

Cross-border Relations

The Control of Ships on the Danube at the Entry in the European Union

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Abstract: In the last decade, the border security has become one of the most important issues of global security, exerting a decisive influence on the globalization of international relations, trade relations, and asymmetric risks on cooperation in various forms - including military, in order to combat international terrorism affecting the economies of all countries at regional and even planetary level. Since the state border of Romania have external border of EU, NATO and in the near future Schengen external border, including a good part of the Danube, the authorities have to deal with a great challenge, especially at administrative and legislative level.

Keywords: external border; ship control; European Union; Danube

1. General Notions

The communities that have developed in the vicinity of water received, in addition to natural food resources, also the possibility of communication and exchange of goods by sea, practicing shipping since the beginning of humanity.

Seas, rivers and streams were both foreign and strategic areas, favorable for defense and easy transport routes, increasingly widely used, especially since the Industrial Revolution and since the promotion of free navigation principles on the rivers.¹

¹ "... river courses are common and inalienable property of all the countries bathed by their waters, and any nation cannot claim, without committing an injustice, that it has the right to occupy one channel of a river and prevent the neighboring peoples, on the banks of that river, not to use the same facilities ... so it is revocable at any time, even in case of agreement, because nature knows no privileged peoples or individuals, and that the human rights are imprescriptible." (Baicioianu, 1917, p. 19)

One of the biggest possibility offered by the Danube is, from ancient times, shipping. This possibility is enhanced by the commissioning the Trans-European Rhine-Danube system, the navigation axis of European importance, which will connect through this river western countries, the center of the continent and the Black Sea. The transport on the Danube River is open to all commercial ships that will operate in full equality of treatment in terms of port charges, fuel supply, driving and servicing.

Simultaneously, the strategic area of interest, where Romania is, represents a transit area for a range of criminal activity consisting of: illegal migration and human trafficking, illegal trafficking in weapons, ammunition, explosives and radioactive materials, traffic in narcotic drugs and precursors; trafficking in counterfeit goods, money laundering and illegal economic and financial activities.

By their nature and extent such activities are strongly influenced by the open or latent conflict existing in the former Soviet space with decisive contributions on the development of terrorism and proliferation of weapons of mass destruction.

We should note also that this new extension of illegal acts found a fertile ground in the local criminal environment, among those who actively participate in the violation of the rule of law, disrupting order, peace and public safety, inland and border waters. Many times simple poachers, fishermen or seafarers authorized, are drawn into organized crime networks, which have as object of activity immigrant trafficking, smuggling, illegal migration and traffic in narcotic drugs, etc.

In this criminal context Romania crime tends to become a transit country, the target country especially for illegal migration, trafficking in narcotics and human trafficking, particularly dangerous role contributing to the destabilization of the order and the emergence of new crime sources.

For these reasons, Romania was forced to constantly improve its the legal system,

especially in controlling ships into and out of the country and it should, also,

develop the crime prevention programs able to provide a tolerable threshold for all

life categories.

2. The Specific of Border Control of Ships on the Danube

With Romania's EU integration¹ and preparation for accession to the Schengen area, we are already talking about the **legal community regime of water border** characterized mainly by the priority of community rules with obligatory feature towards the provisions of the national laws², by the abolition of controls to internal border, together with a strengthening of external border controls, the introduction of the Schengen Information System (SIS) that allows the identification of all categories of persons and goods which are subject to criminal justice in the community space, the exertion of the right to follow over the national border (in another state), the exertion of the right to transborder border surveillance, etc.

Out of 3202.175 km as Romania's border measures, 2116.574 km are represented by the waters of which 33 km border with the Republic of Hungary, 289.7 km with Serbia, 469.5 km with Bulgaria, 342.8 km of Republic of Ukraine, Moldova 681.3 km with a total plus 1816.3 km and 298.674 km border line representing the Black Sea.

Currently, after Romania's accession to the European Union, borders with Hungary and Bulgaria became the EU's internal borders, and consequently, the waters represent those borders that have gained the EU's internal water quality.

The control of ships,³ for crossing the state border, that enter or leave in / from Romanian ports from / to international voyages are carried out in port checkpoints. The ones that are exempted from the control are Romanian and foreign military vessels and their crews, provided by the Ministry of Defense and Ministry of Interior and Administrative Reform.

