

Principles of Legal Regulation of Navigation on International Rivers in Europe. Problems and Solutions (on the Example of the Danube and Rhine Rivers)

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Abstract: Today Europe is developing a unified navigation system of inland waterways, which is a network of interconnected natural and artificial waterways and allows inland navigation vessels to carry out Trans-European navigation from one river basin to another. This article examines the problems and mechanisms of their solution related to the development of a unified navigation system of inland waterways and the development of a new international legal regime for navigation on international rivers in Europe. The study is based on the analysis of international legal acts of the Mannheim Convention on the navigation of the Rhine of 1868 and the Belgrade Convention of 1948 on the regime of navigation on the Danube. The Article analyzes the principles, problems and ways of resolving, legal regulation of navigation on the international rivers Danube and Rhine.

Keywords: inland waterways; international law; international rivers; legal regime of navigation; principles of navigation

The main object of the research is the problem connected with the development of the uniform navigable system of internal waterways and the development of a new international legal regime of navigation on the international rivers of Europe. The research is based on the legal analysis of the Convention regarding the regime of navigation on the Danube (1948) and revised convention for Rhine navigation (1868). Nowadays there are no principles of legal regulation of navigation on the international rivers which are recorded in international legal documents. The aim of the article is – formulation of the basic principles of legal regulation of navigation on the international rivers of Europe.

The inland waterways of Europe are the most important part of the infrastructure of European States, providing transport links between European States and each other,

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as well as export and import transport by direct water to the ports of countries not only in Europe, but also in Asia.

At present, Europe is developing a single navigable system of inland waterways, the history of which dates back two centuries.

The process of development and codification of the principles of international law concerning navigation on the international rivers of Europe began with the adoption of the Final act of the Congress of Vienna in 1815. Until that time, navigation on international rivers was generally the only use of rivers, and was subject to monopolistic regulation by coastal States.

The final act of the Congress of Vienna for the first time contained provisions concerning the regulation of navigation on international rivers in Europe, including the first time special principles of navigation were developed and established. According to article 108-116 of the General act:

1. States through which territory the same international river flows shall regulate navigation on it by mutual agreement;
2. Navigation on international rivers is open to all Nations;
3. Police rules should be the same for all Nations and favorable for trade;
4. Each coastal state shall perform the work necessary to ensure navigation in its part of the river;
5. Transit taxes are abolished, only fees are charged to cover the costs of works carried out in the interests of General navigation. (Klyuchnikov, 1925, p. 116).

Thus, the Final act of the Congress of Vienna in 1815 approved universal international rules governing navigation on international rivers. However, their implementation required the conclusion of a special agreement by the coastal States. By this agreement, the coastal States established a specific legal regime for navigation on a particular international river.

At the end of world war II, the United States, Britain, and France tried to restore the “Versailles” mode of navigation on international rivers. On July 23, 1945, at the Potsdam conference, the US delegation made a proposal to establish a regime of free, unrestricted navigation on the inland waterways of Europe, passing through the territory of two or more States. It was also proposed to create temporary bodies for the Danube and Rhine with the participation of the United States, Great Britain, the USSR, France and the coastal States to regulate navigation issues in the interests of

ensuring equal opportunities for citizens of different States. These bodies, in accordance with the draft agreement submitted by the US delegation on September 22, 1945, were to function on the basis of the provisions of treaties and conventions in force until November 1936.

However, despite all these efforts by States, the differences in the legal regimes of navigation on these rivers have not been eliminated to date. Despite the fact that both the Mannheim Convention of 1868 and the Belgrade Convention of 1948 contain in their provisions a number of the above principles, they have established different legal regimes for navigation on the rivers Rhine and Danube. In addition, the conventions established the different scope and content of the powers of the river commissions: the Rhine and the Danube. This makes it very difficult for them to cooperate effectively. Each river Commission has the right to independently resolve all issues related to navigation on an international river. This has led to the fact that the Rhine and the Danube have different navigation rules, technical regulations, different methods of issuing ship's documents, and so on.

