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BASIC ASPECTS OF LEGAL REGULATION OF MERCHANT SHIPPING

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Abstract: In the article, the author addresses very significant issues of regulation of the emergence and functioning of merchant shipping. The article analyses the activities of the legal section of All-Russian Congress of Sea Pilots on August 1, 1923 in Petrograd and outlines the development of shipping globally. The author is concerned with the current difficult situation with the domestic system of commercial shipping, which has not fully recovered in recent years. Fixed assets of the merchant sea and river fleet in Russia are old and in need of serious renovation. The issue of an objective need to improve the legal regulation of maritime interstate relations and to improve the legal regime of the seas and oceans in Russia and on the international level is also discussed in the article. The author shows the history of creating the legislation and regulations of merchant shipping, suggests the causative factors and possible ways of renovation.

Keywords: maritime shipping, pilots, pilotage, Russia, crew of a marine vessel.

The relevance of the chosen research topic arises from the current difficult situation in the activities of the domestic system of merchant shipping, which has not fully recovered in recent years.

This is not a secret today that there is a very substantial depreciation of the main assets of the merchant marine and river fleet of our country. This factor also requires creation of an effective system for examining all ships and floating equipment, creation of a clear mechanism for monitoring their condition in order to prevent possible accidents, breakdowns and crashes that might happen on a voyage¹.

¹ Zmerzlyy B.V. *Legal regulation of merchant shipping in the Black Sea-Azov region in the late XVIII – XX centuries*. Simferopol, ChR "Predpriyatiye Feniks" Publ., 2014, p. 512.

The study of the legal components of various economic policies of a state in the era of the emergence and development of macroeconomic and political unions as well as other forms of associations is very important and necessary from various points of view. The processes of globalization in the formation of the world community predetermine the growing importance and the need to improve foreign economic activity, which is facing tasks that are ever more complex.

The development of foreign economic activity is usually accompanied by the improvement of the means of delivery of exported and imported goods. One of such means is merchant shipping, which is of fundamental importance both for the harmonization of international economic relations in general and for transportation in particular.

Shipping is the most common and most significant permanent source of pollution of the marine environment. However, the existence of modern civilization as well as its further effective functioning is impossible without shipping and navigation. Therefore, the international legal aspect is becoming increasingly important in resolving the current problematic situation. Both in the scientific and in the practical approach there is an objective need to improve the legal regulation of maritime interstate relations, to improve the legal regime of seas and oceans¹.

Shipping is sailing of ships on waterways. Based on the region of the shipping, it can be divided into maritime, domestic, and mixed navigation, while based on the function – into commercial, fishery and other types. In the past, navigation was undertaken by observation of coastal features along the rivers, lakes, or the sea shore. The development of nautical astronomy, the use of the compass and the improvement of the design of ships brought navigation into the open seas and oceans. Modern shipping is based on highly developed technical means that provide for its implementation (ships and their equipment) and shipping services (ports, hydrometeorological, hydrographic, rescuing, repair services, etc.).

Addressing the main issues related to trade, shipbuilding, training skippers, customs authorities within one department is certainly an important step towards the development of commercial shipping. Participation of experienced merchants in the Collegium of Commerce² in olden times should have enhanced the authority and professionalism of the decisions made.

For making management decisions, the creation of the institute of employees of commercial shipping and the development of education system for that was imperative. The main document regulating the legal status of merchant shipping employees in the Russian Empire was the “Charter of Merchant Shipping” (15176), which was adopted on 25 June 1781. Further decrees were adopted in 1823, 1830, 1857. The most significant

¹ Nikitina A.P. International legal aspects of the protection of the marine environment, *Public and private law*, no. IV (XXXVI), Moscow, 2018, p. 216-223.