In the port checkpoints control the team is made up of border police, customs, port captains and representatives of the agency's charter and other authorized persons.

The coordinator of the control team is always an officer or agent of border police.

The control of ships crossing the border that will stop at ports situated on the Danube do not work as checkpoints, they are carried out at the first port, located upstream or downstream of that port, where it creates a checkpoint.

¹ Romania joined the European Union with all the rights and obligations at 1st January 2007 under the Treaty of Accession of 25 April 2005 ratified by our country according to Law no. 157 of 2005, published in the Official Monitor, Part I, no. 465 of June 1st, 2005.

² See article 10 line 2 of Romania Constitution.

³ See more details in (Carp, Aelenei, Dârmon, & Țonea, 1999, pp. 56-58)

At the exit, the control is carried out in port where the ship leaves in the external journey, in the situation where it exists when control point; otherwise, those vessels are obliged to stop for inspection in one of the ports of Galati, Sulina or Moldova Veche. The control for border crossing of foreign vessels that sail in the Lower Danube Sector, between Braila and Sulina ports will be achieved at Sulina port entry, and at the exit in one of the ports of Braila, Galati, Tulcea or Sulina, if from these ports the vessels leave directly to international journeys. The control of ships which sail through the Danube - Black Sea port of Constanta is performed at the South entrance and the exit, in the last Romanian port from which ships depart directly in their journey.

In the Cernavoda port there are controlled only those ships arriving or departing on international journeys from ports Basarabi, Poarta-Albă, Medgidia, Midia or Cernavodă. The Control for crossing the border is carried out on all ships that sail through Sulina port towards Reni or Ismail ports. The ones that are not submitted to control are: the Romanian and foreign ships that coming from these ports and do not stop in a Romanian port; the cargo and passenger vessels under the Romanian flag sailing between the ports of Constanța-Sulina-Galați and Brăila into and out of the Danube Lower Sector.

The ships sailing under the foreign-flagged down the inland Danube and going to transit with a stop are controlled at the entrance into the country, in the port of Calarasi and for the exit, in last port of the country, if it is organized a crossing point border or Galati port. For the navigation in the Danube upstream sector, the control at the entry into the country shall be at the port Galati, and for leaving the country, the last port, if it is organized a crossing point, or port Calarasi.¹ According to the law on state border of Romania, foreign-flagged ships sailing in transit without stopping on the inner Danube or the Danube-Black Sea Cannel are controlled at Calarasi port respectively Galati port ² to prevent and detect any violations of the national rules or EU law.

¹ Article 27, line 7 of G.E.O. no. 105/2001, as amended.

² Currently, the control of ships in transit is performed only at the port of Galati, without having a correspondent at Calarasi also, as required by the current law. We believe that under these conditions, the purpose for which it was ordered this control is far from being reached. In fact, in Galati, when presenting at the entrance (exit) on the inner Danube, the ship receives at the same time the control of entering and exiting. The lists of the crew and passengers or goods are controlled by input and output only here, afterwards there would be no guarantee that the passengers and cargo transited the inner Danube.

3. Specific Elements on Border Control of Persons on the Danube Border

The control of identity documents of foreigners, members of the crews that run international voyages and of passenger border for crossing the border is done in compliance with the Government Decision no. 1.335/2000 for the approval of Methodological Norms for implementing the provisions of the Convention on facilitating the international maritime traffic (FAL), adopted in London on April 9, 1965, as amended and supplemented.

At the Romanian ships that transport goods, that for justified reasons, are forced to stop in the roadstead, the access to land of the crew is allowed with the approval of the crossing point chief. In this case the control is executed after their ships come into port and the control of the sailor's books is achieved at their descent on land.

Crews of ships which are in roadstead, over which at the arrival it was not achieved a border control, may be granted medical assistance with the access of the doctor on board, at the request of commanders and with the approval of the head of the crossing point.

Based on the competent medical authorities' approval the disembarkation of foreign sailors in order to be hospitalized in one of the city hospital is approved by the chief port of the crossing point, at the request of the port captains.

Sailors left in Romania after leaving the ship may present at the Navigation Agency Company they their vessel belongs in order to resolve the situation. If in the port there is no shipping agency, the head of the crossing point allows the sailors to leave the country with another ship.

