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I.V. Redina

IMPROVEMENT OF ECONOMIC AND LEGAL ASPECTS
OF SHIPPING CONTROL IN UKRAINE

Article presents and formulates the actual problems and the realistic ways of economic and legal protection of shipping in Ukraine. The necessary changes in the Merchant Shipping Code of Ukraine and other acts of legislation that would ensure national security, national interests and promote international authority of the state are established.

Keywords: merchant shipping, national security, freight independence, the flag state of the vessel, the national identity, the nationality of the vessel.

В статтє выявленї актуальнє проблемє, обоснованї и сформулированї реальнє пути економико-правовой зашиты судоходства в Украине. Установленї необходимє измененїя в Кодексе торгового мореплавания Украины и других законодательных актах, обеспечивающих национальную безопасность, способствовали национальным интересам и повышали международный авторитет государства.

Ключевые слова: торговое мореплавание, национальная безопасность, фрахтовая независимость, государство флага судна, национальная принадлежность, национальность судна.

В статті виявлені актуальні проблеми, обґрунтовані та сформульовані реальні шляхи економіко-правового захисту судноплавства. На підставі аналізу встановлено необхідні зміни в Кодексі торгового мореплавання України та інших законодавчих актах, які б забезпечували національну безпеку, сприяли національним інтересам і підвищували міжнародний авторитет держави.

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Встановлено, що створюючи умови для розвитку національного судноплавства, в основі успіхів великих морських країн лежить, перш за все, наявність у їх суспільстві розвинених морських традицій, завдяки яким стає ясным, що вклади в судноплавство та інші сфери морської діяльності дають трикратну віддачу в цілому у всіх галузях національної економіки. Обґрунтовано сутність та напрямки проведення змін щодо вдосконалення чинного законодавства та заходів, які забезпечать ефективний контроль за розвитком судноплавства України.

Було проаналізовано, що законодавство більшості країн встановлює вимоги до національної приналежності власників судна і його екіпажу. Доведено необхідність прийняття ряду законодавчо-нормативних актів, що визначають загальнодержавну систему контролю, регулювання та керування морською діяльністю, що стосується реорганізації системи контролю держави порту і держави прапора, створення сприятливих, конкурентоспроможних умов діяльності судноплавних компаній, спрощення всіх процедур організації перевезень і тарифної політики. Особливу увагу присвячено необхідності встановлення зв'язку між національною приналежністю судна і його правом плавання під прапором певної держави, впливає з вимог здійснення юрисдикції цієї країни, під прапором якої ходить дане судно.

Ключові слова: торговельне мореплавання, національна безпека, фрахтова незалежність, держава прапора судна, національна приналежність, національність судна.

Problem statement. One of the major marine economic activities is commercial shipping, which represents an important measure of foreign and domestic trade at all times. The experience of the developed maritime countries shows that their progress is possible because of the planned national maritime policy, which is directed to the development of maritime capacity. The presence of the maritime state policy allows defining clear directions, goals and objectives in the economics sector. The high level of the national merchant shipping development, in consideration of specialties of foreign eco-

conomic factors should be formed according to the criteria to ensure the independence of the freight trade and full participation in the global cargo transportation in international freight market.

Despite the fact that the perfect legislation is the necessary condition for the development of all spheres of maritime activities, there are no needed laws for its regulation in Ukraine. The changes in The Merchant Shipping Code of Ukraine and other legislation are also needed to ensure national security, to promote national interests, to improve the international authority of the state. Nowadays, number of legislative regulations, which determine the national system of control, regulation and administration of maritime activities, should be also adopted. This applies to the reorganization of the control system of Port State and Flag State, the creation of an enabling and competitive environment for the shipping companies, the simplification of the procedures for the organization of transport and tariff policy.

Analysis of recent research and publications. Ukraine is not the only country which is faced with the question of legislation improvement, promoting the development of national shipping. In the conducted scientific studies it is shown that having access to the international legal framework, maritime law is being developed, the efficiency of freight operations is being increased, etc. The lines of research in the sphere of improvement of shipping control are in question of the scientists of different countries who are interested in effective functioning of national economy and in particular, national shipping [1-2].

The purpose of the article is to substantiate the nature and direction of the changes improving the existing legislation and measures that will ensure the effective control of the development of the shipping in Ukraine.

