

The Motivation for Studying the Maritime Law Institutions within Romanian Higher Education

Unlike other countries that have the capacity of shipping and cargo, in Romania the maritime law is not considered a separate branch of law. Some institutions of maritime and fluvial law are briefly studied law in Transportation Law and Commercial Law, but this situation cannot lead to the development of law in general and hence the formation and specializing the lawyers in this field. The consequences of this concept are obvious, if we look at the legal literature, extremely poor in the theoretical approach of the institutions of maritime and fluvial law. This is confirmed also by the fact that the few references to law institutions have been made by experts in navigation and very limited by the lawyers. Maritime and fluvial law is independent in relation to the other branches of law, as it has its own research and specific national and international sources. This is one of the motivations to study maritime and fluvial law as a separate branch of law in France, Spain, Italy, Russia, Britain, Canada, USA, etc. Famous universities, in Europe especially, have departments of maritime and fluvial law, and the disciplines of maritime commercial law, maritime law, commercial law, law of the sea, port maritime law, etc. are taught by legal personalities from all over the world. For instance, the Law Faculty of University of Sorbonne, the head of the Maritime Law Department was the academician René Rodier for a period of three decades; he was considered the father of modern maritime law. His graduates are now professors from well-known universities, who run similar departments. It is true that in the legal literature of the late IXth century and the beginning of the XXth century there was a controversy about the autonomy of the maritime and fluvial law, but in the recent decades there have been elucidated the causes that determined different opinions. The authors that invalidate the autonomy took into consideration only the legislators' concept in the early period of capitalism, when he began developing merchandise production and hence development of maritime trade; this led the states to adopt commercial codes that established the rules regarding the land and sea commerce. In modern times, in addition to commercial codes which have been modified or replaced, there have been adopted national and international laws regulators which have another purpose than trade. Thus, there are rules for saving life at sea, organizing and functioning of ports, the incrimination of the illegal acts with specific procedural rules, port work, the organization and operation of international shipping companies, regulating transportation through certain waterways, training the seafarers, safety navigation, organization and operation of port activities, licensing shipping, etc. Moreover, today many states have adopted or are currently adopting navigation codes that include all shipping rules on trade, shipping, and related activities, there are introduced provisions of international conventions to which states have joined. While most states, even those with reduced shipping capacity and have not developed seaports and river ports have chosen the establishment of specialized courts and offices; the Romanian legislator adopted solution of organizing some sea and fluvial sections within the courts and prosecutors of Constanta and Galati. The reason for its establishment was most probably financial, but this proved to be incorrect because, as practice has shown, the economic losses caused by such legislative solutions are much higher. Although it has been discussed for years about reforming the justice, so far it has not been adopted a new law to replace the one of December 203/1974 by which it is regulated the material and territorial jurisdiction of maritime and fluvial sections. The Serious consequence of this "leak" is that many

criminal acts made by prosecutors or court judgments are absolute null, which in most cases is not invoked because of lack of specific training. For the same reasons, the Law no 191/2003 adopted by governmental liability cannot be fully applied because much is unconstitutional, although the normative act has special importance as it replaced the fifth chapter of December 443/1972, where there have been incriminated facts that affect the shipping. The examples could continue but I consider that there are sufficient arguments for the introduction of the maritime and fluvial law in higher education. If this approach will continue to be ignored, we cannot certainly discuss of any proper reform of higher education.