



THE 7<sup>TH</sup> EDITION OF THE INTERNATIONAL CONFERENCE  
**EUROPEAN INTEGRATION  
REALITIES AND PERSPECTIVES**

## **Maritime Rescue**

**Constantin Anechitoae<sup>1</sup>, Calin Marinescu<sup>2</sup>**

**Abstract:** The maritime rescue, as any other legal institution related to maritime events - collision, crash, etc. - has its distinctive features. The maritime rescue may be considered as the operation that arises from maritime collision, because, while collision stems from a breach of a negative duty necessary in maritime navigation, i.e. of not harming the other, the maritime rescue is the implementation of positive obligations required to vessel captains by the material requirements of the marine life that adds to the elements of the legal concept which can be summed up as follows: to go to the aid of a vessel in danger, provided that the vessel does not expose itself, through this action, to a serious danger. The institution of maritime rescue encourages maritime commercial activities by the fact that, thus, there are governed such clear rights and obligations saving life at sea and shipping goods.

**Keywords:** maritime rescue; sea life; goods

### **Introduction**

Historically, the aim of rescue rules was to counteract the temptation of the savior to acquire goods from stranded ships. In modern times, the aim was actually the desire to provide an incentive for the rescue efforts and, therefore, to maintain property values.

In practice there were used the concepts of “assistance” in order to refer to the help rendered to vessels in danger, with the purpose of avoiding a more serious accident, and “rescue” in order to consider the contrary, when the aid is provided under serious conditions or when a first accident has already occurred. Theoretically, “assistance” means the aid provided to a ship in danger in order to get out from a situation, and “rescue” – the help rendered to a vessel in danger, which, because it lost its maneuver ability, cannot cooperate with the opportunity of the aid it receives. We speak of “assistance” when the help comes in time in order to avoid danger, i.e. before sinking, and of “rescue” when the act does not occur until after the shipwreck has already begun.

### **1. Introductory Terms**

The rules that apply to salvage are unique in maritime law. There are no similar rules on the land that would entitle a person which has just saved another person’s property to ask for a generous reward. The reason is partly historical, but actually another major reason is the actual physical situation. With the exception of fire, the land does not need such a big help in salvage services.

From the historically point of view, the aim of salvage rules was to counter the temptation of the wrecker to acquire goods from vessels that ran ashore. In modern times, the goal is actually a desire to provide an incentive for the efforts made in order to save and, therefore, to maintain property values.

---

<sup>1</sup> Lecturer, PhD., Faculty of Law, „Ovidius” University of Constanta, Romania, Address: 1 Universitatii Alley, Constanta, Romania. Tel.: +40241694330, Fax: +40241511512. Corresponding author: anechitoae@yahoo.com.

<sup>2</sup> PhD in progress, National Institute of Economic Research “Costin Kirişescu”, Romania, House of Romanian Academy, Calea 13 Septembrie, Bucharest, Romania., Tel.: +40318.81.06. E-mail: marinescu@nordmarine.com.

In practice, there has been used the concept of “assistance” to describe the help provided to a vessel in danger, with the purpose of avoiding a more serious accident, and “salvage” in order to have in view the opposite, when aid is provided in serious conditions or when this first accident has already occurred.

Theoretically, in doctrine, “assistance” means the assistance provided to a vessel in danger in order to overcome the situation it is in, and “salvage” means the aid rendered to vessels in danger, which, losing their ability to maneuver, cannot work at the aid that they receive. We talk about “assistance” when the aid intervenes in time in order to avoid danger, that is before the shipwreck takes place, and “salvage” when the act in question does not intervene until after the shipwreck has already begun. (Manolache, 2001, p. 12)

## **2 The Distinction between Maritime Rescue and Maritime Assistance**

The Convention for the unification of certain rules of law relating to assistance and rescue (Brussels, September 23, 1910) makes no distinction between maritime rescue and maritime assistance.

The Rescue International Convention, adopted in London on April 28, 1989 shows that the rescue operation means any act or activity undertaken to assist a vessel or any other property in danger, in navigable waters or in any waters.

