

Justifiability of Studying Maritime Law Institutions in the Academic Tuition from Romania

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Abstract: Maritime and river law has an independent character in relation with the other branches of law as it has its own research object and specific national and international springs. This is one of the justifications of river and maritime law studying as a distinct law branch in France, Spain, Italy, Russia, England, Canada, USA, etc. In the famous universities mostly from Europe, there are professors of river and maritime law and the law subjects maritime commercial law, administrative law, commercial law, sea law, maritime port law, etc., are taught by personalities of the juridical world. In the modern period, besides the commercial codes that have been changed or replaced, there have been adopted many normative national and international documents with other regulation objects than commerce. For the same reasons, the provisions of the Law no. 191/2003 enacted by governmental responsibility assumption cannot be totally applied because they are mostly unconstitutional, even though the normative document has a special importance as it replaced the Vth chapter of the Decision 443/1972 in which were incriminated facts of naval transport. The examples can continue, but we appreciate that there were brought forth enough arguments in favor of introduction the maritime and river law studying in the academic tuition. If this intercession is ignored, certainly, there cannot be a proper reform in the academic tuition.

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Unlike other states that possess maritime and river transport capacities, in Romania, the maritime law is not considered a distinct branch in the legislation. Some institutions of maritime and river law are studied briefly in Commercial Law and Transport Law, however, this situation cannot lead at the developing of law in general and implicitly at the formation and specialization of jurist consultants in this field. The consequences of this way of thinking are easy to understand if we take a look at law literature, extremely poor in the theoretical approach of maritime and river law institutions.

This observation is also attested by the fact that the few acknowledgements at the law institutions mentioned were made by navigation specialists and way too few by jurist consultants.

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For example, at the Law Faculty from Sorbona University, the head of the Maritime Law Department was for a period of three years the academician Rene Rodier, considered to be father of modern

maritime law and whose postgraduates are professors in famous universities and lead similar professors. It is true that in the juridical literature from the end of the XIXth century and the beginning of the XXth, there were controversies about the independent character of the river and maritime law, but in the last decades there has been elucidated the causes that determined the differences of opinion.

The authors that disaffirmed the independent character considered only the legislator's position during the early capitalism period when it started the development of merchandise production and, implicitly, the development of maritime trade, and all these determined the states to adopt commercial codes in order to establish rules about terrestrial and maritime commerce.

In the modern period, besides the commercial codes that have been changed or replaced, there have been adopted many normative national and international documents with other regulation objects than commerce.

Thus, appeared norms for saving human lives at sea, harbor organization and functioning, incrimination of illicit facts with specific procedural rules, labor in harbors, international naval companies organization and functioning, transport regulation on certain navigable ways, sailor's tuition, navigation safety, organization and functioning of port activities, granting of licenses for naval transport, etc.

However, nowadays, many states adopted or are about to adopt navigation codes that contain rules about commerce, naval transport, connected activities and in which are introduced provisions from International Conventions at which they have adhered.

While most states, even those with few naval transport capacities and with no maritime and river harbors developed decided to found specialized court laws, the Romanian legislator adopted the solution of organizing maritime and river divisions in Constanta and Galati. The reason to found them was, probably, the financial one, but this conception proved to be wrong as, just like practice proved, the economic loses for such legislative solutions are more important. Besides the financial aspects this type of legal organization reveals the complete bad conception according to which the magistrate, the lawyer, the juridical consultant, the harbor captain, etc., are considered specialists in river and maritime law only through personal preparation, which obviously it is a mistake. But, in reality, not even before the juridical organization law, nor in the present, the magistrates, the lawyers, etc., did not and do not have a professional preparation in this field. In our opinion, there cannot be such a specialization without a superior theoretic preparation, and it can only be fulfilled only by including maritime and river law in the academic tuition. The administrative measures awarded by the law to the Minister of Justice and to the General Prosecutor of Romania to name judges and the prosecutors that are part of the above mentioned departments have no relevance as long as they have no proper preparation. In practice these magistrates that solve regular civil or criminal cases are also obliged to solve the causes which have as object maritime or river disputes. Because of these serious problems of juridical organization, sometimes, there have been named to enquiry navigation incidents, deadly work accidents on ships, even probationer prosecutors or persons who were not part of river and maritime divisions and in consequence the documents could only be considered null. In these conditions, it is sure that there cannot be an established juridical practice in order to influence the theoretical examination of maritime law institutions. There can not be omitted that the agents or the participants at the foreign naval transport and trade value their requests in front of specialized court law from abroad and this happens not only with special economical consequences for the Romanian state but also with bad consequences for the Romanian justice image and implicitly for the academic tuition.

From the presentation of reasons of the normative documents enactment regarding the organization and the functioning of court laws and prosecutor's office clearly results that their necessity is determined by the specific of cause instrumentation that have object a maritime or river dispute. In order to administrate and evaluate correctly the proofs from a civil or criminal cause with an object, as an example, a maritime or river collision, the magistrate, the lawyer, the harbor captain, the agent, etc., must know and understand the maritime law terms, the provisions of international documents, harbor's habits, the way, completely different in which one must investigate the place of the navigation place, the different way to listen to the sailors who have a different psychology from the persons in the cities, the provisions of international rules about navigation and saving human life at sea, saving the ship and the goods, the specific judicial practice, etc.

In order to harmonize the national legislation with the European one, changes have been performed but the results were not the desired ones. The causes that led to discontent are easy to reveal. Because of the lack of jurist consultants specialized in normative acts projects, these have been made up by specialists in navigation, but they – as proved before – have no law knowledge and especially of legislative technique. However, because of the lack of juridical preparation, projects received more easily favorable notice from the Legislative Council and the Ministry of Justice. Taking over rules from other legislations and the use of some Romanian specialists did not necessarily meant extra quality because nobody considered Romanian harbor habits and national legislative framework.

Because of the weak theoretical preparation in the field of maritime and river law field, not even the named and obliged persons in certain positions and who have the right of legislative initiative did anything in order to remove such situations appreciated as unacceptable for an European state.

Although, it is discussed the reformation of justice for many years, not even now, there was not enacted a normative document to replace Decision 203/1974 which regularizes material and territorial competence of maritime and river divisions. A grave consequence of this "negligence" is that many of the criminal enquiry documents made by the prosecutors or decisions of the court law are null and void and in many cases it is not pleaded because of the lack of specific preparation.

For the same reasons, the provisions of the Law no. 191/2003 enacted by governmental responsibility assumption cannot be totally applied because they are mostly unconstitutional, even though the normative document has a special importance as it replaced the Vth chapter of the Decision 443/1972 in which were incriminated facts of naval transport. The examples can continue, but we appreciate that there were brought forth enough arguments in favor of introduction the maritime and river law studying in the academic tuition.

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