The main material of the research. The waters of the oceans, seas and rivers, artificial ponds, etc. now, in spite of the state borders, are used by the ships of almost all countries of the world. At the same time, the use of water areas for sea legal trade, fisheries, scientific and other researches, providing different types of services,

especially tourism that is all that is included in the concept of commercial navigation is carried out within the limits of state sovereignty.

The main provisions of international maritime law on these matters, and in particular, with regard to the actual connection of the ship and its flag State, in the Convention on the High Seas in 1958, confirmed and specified by the UN Convention on the Law of the Sea in 1982 [3, 4]. The latest Convention, before the entry into force was recognized in the theory and practice of international law of the sea as "exfuturum", in other words "the right of the future", acting as a point of reference in the improvement of the legal aspects of maritime navigation.

According to the provisions of these conventions, each state has the right to sail ships under its flag in the high seas. Doing so the state has the right to determine the conditions under which it grants its own flag to the vessels and registers them in their official authorities that determine their nationality. Getting the right to sail under the national flag of Ukraine is determined by Article 33 of the Merchant Shipping Code of Ukraine, which states that the right to sail under the national flag of Ukraine from the time the ship receives its registration in the State Ships Register of Ukraine or in the Ukrainian ship's book and testimony about getting the navigation right under this flag.

Merchant Shipping Code of Ukraine is the main maritime law of Ukraine, the current version of which replaced the Merchant Shipping Code of the USSR in 1968 and largely accepted the provisions which are not in accordance with the present conditions, prevailing in the process of adoption of legislation to regulate the activities of public authorities [5]. In particular, The Code should be added by provision of new forms of state control on the safety of the ships, which are widely used in international practice (port state control), by the rules on the legal regime of navigation in the territorial sea of Ukraine, and much more.

According to the international legal standards, the vessels should have the nationality of the State under whose flag they are

entitled to sail and they also should sail under the flag of the only one state. The nationality of the vessel is determined by the country of registration. In turn, if the ship is arbitrarily changing the flag, that is to say, sails under the flag of two or more states, it can be considered as such that has no nationality. The changing of the flag is considered to be legal if it is associated with transfer of ownership or changing of the country of registration. The need to establish a link between the nationality of the vessel and its right to sail under the flag of a particular state is the result of the requirements of the jurisdiction of the country whose flag the ship goes. This principle is a necessary condition for the implementation of the guaranteed legality, safety of merchant shipping in both inland and territorial waters and on the high seas and is secured by the UN Conference on the conditions of vessels registration, which took place in Geneva January 20-February 7, 1986. The State, exercising its jurisdiction of the ship, providing the application of national and international principles of law defines the competent authority that on behalf of this state determines the possibility of nationality granting to the ship of state and has the necessary legal procedures for its consolidation that is directly carrying out the administrative functions of registration. Thus, each country that provides the ships its national flag should determine its own authority, which is assigned under the laws of the State to exercise the administrative functions of registration of the ships, that could be designated in the ships register of this country, to publish the documents and provide the information on ship on such register in the manner prescribed by international standards and national legislation. Jurisdiction over a ship at sea is exclusively concerned with the state of the vessel. All vessels using the open sea must have the nationality. The vessel, which has no maritime state flag, has no defense at all, because the freedom of navigation on the high seas – this is freedom only for vessels sailing under the flag of the State [6].

In the background of the problem of connection between the ship and the flag of the country of registration there is an example where developing countries under the United Nations Conference on

Trade and Development, raised the issue of the establishment of concrete and effective standards of such connection. This was done to limit the impact of unfair competition on the part of the developed countries fleets that are registered under the so-called "flags of convenience" as the international law of the sea at that time fixed the requirement of a genuine link between the flag state of the vessel and its registration, but no specific legal provisions in this regard has been established. As a result, this fact is reflected in section 128 of the UN International Strategy, adopted by the General Assembly on December 5, 1980. Later in the UN Convention on the Law of the Sea established 1982 there were established already more concrete provisions (Article 94). In turn, the United Nations Convention on Conditions for Registration of ships already in 1986 established a fundamentally important provisions relating to the ownership of the vessel and its crew manning. Under the provisions of the Convention, the state of registration should follow the rule, according to which the owners of the vessel must be nationals of that State. The degree (percentage) of the state registration citizens' participation of in the ownership of the vessel should be determined by national law.