Analyzing the provisions of the Mannheim Convention of 1868 and the Belgrade Convention of 1948 we can distinguish the following principles of legal regulation of navigation on international rivers:

General principles of legal regulation of navigation on international rivers in Europe, which follow from the principles of international law.

These include:

The principle of sovereignty of coastal States. Each coastal state extends its sovereignty over that part of the international river that flows through the territory of that state. Each of them, as well as the owner of the entire river, can use its waters, satisfying their own needs and the needs of their subjects, and exclude others from this use.

The principle of equality of coastal and non-coastal States.

Navigation on international rivers should be carried out on the basis of equality, both in coastal and non-coastal States. Coastal States should not prejudice the rights of non-negligent States.

This principle is directly expressed in article 1 of the Belgrade Convention of 1948, which states that navigation on the Danube should be free and open to citizens,

merchant vessels and goods of all States on the basis of equality in respect of port and navigation fees and conditions of commercial navigation¹.

In addition, the decision of the Appeals chamber of the Central Commission for the navigation of the Rhine, dated 10 February 2013, also established that all interested parties in the navigation of the Rhine should be treated equally, regardless of differences of an economic, social, political or other nature. As a result, various agreements (for example, establishing the technical characteristics of a vessel) must be justified by objective elements regarding general safety, organized traffic, or general interest.

Thus, together with Grotius, Pufendorff and Vattel, it is necessary for all States to recognize the right of harmless use and navigation, which cannot be unconditionally denied to any friendly state and its subjects, in the interest of international relations.

The principle of cooperation between coastal and non-coastal States.

In order to establish a new legal regime for navigation on Europe's international rivers, coastal and non-coastal States should cooperate with each other. Currently, such cooperation is carried out through the Central Commission for the navigation of the Rhine and the Danube Commission.

For example, the European Commission and the Central Commission for the navigation of the Rhine concluded a cooperation Agreement in March 2003, which provides for a systematic exchange of information and regular meetings between the two organizations to coordinate their activities, including issues related to the harmonization of legislation of the European Union and the Central Commission for the navigation of the Rhine and ensure their parallel updating.

The issue of cooperation between the Danube Commission and international governmental organizations was discussed in detail by the Commission at its 60-th session, which adopted a resolution on the possibility of granting observer status to such organizations. The Chairman of the meeting stated that the strengthening cooperation of the Danube Commission with the European Commission is necessary and useful and that it should be developed and implemented in order to serve the interests of all the member States of the Danube Commission and the member States of the European Union.

¹ Конвенция о режиме судоходства по Дунаю 1948 г. /Convention on the regime of navigation on the Danube in 1948. *Сборник действующих договоров./ Collection of existing treaties.* Vol. 14. М., 1957. Retrieved from <http://www.danubecommission.org/extranet/e-archive/convention-ru.pdf>

Special principles of legal regulation of navigation on international rivers in Europe are:

The principle of freedom of navigation on international rivers. Freedom of navigation means freedom of navigation along the entire navigable part of the river, freedom to enter ports and use port facilities on an equal basis, freedom to transport passengers from the open sea and back and between ports of different States (Baskin, 1967, pp. 3-12).

This principle is reflected in both the Mannheim Convention of 1868 and the Belgrade Convention of 1948. In accordance with article 1 of the Mannheim Convention 1868, navigation was established free on the Rhine and its tributaries from Basle to the open sea, both upstream and downstream, for vessels of all nationalities in relation to the transport of goods and passengers, subject to the provisions established in the Convention and police regulations for the purpose of general safety.

However, freedom of navigation was restricted after the entry into force of Additional Protocol № 2 to the Mannheim Convention of 1868 in 1985. The navigation of vessels of member States of the Central Commission for the navigation of the Rhine between ports located on the Rhine and its tributaries, as well as on waterways connecting the Rhine with the sea, is carried out only according to the rules established by the Central Commission for the navigation of the Rhine. The Central Commission for the navigation of the Rhine has established requirements that the navigation of vessels from non-Rhine States is possible if the vessel is certified in one of the Rhine countries, and the boatmaster has a Rhine patent. The documents must be issued by an authority of one of the Rhine States and must comply with the requirements of the CCNR. If the documents were issued by organizations of other non-Rhine States, they had no legal force, and the vessel did not have the right of passage on the river Rhine.