² The governmental body of the Russian Empire created in the early 18 century that provided for development of trade (Translator's note).

changes in the training of domestic merchant sailors were made by decrees of 1867. From 1909 until 1926, laws and decrees were adopted concerning the training of merchant shipping employees. By the Resolution of the Central Executive Committee and the Council of People's Commissars of the USSR of 14 June 1929, the Merchant Shipping Code of the USSR was adopted which, with changes and additions, was the legal basis for organizing the operation of the Soviet merchant fleet for many years. In connection with the adoption of the Geneva Conventions of 1958 and significant changes in the field of management of maritime transport, on 17 September 1968, a new Merchant Shipping Code was approved by Decree of the Presidium of the USSR Supreme Council No. 3095-UP.

After the collapse of the Union of Soviet Socialist Republics, it was necessary to make significant changes in the main legislative acts of the country, including the acts regulating commercial navigation. On the basis of Federal Law No. 81-FZ of the Russian Federation of 30 April 1999, the Merchant Shipping Code of the Russian Federation was adopted.

At the same time the unification of legal relations in this area is complicated by the difference in national legal and international legal regulation in the field of international sea transportation.

Maritime shipping is a universal means of distributing goods in the field of both national and international trade. Various types of maritime freight transportation have emerged in merchant shipping and currently continue to develop and improve, in particular, with the advent of new technologies in linear traffic, the global containerization of maritime freight and the evolution of the regulatory framework in this area¹.

The norms and international legal principles that govern relations between states in the sphere of maritime navigation together constitute the most important sub-branch of modern international maritime law. Undoubtedly, the regulation of various types of marine activities must necessarily take into account environmental aspects and their various consequences for the marine environment, taking into account the existing national and international legislation².

World shipping is not possible without the work of navigation pilots and pilotage. The legal regulation of pilotage activity is determined by the need for the normative consolidation of its main principles.

The activity of pilots who are on-site guides of ships in different specific conditions is still one of the most important means of ensuring the safety of navigation in many ports, straits, canals, rivers and seas. The first normative provision appeared at the All-

¹ Ivanova T.N. *Legal regulation of the sea transportation of goods in a linear communication in the Russian Federation*: Dissertation ... Doctor of Legal Sciences: 12.00.03, Russian Academy of National Economy and Public Administration under the President of the Russian Federation. Moscow, 2014, p. 174.

² Nikitina A.P., Krykhtina V.V. International legal issues of the protection and preservation of marine environment, *Student of the Year: Collection of Articles of the II International Scientific and Practical Competition*, part 2. Penza, Nauka i Prosveshcheniye Publ. 2017, p. 139-142.

Russian congress of sea pilots on 1 August 1923 in Petrograd, where the legal section was charged with the development of such questions as processing of the current pilot charter; the aim of uniting sea pilots; the activities of societies; composition of societies; pilots' societies; management of societies' affairs; Central Committee or permanent bureau; audit commission; rights and obligations of members of societies; rights and obligations of pilotage societies; management of pilotage societies; exclusion from the union number; termination of activities of companies. The financial section dealt with the following issues: means of the association and individual societies; the basis for charging the pilotage fee and the size of the fee according to local conditions. The organizational section had the following tasks: special duties of members of the association as pilots; rights and obligations of pilots and candidates; relations between pilots and captains, as well as the procedure for receiving special training¹.

The historical experience clearly shows that the international community has been forming the legal foundation of the regime of the seas and oceans for a long time and with great difficulty. Now since the United Nations Convention on the Law of the Sea has clearly and precisely defined the status of the territorial sea, the contiguous zone, exclusive economic zone, high seas, international straits and archipelagic waters; there is the extremely relevant issue of compatibility of shipping activity of states via the open world transportation routes in the World ocean which have the status and the regime of the sea spaces. The latter are recognized by the UN Convention on the Law of the Sea as a sphere of public law rights and interests of all states.

