

АНГЛОМОВНІ ЕКОНОМІКО-ПРАВОВІ ДОСЛІДЖЕННЯ

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ASPECTS OF LEGAL PROTECTION OF SHIPPING IN UKRAINE

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.

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.

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 [1,2]. 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 [3]. 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.

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. The degree (percentage) of the state registration citizens' participation of in the ownership of the vessel should be determined by national law.

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». The implementation of the legal aspects of shipping protection 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.

LIST OF SOURCES

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3. Кодекс торговельного мореплавства України // Відомості Верховної Ради. — № 47-52. — 1995. — 73 с.