However, on 27 November 2002, Additional Protocol № 7 to the Mannheim Convention of 1868 was adopted, which removed these restrictions. According to this Protocol, documents required for navigation on the Rhine river can also be issued by other „Contracting States”, primarily by members of the European Union. And the Central Commission for the navigation of the Rhine can recognize ship certificates and patents if they are issued by non-Rhine organizations, but on the basis of similar regulations to the Rhine.

In accordance with article 1 of the Belgrade Convention of 1948, navigation on the Danube must be free and open to citizens, merchant vessels and goods of all States on the basis of equality in respect of port and navigation fees and conditions of commercial navigation¹.

Freedom of navigation under the Convention also means the right of vessels, subject to the rules established by the relevant Danube States, to enter ports, perform loading and unloading operations, board and disembark passengers, and replenish fuel, supplies, etc.

However, freedom of navigation on the Danube river has restrictions, namely, navigation on the Danube by warships of all non-Danube countries is prohibited. At the same time, the navigation on the Danube of warships of the Danube countries outside the country whose flag is carried by the ship can only be carried out by agreement between the interested Danube States.

The Convention on the regime of navigation on the Danube has not established any restrictions related to the recognition of ship's certificates or boatmasters' certificates issued by non-coastal States.

The principle of unity of the rules of navigation on international rivers.

The establishment of rules for navigation on international rivers is necessary primarily to ensure the safety of navigation on rivers, as well as to establish a unified procedure for the use of vessels on international rivers.

Such rules applied on international rivers should be implemented without discrimination based on the nationality of vessels, their points of departure and destination, or for any other reason.

Such rules applied on international rivers must be implemented without discrimination on the grounds of the nationality of the vessels, their points of departure and destination, or for any other reason.

At present, the safety of navigation on the river Rhine is ensured in accordance with the rules on navigation on the Rhine, which are contained in the uniform instructions. They are applied throughout the entire length of the river (although this does not eliminate the establishment of specific norms for certain sections of the river that

¹ Конвенция о режиме судоходства по Дунаю 1948 г. /Convention on the regime of navigation on the Danube in 1948. *Сборник действующих договоров./ Collection of existing treaties.* Vol. 14. М., 1957. Retrieved from <http://www.danubecommission.org/extranet/e-archive/convention-ru.pdf>.

differ from the norms contained in the instructions). These instructions are set exclusively by the Central Commission for the navigation of the Rhine.

Coastal States (members of the Central Commission for the navigation of the Rhine) do not adopt any rules at the national level that could in any way restrict navigation on the Rhine, except if these rules do not affect the rules of navigation.

As for the Danube river, according to article 23 of the Belgrade Convention of 1948, navigation in the lower reaches of the Danube and in the area of the Iron Gates is carried out in accordance with the navigation rules established by the Administrations of these areas. Navigation on the remaining sections of the Danube is carried out in accordance with the rules established by the respective Danube countries through which territory the Danube flows, and in those areas where the banks of the Danube belong to two different States – in accordance with the rules established by agreement between these States.

When establishing navigation rules, the Danube States and Administrations will take into account the basic provisions on navigation on the Danube established by the Danube Commission.

Thus, at present there are absolutely two different orders of rules for navigation on the international rivers Rhine and Danube, the establishment of which is the responsibility of the river Commission.

The principle of maintaining and improving navigable waterways on international rivers.

Each coastal state must protect the river within its territory and support navigation by maintaining navigable waterways of the international river and hydraulic structures when navigating them. It should be noted that both the Mannheim Convention of 1868 and the Belgrade Convention of 1948, this principle belongs exclusively to the competence of the coastal state.