The basic element of the maritime transport regime is the freedom of navigation, which serves as a criterion for the legality and legitimacy of the activities of states in the oceans, aimed at the use of ships for the purpose of transporting goods by sea. Freedom of navigation ensured the creation in the system of international maritime law of a special institute – the institute of “law of navigation” – within which the regulation of navigation is always carried out in accordance with the specifics of all types of commercial and transport shipping.

By the time the incorporation of the coastal regions of the Black Sea and the Sea of Azov into the Russian Empire had started, there was no single management system for such an industry as merchant shipping. During this period, there was an active creation of various structures together with the restructuring of the state authorities. In the ports of the Black Sea and the Sea of Azov, various structures were created designed to ensure the interests of the state in this direction, but were not directly involved in the regulation of navigation.

In 1800 two important fundamental steps were taken in this direction. Firstly, “The Charter of Border and Port Quarantines» was adopted on 7 July 1800 (19476). It absorbed

¹ Nikitina A.P., Sharmoyants A.P. Attempts to reform the organization of pilotage in 1923 in the Black Sea-Azov region, *Uchenye zapiski Krymskogo federalnogo universiteta imeni V.I. Vernadskogo*. Simferopol, 2018, vol. 4, no. 2, p. 308-315.

not only the new medical knowledge at the time and an objective state approach, but also the accumulated domestic and foreign experience of such institutions¹.

The other important event that took place in 1800 was the adoption on 13 September of the «Highly Approved Decision of the Collegium of Commerce» (19554), duties of which included: “1) the state of foreign trade; 2) the state of domestic trade; 3) internal and external merchant shipping; 4) the customs office with a foreign merchant punishment and the court departments.”

The main document that regulated the legal status of employees of merchant shipping in the Russian Empire for a long time was the Charter of Merchant Water Shipping (15176) adopted on 25 June 1781. Its sections 6-9 prescribed to hire experienced sailors on the ship, though the charter itself stipulated that it should have been done only «when there is a sufficient number of jury sailors or shipmen, helmsmen or navigators and pilots at harbours or cities». In other cases, the statute allowed to recruit anyone. Provision was made for a mandatory entry of shipbuilders, shipmen, helmsmen and pilots in the brokerage book. It was recommended to give preference to people recorded in such a book during the recruitment. Given the acute shortage of the experienced sailors, the charter allowed people to sign up as sailors: «It is allowed to sign up at a city or at a wharf any time yearly». This right was extended not only to free people, but also to the non-free who had the corresponding document.

The ship broker was required not only to register, but also, if necessary, to search for the registered sailors at merchants' demand. The broker also received notes from the owners, where they wrote a review on the sailors. If it was positive, the sailors were entered in the column «good sailors» (sections 10-12). Those who received such a status could “sign up as sailors and hire themselves freely in the cities and marine harbours for Russian merchant ships or vessels, and sail on those Russian merchant ships or vessels across the sea and sail everywhere according to their contract, where merchant industries or circulation requires so, the prohibition is not imposed.”

The sailors recorded in the brokerage book were allowed to choose the head of the work association (artel) and several senior officers at the beginning of navigation. They were entrusted with the further keeping records in the broker's book, the distribution of work among the artels, the enforcement of contracts with the merchants, the timely payment of money to other sailors.

Pilot services that carry out pilotage of ships in the seaports of the Russian Federation perform an important role in ensuring shipping. The purpose of the pilotage is to assist navigators in the safe passage of vessels on the domestic waterways of the Russian Federation, where, due to navigational and/or hydrometeorological conditions, the density of navigation, the nature of cargo traffic and other reasons, the navigation conditions pose the increased danger or difficulty (hereinafter – the pilotage areas), as well as to prevent

¹ The complete collection of laws of the Russian Empire. Since 1649. Vol. XXVI. 1800 – 1801. St Petersburg, 1830, p. 875.

traffic accidents with ships, damage to hydraulic structures and navigation equipment. The state control (supervision) of the activities of pilotage services and organizations is carried out by the Federal Service for the Supervision of Transport.