According to the Article 32 of The Merchant Shipping Code of Ukraine concept of Ukrainian vessel or vessel of Ukraine means the nationality of the vessel subject to the jurisdiction of Ukraine. On establishing the interest of businesses and individuals in Ukraine owned ship registered in Ukraine in The Merchant Shipping Code of Ukraine says that the right to fly the national flag of Ukraine has the ship, which is public property, or is owned by a private person – a citizen of Ukraine, as well as a legal entity in Ukraine based solely Ukrainian owners, or a vessel which these persons to bareboat – charter. Thus, in The Merchant Shipping Code of Ukraine any direct participation of foreign capital in the ownership of the vessel, which sails under the Ukrainian flag is excluded. This fact has very important not only legal, but also an economic aspect, because by doing so greatly range of sources of investment in the development and modernization of the national fleet in Ukraine is narrowed. This position is also very important from the point of view of establishing any form

of state support for national shipping, bearing in mind the possibility of appropriate sanctions by OECD countries. Indeed, if the owners of the fleet under the Ukrainian flag on a certain percentage may be foreign entities, the support of national shipping of the state is no longer purely protectionist, as equal benefits are also received by foreign owners.

According to the regulations of the same Convention 1986, at the manning of the crew of the vessel the principle of a certain level of representation for nationals of the country of registration should be observed. Specific terms relating to the proportions of the national and foreign crew are set by national legislation in the country of registration depending on the availability of qualified personnel.

In The Merchant Shipping Code of Ukraine the legal status of the crew of the vessel, its composition, qualification requirements, health, citizenship, etc. are regulated by Articles 48 – 57 Section 3 – "The Crew of the ship". In contrast to the establishment of the ownership share of the vessel, The Merchant Shipping Code of Ukraine much more liberal approaches the requirements to the nationality of the crew. For example, Article 53 states that the members of the crew of a vessel registered in the State Ships Register of Ukraine or in the ship's Book of Ukraine may be citizens of any country. At the same time saying that the captain of the Ukrainian vessel may only be a citizen of Ukraine. Apparently, it should be recognized that such a "conservatism" in the field of establishing of the ships ownership and "liberalism" in regard to the nationality of crew members don't correspond the conditions prevailing in the Ukraine. If we analyze the international practice, the laws of most countries (meaning only the main registers and exclusive "flags of convenience") establishes a requirement of the owners of the ship and its crew, having a national identity within less than half, with mandatory national identity of the captain, and in some cases of the senior officers [7]. The latest fact is due to the need of implementation of the exclusive jurisdiction of the state over ships flying its flag, which is implemented directly to the ship's captain or, in his absence, to the senior officer. This practice should be recognized as the most acceptable, but in terms of the re-

sponsibility of the country of registration and the consequences that arise in the case of certain forms of its operation, and the uniqueness of the exclusive jurisdiction of the flag state of the vessel, these requirements would be more stringent with regard to the establishment of mandatory property the ship by national members and the establishment of a mandatory national identity is not only the captain, but the two officers of the vessel. The mandatory national identity not only of the captain but the officers will provide an opportunity to implement the exclusive state jurisdiction upon the ship under its flag in all cases.

The main aspects of the economic and legal framework should be implemented through the legislative system, the most important should be the law "International Shipping Register of Ukraine", "The Merchant Shipping Code of Ukraine", as amended, in accordance with the terms of the functioning of a modern "Strategy of development of ports of Ukraine", "National regulations of freight transportation and pricing in mixed land-water connection" and others.

Conclusion. The implementation of the economic and legal aspects of shipping control will enable the development of the Ukrainian economy as a whole. Creating conditions for the development of national shipping should be mentioned that in the basis of the success of the great maritime countries, above all, should be the presence in their society of the developed maritime traditions, due to which every member of society understands that investing in shipping and other spheres of maritime activity provides at least three times the returns in all sectors of the national economy and considers the development, first of all of merchant shipping as a the priority development of the national economy.

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Рецензенти:

доктор економічних наук, професор, завідувач кафедри національної економіки Національного університету «Одеська юридична академія» **О.М. Кібік**

доктор економічних наук, старший науковий співробітник Інституту проблем ринку та економіко-екологічних досліджень НН України **О.А. Ліпінська**