Thus, the Mannheim Convention of 1868 establishes the principle of preserving, maintaining and improving the navigable waterway of the Rhine. So each state within its territory lays and maintains in good condition the towpath, as well as the fairway of the Rhine; the governments of the coastal States make sure that navigation on the Rhine is not hindered by structures built on the river; on the instructions of the governments of all coastal States, inspections of the state of the river are made, the results of measures taken to improve it are evaluated, and the presence of new obstacles to navigation is determined.

Although these activities are carried out by coastal States, the Central Commission for the navigation of the Rhine monitors and investigates activities that may affect navigation. According to article 3 of the Belgrade Convention of 1948, the Danube States are obliged to maintain their sections of the Danube in navigable condition for river and sea vessels and to perform the necessary works to ensure and improve the conditions of navigation, as well as not to put obstacles or hindrances to navigation on the fairways of the Danube. The Danube States shall consult the Danube Commission on the matters referred to in this article.

The riverside States may undertake works for the provision of navigation within their own jurisdiction, the execution of which is necessitated by urgent and unforeseen circumstances. States will inform the Commission of the reasons for these activities and provide a brief description of these activities.

The principle of freedom of transit.

Shipping is closely linked to trade, which affects the development of both the state itself and the development of international economic relations. For the purposes of international regulation, shipping has always been considered an economic activity, that is, the activity of transport services for the transport of passengers and cargo.

Transport services for the transportation of passengers and cargo are provided not only by riverside States, but also by States whose territory the river does not cross.

For landlocked countries, transit through the territories of other States to access transport services is an essential condition for their integration into the international economy. The Mannheim Convention of 1868 and the Belgrade Convention of 1948 established that the coastal States will not charge any fees for transit, whether direct, after reloading to another ship or after unloading to warehouses, as such, from ships, rafts, passengers and goods, in addition, such fees are not even subject to establishment.

The presented system of principles of legal regulation of navigation on international rivers is a single interconnected system. This relationship is manifested in the fact that none of the principles is independent and cannot be considered separately without the others. Violation of one principle entails non-compliance with others. Therefore, only the application of all these principles together will ensure the establishment of a single legal regime for navigation on a single navigation system of inland waterways in Europe.

In this regard, the task of developing a new international legal regime for navigation on international rivers in Europe is becoming more and more urgent.

A priority in this area is cooperation between riverside and non- riverside States in resolving issues related to the unification and mutual recognition of the main regulatory documents necessary for navigation on international rivers, including the Rhine and Danube.

For effective interaction of States with each other in this sphere of activity, it is necessary for them to apply common principles of legal regulation of navigation on international rivers.

The principles of sovereign equality of the parties, mutual benefit, and comprehensive consideration of mutual interests in the use of river waters should serve as the General international legal basis for regulating the regime of international rivers (Anufrieva, Bekyashev, Bekyashev & Ustinov, 2005, p. 460).

It is also necessary to indicate some important problems of navigation that have been solved in recent decades.

Germany was not a party to the Convention on the regime of navigation on the Danube of 1948 until 1999 and, despite the provision of art.2 of the Convention, which established that the Convention regime applies to the navigable part of the river from Ulm to the Black sea, was not bound by Treaty obligations with regard to granting all States of the world freedom of navigation on their part of the river.

Until 1978, Germany actually complied with the provisions of the Danube Convention, granting vessels of the Danube and other States the right to freedom of navigation on their section of the river and using this right throughout the Danube in the territories of other Danube States. On April 3, 1978, the German government announced the establishment of a permissive regime for navigation on the section between the cities of Regensburg and Kelheim, citing expensive works to improve the navigation conditions of this section. In response to the protests of the Danube countries, the German government stated that navigation on the German section of the Danube is not subject to the international regime and shall be permitted only on the basis of reciprocity; that this order will be respected by Germany between the cities of Passau and Regensburg; for the area of the Regensburg – Kelheim the introduction of a licensing regime of navigation was confirmed, and in respect of the site Kelheim – Ulm it was established that commercial shipping was not carried out due to poor shipping conditions.

This step, made by the FRG, provoked the protest of the governments of Bulgaria, Hungary, Czechoslovakia and the USSR, sent to the FRG government in the period 1978-1980. As a result, the problem of navigation and the passage of the Regensburg – Kelheim section was resolved on the basis of bilateral agreements on navigation on inland waterways concluded between each of them and the Federal Republic of Germany.

