THE ACCESS OF FOREIGN MILITARY VESSELS IN TERRITORIAL AND PORTUARY WATERS OR IN COMMERCIAL PORTS

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ABSTRACT

According to art. 19 of Law no. 17/1990 regarding the legal status of inland and marine waters, the territorial sea, the contiguous zone and the exclusive economic zone of Romania, in the territorial sea, the inland and marine waters and ports of Romania, the access of any vessel, which has nuclear, chemical weapons on board or other weapons of mass destruction or which carry such weapons or ammunition for them and any other goods or products prohibited by Romanian laws, is banned. According to art. 20 of the same Law, the foreign nuclear-powered vessels can enter ports or roadsteads only with the prior approval of the competent Romanian authorities, which will be requested at least 30 days before their arrival.

Keywords: Territorial waters, maritime and river ports, civil and military vessels.

1. PORT WATERs

The international rules govern legal national and international relations between countries, on the use of national and international non-maritime waters (rivers, lakes and canals) [1]. A national water course watercourse is the watercourse composed of inland non-maritime waters and inland maritime waters [2]. Inland non-maritime waters include: water courses (rivers, streams), lakes and canals, except those under international regimes (international channels). Inland maritime waters include: inland seas, bays and baths, water ports, port roadsteads; maritime waters between the shoreline and the territorial sea baseline.

1.1. The harbour approach channel

The harbour approach channel is more or less determined by geography, local conditions and circumstances. If there are more possible variations of the route, the one which allows a smooth sailing is chosen.

In practice, the choice of the route leads to a compromise between the hydraulic and navigational aspects and the technical equipment on land and on the vessel, necessary to the vessels’ guidance. The entrance runway must be oriented so that the wind blows on the vessel’s bow and that the vessel is not obliged to return, to reach the wind broadside or to dock with the wind blowing from the stern.

The route should be as straight as possible; a single curve is preferred to a succession of curves at small intervals. The fairway will follow the mainstream direction and, in case of rising sea levels, when large vessels arrive, it is advisable to meet frontal currents.

When passing under bridges etc., the fairway will have a clearly marked route on a straight length of at least 5 vessel lengths on each side of the crossing vessel. The minimum waterway width can not be reduced.

The interior access construction must be aligned with the navigation fairway shaft.

We must avoid locating the lock or the access to the roadstead at the middle of the landing front because this reduces the useful length; in the access area, buildings will be provided with rounded corners, protected with shock absorbers.

On the route or in ports, accidents can occur, leading to traffic breaks or to collision risks. For each fairway there is a "critical point" from which the vessel can not stop, turn or evacuate the fairway.

1.2. The Port Manhole

The Port manhole is used for the arrival and departure of vessels in and out of ports and it is the most difficult area that a vessel covers on its access route to the port [3]. It must be wide enough to create favorable conditions for the safe movement of vessels in all weather conditions and water surface agitation.

In order to ensure the maneuver capacity, the access speed of the vessel will be 15-20 km/h [4]. An increase in vessel speed would provide for more stability but it has the disadvantage that it leads to a longer stopping length, affecting the interior design of the port. At the same time, the manhole must have a width as small as possible, in order to limit the propagation of waves, silt and ice.

Ports have usually one manhole. In large ports, depending on the traffic size and extent of the coastal zone, two or three entries may be taken. This solution may be necessary in order to facilitate the vessels’ maneuvering if the waves and the wind have frequent direction changes. The manholes have different orientations and the vessels can use them depending on the storm propagation direction. The existence of several manholes facilitates both the access and the entrance of silt in the port.

2. TERRITORIAL WATERS

The territorial waters are a sea portion which extends along the shores of a State and over which the
coastal State exercises its sovereignty. The coastal State sovereignty is extended both over territorial waters and on the soil and subsoil covered by them and over the air space above them. The width of territorial waters is established by the coastal State law, taking into account its economic interests and those concerning the protection of its security; in general, the breadth of the territorial sea, fixed by different States, ranges from 3 to 12 nautical miles. The Romanian territorial waters expand over 12 nautical miles (22.24 m), from the seashore to the sea. The sovereignty right over the territorial waters of the coastal State was established by the rules of international law and the national legislation of a large number of States. This principle was confirmed by an international convention concluded in 1958 in Geneva, at the conference for encoding the Law of the Sea, convened by the United Nations; under its sovereignty, the coastal State has the exclusive right to fish in the territorial waters, to exploit the natural riches of their soil and subsoil, to exercise customs and health control, police rights etc. The UN Convention on the Law of the Sea signed at Montego Bay (Jamaica) on 10 December 1982 integrates the previous provisions, leaving the right to the sovereign State to set the inner sea width which shall not exceed 12 nautical miles, measured from baselines (Article 1, section 1 in conjunction with art. 3). Within the territorial waters, there are applied the laws and regulations of the coastal State and its jurisdiction.

2.1. The access of foreign warships in territorial waters

Foreign trade vessels are allowed to pass through territorial waters, provided that the coastal State law on the harmless passage is observed.

Warships can not pass through the territorial waters of a foreign State without its prior authorization. There are exempted only the cases of force majeure, when the entrance of a foreign warship in the territorial waters is necessary because of damage or storm berthing. Foreign warships which have been permitted to enter the territorial waters are bound to observe the coastal State laws and may be forced to leave the territorial waters in case of law infringement. However, foreign warships have immunity from the civil and criminal jurisdiction to the coastal State. Foreign submarine ships can navigate only at the surface.

2.2. The access of foreign military vessels in port waters and ports

Military vessels can enter only under the prior authorization of the State port, which may impose restrictions on the number of vessels and on their stay. Military vessels can still enter without authorization in case of force majeure (storm, damage etc.) or if the head of their State or the diplomatic representative accredited in the country of respective port is on board. Military vessels shall enjoy immunity from criminal and civil jurisdiction; they can not be seized, confiscated or requisitioned. Therefore, offenses committed on board, between crew members, shall be punished according to the laws of the State which the vessel belongs to. If a criminal takes refuge on shore, he must be delivered to the vessel master. The jurisdiction immunity of the vessel extends to the members of State crew when they are ashore, in uniform and under their official titles (during service or in connection to it). In case of desertion, crew members can not be arrested by the vessel master; deserters’ remission is not obligatory for the State of residence.

Warships which have been permitted to enter the port waters of a foreign State enjoy immunity from both civil and criminal jurisdiction. These vessels can not be seized, confiscated or requisitioned.

The offences committed by crew members are punishable under the laws of the State which the military vessel belongs to. The vessels in the port waters of a foreign State are bound to observe the regulations of the coastal State. Foreign private commercial vessels are subject to the civil and criminal jurisdiction of the coastal State. However, the order on board is governed under the laws of the State whose flag the vessel flies, and the coastal State shall exercise criminal jurisdiction over the crew of a foreign vessel in its ports only if the offense committed harms the public order of the coastal State or if the vessel master called on the support of local authorities. According to international law, state-owned commercial vessels in foreign port waters enjoy immunity from civil jurisdiction, i.e. they can not be seized, requisitioned or followed for the execution of civil obligations.

State vessels assigned to non-commercial purposes (sanitary vessels, customs control vessels, vessels for scientific research etc.) are generally treated as warships as regards their regime in the water of foreign ports.

3. REFERENCES

[1] We consider appropriate to use the word national or international rivers, although, etymologically, it would be more appropriate to talk about national or international non-maritime waters, as the lakes and channels are not rivers or, stricto sensu, watercourses. Also, the international river law includes river groundwater.
[3] „The Manhole” of Port Tomis has the width of 65 m, oriented towards South-East.