The obligation to assist is imposed by Art. 10, section 1 of the Convention: “Every master is bound, to the extent that he can do it, without endangering his ship and the persons on board, to assist any person in danger of being lost at sea”.

In practice, the term “assistance” is used to refer to the help provided to a vessel in distress, in order to avoid a more serious event, and the notion of “rescue” - to designate the help given after the production of maritime distress.

The assistance always involves the existence of a state of real danger.

The rescue is conceivable only if the vessel, being in the open sea, is in such danger that, without immediate help, it would be completely lost; the assistance consists of preventive measures in order to avoid major damage to both the body of the vessel and the goods.

## **3 The Stimulating Factor by Reward**

The stimulating factor is particularly evident in the rules for calculating the rescue reward. If the rescue effort was successful, the reward has to clearly exceed the normal remuneration for such services. The assessment must recognize the danger associated with the rescue operation – i.e., the danger faced by the savior, the risk to fail, or the risk to damage the saved party - and the value of the property saved. The rescue reward, which is from 5 to 10 percent of the total value of the property saved is not an unusual percentage, which means that a reward for a general cargo ship loaded to its maximum capacity may be a considerable amount. It goes without saying that the perspective of such compensation is a strong incentive for any potential savior.

The stimulating factor is also a reason for another rescue law, namely, the so-called “no cure, no pay” principle (if the rescue operation fails, the reward is not granted). This means that no reward can be asked unless the rescue operation was successful. If the attempt fails, the rescuer cannot make any claim, not even for the direct reimbursement of expenditures. The principle of “no cure, no pay” encourages rescuers to do everything they can, hoping to win a generous reward if their efforts result in success.

Another incentive is provided for the establishment of a maritime lien on the ship and cargo in order to ensure the claims after rescue. Thus, rescuers can be relatively sure that the rescue reward will be paid.

#### 4. Principles of Maritime Rescue

The philosophy of the rescue service was epitomized in maritime law literature as follows:

*“The maritime rescue principles are based on the simple premise that everyone who helps in order to save marine property is entitled to reasonable compensation for their efforts, and those who have benefited from these efforts should contribute to a reward in proportion to the value of the property saved. This, of course, led to the famous triumvirate of danger, volunteering and success that, with few exceptions, must exist in order to be able to talk about a rescue service”*(Gold).

Thus, in order to reward a rescue service, three main factors should exist: danger, volunteering, success.

According to article 87 of O.G. 42/1997 (r) on maritime transport and on inland waterways, when the commander / leader of the vessel flying the Romanian flag receives a message indicating that there is a vessel in danger, is obliged, to the extent that he does not endanger his own vessel, crew, passengers and / or cargo, to move with all possible speed to that vessel in order to provide it the necessary assistance and to save the people in danger on board of that ship.

The vessel commander / leader is obliged to give, after collision, support to the other vessel, crew and passengers and, where possible, to indicate to the other vessel the name of his own vessel, its port of registry and the nearest port to which it will get Article 88, O.G. 42/1997 (r)].

The vessel commander / leader has no obligation to provide assistance and rescue if the master / leader of the vessel in distress expressly refuses help and if he receives information that help is no longer necessary [Art. 88, O.G. 42/1997 (r)].

The grounds for not granting the aid, due to refusal will be recorded in the logbook.

#### 5. The Existence of Danger

The situation threatening the vessel which needs help is an objective and necessary circumstance qualifying an aid as rescue. It has a rather vague nature, especially since there is no legal definition in the internal and international regulations, so that it inherently raises the question on the nature or the type of danger affecting the vessel, so that the effective intervention of the rescuer determines a royalty, or the question related to the lower limit of possible dangers.

The first question that arises is: what can be called “danger”?

The answer is that, basically, there should be a risk of physical and extensive damage of the ship and cargo. Thus, if there is a risk of total loss of ship or cargo, we can clearly speak of a rescue situation. An unfortunate example is the case of Costa Concordia cruise ship with 4,229 people on board which, on January 13, 2012, struck the rocks and partly sank near the Giglio Island in the Tyrrhenian Sea. The supreme value to defend, i.e. the life and integrity of the passengers, was threatened by documents containing false information about the true state of danger, which would have required urgent rescue actions.