Another serious problem was the appearance of new States in the Danube region in the early 90-s of the last century – Moldova, Slovakia, Ukraine and Croatia. Russia has become the only party to the Convention that does not have a Bank on the Danube. Germany, for its part, had already declared its intention to become a party to the Danube Convention. In order to resolve this problem, a Committee of all interested countries was established in 1993.

The additional Protocol was signed on 26 March 1998. In accordance with this Protocol, Germany joined the Danube Convention as a Contracting party on equal terms with the States parties and their successors, which, according to article 1 of the Protocol, are Austria, Bulgaria, Croatia, Hungary, Moldova, Romania, Russia, Slovakia, Ukraine and Yugoslavia (then FRY). These States, including Germany, are also members of the Danube Commission. The scope of the Convention extends to the Danube from Kelheim to the Black sea, with access to the sea via the Sulina canal. It is also established that amendments to the Convention are accepted subject to the consent of all its parties.

Less well known is the recent litigation for access to the sea between Moldova and Ukraine. Moldova claimed a small part of the coast (about 500 m long) at the mouth of the Danube, near the village of Giurgiulesti, for the purpose of access to the sea. And at the end of 1996, it started building a commercial port there that could serve its export-import operations. However, the port needs at least another 4,500-5,000 m of coastline on the Danube. After years of negotiations, Ukraine ceded a 600 m long stretch of coast to Moldova.

In our opinion, the problems of using navigation on the international rivers Danube and Rhine will periodically surface to a greater or lesser extent. This is primarily due to the political processes taking place in this region. The collapse of old States and the emergence of new ones changes the balance of interests. Therefore, in order to resolve disputes between interested States in time, further regulatory regulation will be required. And the main thing is to comply with existing principles and norms in the field of international river law, as well as adapt them to modern conditions by

adopting appropriate changes or developing new rules for the fair and equitable use of international rivers.

In recent decades, Europe has developed a fundamentally new regime for river navigation, and the European river network is becoming a single system, including, along with international rivers, interconnected national rivers and channels, open to foreign vessels mainly on the basis of the same type of bilateral agreements. At the same time, States give preference to bilateral rather than multilateral treaties in this area, since this method of regulation provides them with more opportunities to ensure real reciprocity, greater freedom in choosing the means of resolving disputes and conditions for terminating the contract, and allows them to conclude contracts for a limited time. However, there is no reason to absolutize this conclusion in relation to individual regions. Thus, it is possible that the recent practice in Europe of granting freedom of navigation on national inland waterways to vessels of Contracting States on the basis of uniform bilateral agreements will eventually be replaced by a multilateral Treaty settlement. It is also possible to combine these methods of regulating the relations of States in this area.

References

*** (1957). Конвенция о режиме судоходства по Дунаю 1948 г./Convention on the regime of navigation on the Danube in 1948. Сборник действующих договоров./ *Collection of existing treaties*. Vol. 14. <http://www.danubecommission.org/extranet/e-archive/convention-ru.pdf>

Anufrieva, L.P.; Bekyashev, D.K.; Bekyashev K.A. & Ustinov, V.V. (2005). Международное публичное право./ *Public international law*. Moscow: Prospekt, p. 784.

Baskin Y.Y. (1967). Проблемы правового режима международных рек на Хельсинской конференции Ассоциации международного права (август 1966 г.). Морское право и практика. Информационный сборник./ Problems of the legal regime of international rivers at the Helsinki conference of the Association of international law (August 1966). *Maritime law and practice. Information collection*. Moscow: Ed. CBNTI MMF, Vol. 36 (187), pp. 3-12.

Ключников Y.V. (1925). *Международная политика новейшего времени в договорах, нотах и декларациях. От Французской Революции до империалистической войны/The international policy of the newest time in treaties, notes and declarations Part I: From the French Revolution to the imperialist war*. Moscow: Ed. Litizdat. Vol. VI, p. 441.