The activity of pilots who are guiding the vessels under specific conditions is one of the important means of ensuring the safety of navigation in ports, straits, canals, rivers and seas. For a long time, due to the lack of access to the sea, only the category of amateur river pilots developed¹.

The following decrees confirmed the relevancy of the pilotage for Russia. Thus, the decree of December 31, 1758 (10912) "On enrolment of coachmen and different peasants as pilots for shipping of barques at Vyshny Volochok"² regulated the order of entry as pilots and their jurisdiction. During the serfdom coachmen, monastery and landowner peasants were allowed to sign up as pilots and receive corresponding certificates. The decree ordered them to hold a trial by the collegiate assessor Serdyukov and at Yamskoye department. Thus, the foundations were laid for the legal independence of pilots.

Also the formation of the status of pilots and pilotage services was supported by the following decrees: "On the prohibition for the Governors of the provinces to enter the Nobility Assemblies"³ (no. 16733); "On the enrolment of Vyshny Volochok pilots, and on giving a moderate pay to them"⁴ (no. 10029); "The exemption from conscription of pilots of Vyborg province"⁵ (no. 20222); "Turning pilots-serfs of Borovitsk rapids into the employees of the government department"⁶ (no. 22400); «The exemption from paying bread contribution into shops for pilots at Arkhangelsk port»; "On the settling of Vyshny Volochok pilots"⁷ (no. 26797); "On the supply of pilots of Noshkinsk and

¹ Nikitina, A.P. *Legal regulation of pilots' activity in the Black Sea-Azov region (end of XVIII – beginning of XXI centuries)*. Moscow, RUSAINS Publ., 2018, p. 276.

² On the enrolment of coachmen and different peasants as pilots for shipping of barques at Vyshny Volochok of 31 December 1758, *Full collection of legislation*, First collection: vol. XV (1758 – 1762), no. 10912. St Petersburg, Printing House of II Office of His Own Imperial Majesty's Office, 1830, p. 312.

³ On the prohibition for the Governors of the Provinces to enter the Nobility Assemblies dated November 1788, *Full collection of legislation*, First collection: vol. XXII (1784 – 1788), no. 16733. St Petersburg, Printing House of II Office of His Own Imperial Majesty's Office, 1830, p. 1135.

⁴ On the enrolment of Vyshny Volochok pilots, and on giving a moderate pay to them of 5 July 1799, *Full collection of legislation*, First collection: vol. XXV (1798 – 1799), no. 10029. St Petersburg, Printing House of II Office of His Own Imperial Majesty's Office, 1830, p. 699.

⁵ The exemption from conscription of pilots of Vyborg province of 9 April 1802, *Full collection of legislation*, First collection: vol. XXVII (1802 – 1803), no. 20222. St Petersburg, Printing House of II Office of His Own Imperial Majesty's Office, 1830, p. 94-100.

⁶ On the purchase of pilots from Borovitsk rapids by the government of 19 December 1806, *Full collection of legislation*, First collection: vol. XXIX (1806 – 1807), no. 22400. St Petersburg, Printing House of II Office of His Own Imperial Majesty's Office, 1830, p. 934-935.

⁷ On the settling of Vyshny Volochok pilots of 16 April 1817, *Full collection of legislation*, First collection: vol. XXXIV (1817), no. 26797. St Petersburg, Printing House of II Office of His Own Imperial Majesty's Office, 1830, p. 215-217.

Basugin quays with tickets for rafting ships from the Gzhatsk and Upper Volga quays to Vyshny Volochyok and Novgorod”; «On the dismissal of pilots of the Arkhangelsk port due to old age and illness, from such position, with exemption from paying State taxes and duties»¹ (no. 650), etc.

