regulated by legislation developed precisely at the international level¹. At this level, in addition to the conventions to which states have joined, a soft law has been consolidated, drafted by maritime practice, which states implement in order to standardize technical and commercial requirements, providing a discipline that in this respect provides for minimum requirements that are almost uniform, which are undoubtedly important to carry the transport of goods, especially marine ones, in a regime of legal certainty and that gives uniformity and security to foreign operators who enter into trade relations with Albanian carriers and vice versa.

In this regard, we recall that Albania has ratified various conventions of maritime law over the years. Albania is a signatory to the main conventions of uniform law of the sector¹, which undoubtedly have a significant impact on domestic law, as it is clear that the goal towards the realization of a complete and organic framework of legislation is an essential necessity for all legislation that aims to be in line with the needs of the time.².

At the same time, Albania, in the wake of European integration, is under the influence of regional organizations such as the European Union.³. This impact is expressed through the implementation of the *acquis communautaire*, as an integral part of the European integration process. Albanian maritime law, like air law, is deeply affected by these developments. In addition to these considerations, it is necessary to mention the internal developments, which are related to the market entry of new shipping carriers and the need for the government to proceed with the adoption of bylaws on the concession of port management, the establishment of the Port Authority, as well as the implementation of internationally approved private law.

The Albanian Maritime Transport Code precedes by 5 years the air transport code (Law 9251, dated 08.07.2004). With the adoption of the maritime code, Albania has finally regulated the maritime sector in a special and autonomous way. The issue of transport was completed with the adoption of the air code in 2008. It should be noted that even with regard to the air code, the legislative techniques were similar, trying to introduce international law within the country and at the same time explicitly affirming (Article 5) the supremacy of ratified on priority areas related to legislation" community in the transport sector", focusing mainly on "restructuring and modernization of Albanian transport, improving the free

movement of passengers and goods, as well as access to the transport market and transport infrastructure, including ports and airports, to encourage the development of multimodal infrastructure related to major trans-European networks, particularly to strengthen regional links, to achieve operational levels comparable to those of the European Community "in GUUE L 107/166 dated 28.4.2009

international law. The Albanian legislator, with law 10040, dated 22.12.2008, has tried to meet the needs related to these internal and external developments and has reorganized the air transport system, setting the objective of a systematic construction of the issue. It is worth mentioning in this introduction the treatment of tourist ports with law 9710, dated 10.04.2007 "On tourist ports in the Republic of Albania", which together with the two aforementioned codes, adding the organic laws governing the Civil Aviation Authority and the Port Authority of Durrës, constitute the normative framework of the right of navigation in Albania.

Road and rail transport remains regulated separately.

In accordance with the widespread practice, in the Albanian legal system air and sea transport is regulated in two separate codes and not in a single code governed by common principles. This choice seems closer to the French system and unlike the Italian Navigation Code, which remains, however, unique in the ranks of the various orders of the continental tradition.

The legislator has not even tried to make a formal approach of the two disciplines. Unlike other countries with a code system in this area, Albania has chosen a complete separation of navigation discipline,

keeping air navigation separate from sea navigation.¹ The two realities, in fact, are not perceived by the Albanian legislator as similar and related to a formal unity and unity of the navigation discipline even if the tendency of a mutual osmosis between maritime and air law in terms of legal uniformity, where similar legal solutions are provided for similar situations².

3. Conclusions

Albanian law has long included important international legislation in the field of transport and has become part of it. In addition, starting from the European integration process, Albania has recently included in its domestic legislation and has regulated its legislation according to EU norms.

In the law of navigation, Albania has made the choice to keep the different forms of navigation, transport, and separate from each other and that are not subject to the same rules and principles, both in private and public law.

We hope that the process of approximation of legislation with EU legislation will complete this process of renewal of legislation and codification in Albania in terms of transport in general.

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