#### Volunteering

Concerning volunteering, the wrecker should not be under the pre-existing duty to provide salvage services. The Law of Salvage does not apply where there is an official duty of the coastal guard, the Navy etc. to provide help.

The claim of the wrecker to a reward depends on the successful outcome. This premise is reflected in the traditional phrase “no cure, no pay”. Until recently, the matter of the success of the salvation effort did not have any difficulties. If a vessel was in danger, it should have been immediately removed from the state of danger to safety. When the vessel had difficulties due to engine problems, it had to be

towed into a port where it could benefit at least from temporary repairs. As a consequence, the wrecker was rewarded for salvage of the property.

Thus, a wrecker who had managed to tow a vessel loaded with explosive substances which had a fire on board, and thus prevented damage to the shore, would not enjoy any kind of reward if the ship exploded and sank. A similar situation existed when the wrecker has saved the ship-owner from liability on the saved property.

Major disasters involving oil carriage proved serious problems with the rules of property salvage.

Imagine a tank loaded to maximum capacity which is out of control and heading to the shore, having the potential trajectory to break and cause to a significant environmental damage. The prospect that the wrecker who prevented the oil pollution was not entitled to a reward may not be satisfactory if the ship sank during the rescue operation. No need to say that such an operation has saved the ship-owner from liability for damage caused by pollution.

## 6. Conclusions

The maritime rescue is a maritime event with distinctive features that are based on the spirit of solidarity and on mutual human aid, which must govern the activity at sea. The legal rules established in this regard give expression to this spirit. But they cannot offer the possibility to obviously frame the maritime rescue in a pre-existing legal typology.

## 7. References

- Alexandrescu, A. & Alexandrescu, C. (2006). *Tratat de Drept Maritim / Maritime Law Treaty*. Galati: Ed. Fundației Academice Danubius.
- Anechitoae, C. (2009). *Drept maritim și portuar. Bibliografie selectivă/Maritime and inland water law. Selective Bibliography*. Vol. I. Trilingual edition. Bucharest: Ed. Academiei Române.
- Anechitoae, C. (2005). *Convenții internaționale maritime – legislație maritimă / International maritime conventions - maritime legislation*. Bucharest: BREN.
- Boldeanu, C & Iordache, F. (2005). *Curs de Drept al Mediului / Environmental Law Course*. Constanta: Dobrogea.
- Grigoriu, C. & Anechitoae C. & Staiculescu A.R. & Lisievici Brezeanu, A.P. (2012). Management issues for the safe operation of ships and for pollution prevention. Proceedings the 14th International Congress of International Maritime Association of the Mediterranean (IMAM), Genova, Italy, 13 – 16 September, 2011. In: *Sustainable Maritime Transportation, and Exploitation of Sea Resources*. Editors: Enrico Rizzuto (*University of Genova – DICAT, Genova, Italy*). Vol. 2, pp. 941 – 944.
- Lucian, G. & Mihai, I. (2003). *Culegere de acte normative / Collection of laws*. Constanta: Muntenia.
- Manolache, O. (2001). *Contractul de salvare maritimă / Maritime Rescue contract*. Bucharest: All Beck.
- Popa, G. (2011) *Prevenirea și combaterea spalării banilor și criminalitatea economico-financiară/Preventing and combating money laundering and economic-financial crime*. Bucharest: BREN.
- Stan, A. V. (2003). *Tratat de transporturi /Transportation Treatise*. Bucharest: Universul Familiei.
- Tonegaru, C. (1933). *Procedura în caz de avarii și sinistre maritime aplicabile și în navigația maritimă, ed. a III-a / Procedure in case of damage and sinister applicable maritime and shipping, III<sup>rd</sup> Edition*. Bucharest: Tipografia „Lupta”.
- Voicu, M. (2002). *Instituții de drept maritim / Maritime Law Institutions*. Constanta: Ex Ponto.
- \*\*\* International Maritime Organization (1992). *Maritime law for ships' officers. Course – Compendium*. Printed and published by the International Maritime Organization, London, p. 138.