Each of these decrees regulated one or several minor problems in determining the legal status of pilots. As a result, at the beginning of the nineteenth century the general approach was formed, according to which the pilots were free people (not serfs), they received fixed payment for their service, they could not be forced to do anything other than escorting vessels, they had certain benefits in paying taxes or conscription and certain social guarantees, for example with regard to elderly pilots; separately there were established the responsibility of pilots and the rules of their relationship with the skippers. All these provisions were disparate and not always sufficiently detailed, but later they became the basis for most pilotage charters.

With the development of shipping, trade and ports the value of different straits, rivers, canals and estuaries changed. Later the associations of pilots (on the Dnieper, Bug, Kerch, etc.) were created. The association of Sulinsk Pilots Company was the least fortunate: as a result of the Crimean (Eastern) War, the Russian Empire lost control over the estuary of the Danube as well as the right to form their own pilotage associations there².

Given the role of foreigners in merchant shipping, they were also allowed to sign up in the work associations, with the payment of only the bourgeois-level tax and with the exemption from conscription for themselves and for those families with whom they entered the work associations. Within 10 years from the issuance of the decree, foreign skippers and navigators who presented good certificates of their abilities and behavior from foreign authorities, supported by Russian diplomatic agents, could sign up in the port cities with the permission of the local authorities without taking the oath of allegiance, but they had to purchase real estate or move their families to Russia. They were given the rights of Russian citizens and the right of ownership for the ships, but only for the ones built in Russia. At the same time, if they also wanted to trade they had to sign up at the trade associations³.

Complaints on the actions of the pilot gathering and officials of the association could be brought to the authorities of local shipping supervision department, who could punish pilots and pilots' interns for misdemeanors, which did not entail judicial liability, but violated the order of pilotage service. The punishment included a fine of up

¹ On the dismissal of pilots of Arkhangelsk port due to old age and illness, from such position, with exemption from paying State taxes and duties of 6 November 1826, *Full collection of legislation*, First collection: vol. I, (1825 – 1827), no. 650. St Petersburg, Printing House of II Office of His Own Imperial Majesty's Office, 1830, p. 1170-1172.

² Nikitina, A.P. *Legal regulation of pilots' activity in the Black Sea-Azov region (end of XVIII – beginning of XXI centuries)*. Moscow: RUSAINS Publ., 2018, p. 276.

³ Zmerzlyy B.V. *Legal regulation of merchant shipping in the Black Sea-Azov region in the late XVIII – XX centuries*. Simferopol: ChR "Predpriyatiye Feniks" Publ., 2014, p. 512.

to 5 rubles, arrest up to 3 days and deprivation of the pilotage right for ships and rafts for a period not exceeding one navigation period.

The amounts received from monetary fines were used for the construction and the maintenance of detention facilities. For navigation, the owners of the ships and rafts were charged with the fee the size of which was also determined by the Minister of Communication lines.

According to the rules issued on this issue by the Minister of Communication lines for provision of assistance to ships and rafts in case of accidents the association was obliged to keep the guard and rescue vessels.

The duties of pilots, in addition to piloting ships and rafts, included: monitoring the due designation of the fairways, informing the local shipping authorities about any change globally in fairways that could affect the safety of navigation, and helping ships and rafts in accidents.

It was traditionally established that pilots and pilots' interns assigned to ships or rafts did not have the right to enter into agreements with the owners of ships and rafts or their representatives regarding the loading and unloading of rafts, as well as to undertake the trade instructions of these persons.

In turn, people present on ships and rafts were forbidden to interfere with the orders of the pilot to navigate the vessel or raft.

The pilot is required to monitor compliance with the requirements of the legislation of the Russian Federation and the regulatory legal acts governing navigation on the domestic waterways of the Russian Federation.

Thus, the international community for a long time and with great difficulty formed the legal foundation of the regime of the seas and oceans. In Russia, maritime shipping began in the XVIII century, during this period the institute of merchant shipping employees and the development of the education system were formed, and the training system for merchant navy personnel developed. There was a regulation of issues of ownership and operation of vessels, the legal activities of pilots and pilotage.

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