The foreign Sailors on ships in Romanian ports which are to move for work in another port or in another town in Romania, in order to make contact with the diplomatic mission or consular office of their State, there are granted, upon request, an entry visa. The visa can be solved by chartering agency or state navigation agency of the vessel or by the heads of the crossing points. If sailors travel to other countries there are granted transit visas.

The passage of any member of the crew of a foreign ship in another foreign ship crew, located in one of the Romanian ports is done by the appropriate modification of their crew lists by the commanders of both vessels with the ship's agent approval. These lists are presented to the captain port crews at the head of the

border crossing point, at the customs office and the office of the Public Health Directorate port by ship agents.

On passenger ships under the or foreign Romanian flag, and the passengers who are on merchandise ships coming from or leaving in / from Romania the document control at border crossing is performed on persons and goods disembarkation and, respectively, boarding to / on ships.

Foreign passengers' access to land is allowed only after being filled in all the legal formalities for border crossing.

The heads of diplomatic missions, consular offices and heads of international organizations located in Romania, within the conventions limits to which Romania is part, have access to trade foreign ships in ports or territorial Romanian waters based on their identity cards issued under the Ministry of Foreign Affairs.

The access on board of the family members of foreign sailor on board of the ships moving between the Romanian ports of Constanta, Sulina and Moldova Veche is achieved based on passports or other documents of border crossing, at the request of the captain of the ship and with the approval of the head of crossing point.

4. Observations and Proposals

So, according to the state border law of Romania, foreign-flagged ships sailing in transit without stopping the inner Danube or the Danube-Black Sea port are controlled in Calarasi port respectively Galati¹ port to prevent and detect any violations of national or EU law.

Per acontrario, it results that the Romanian flagged vessels that can navigate freely, without being controlled, regardless of the cargo, nationality of sailors and passengers, the only aspect that we consider is, according to the law, the flag of the ship. Moreover, stopping and controlling the ships under the Romanian flag could be considered as an abuse, although practice has shown that they can be involved in illegal activities, including criminal implications.²

Considering that with the Romania's accession to the Schengen area, the Galati Port will become Schengen port, which will mean that only there will be achieved

¹ Idem

² During the year 2007, the Romanian-flagged ship "Santa Maria" has conducted frequently voyages between Reni-Ukraine and Silistra-Bulgaria with Ukrainian and Moldavian passengers on board in transit to EU countries, some of them entered without having fulfilled the legal conditions.

the control of ships that will travel along the Danube (both for Romania and in Bulgaria), we consider necessary the completion of the normative act on border regime in this regard.

We also propose the amendment of GEO no. 104/2001 on the organization and functioning of the Romanian Border Police in the idea of extending its power throughout the whole structure at the level of the entire country to combat and research border crime and those of cross-border crime domain.

Also in this normative, or GEO no. 105/2001 on the state border of Romania, we consider necessary to *define the concept of cross-border crime*,¹ to give a unified meaning of this phrase, as did the legislator proceed in the case of organized crime concept.²

Given the fact that with the Romania's accession to the Schengen area, the Galati Port will become Schengen port, which will mean that only there will be achieved the control of ships that will travel along the Danube (both for Romania and in Bulgaria), we suggest the completion of article 27, line 7 of GEO no. 105/2001 (as amended) in that Romanian flagged vessels to be submitted to the control as well as any foreign-flagged ships.

¹In this respect, note the United Nations Convention against Transnational Organized Crime, ratified by Romania by Law no. 565 October 16, 2002, according to which an offense is transnational if:

- a) is committed in more than one State;
- b) is committed in one State, but a substantial part of the preparation, planning, direction or control takes place in another State;
- c) is committed in one State, but it involves an organized criminal group engaged in criminal activities in more than one State;
- d) is committed in one State, but has substantial effects in another one.

² In Law no. 39 of 21 January 2003 on combating organized crime, published in Official Monitor no.50 of 29 January 2003.

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***Belgrade Convention of 18 August 1948 on the regime of navigation on the Danube published in the Official Bulletin no. 253 of October 30, 1948.

***Government Emergency Ordinance no. 104 of 27 July 2001 on the organizing and functioning of the Romanian Border Police;

***Emergency Ordinance no. 105 of 27 June 2001 on the state border of Romania;

***Law no.39 of 21 January 2003 on combating organized crime, published in Official Monitor no. 50 of 29 January 2003.