

GUARANTEE MEASURES OF PORT ACTIVITY AND NAVIGATION IN SPAIN

María Lidón Lara Ortiz

Jaume I University (Spain)

mlara@uji.es

INTRODUCTION

Introduction Currently, port activity and navigation are economic activities that raise some concern for the pollution impact they produce on the maritime environment. For this reason, in this paper we consider whether the current Spanish regulation is sufficient and adequate to guarantee port security, including the environmental aspect.

The aim of research The main objective of this research is the analysis of the rules that regulate safety and environmental protection in Spain, in order to propose, if needed, some regulatory reforms that improve such regulation.

Objectives The objectives of this work are the revision of the current Spanish regulation and its adaptation to the security parameters established at an international or European level, since in Spain we have planned the amendment of the Port Law.

The methods of the research The method applied is the normative review, its study compared with international Treaties or the regulation approved in the framework of the European Union, as well as the main guides to draw the conclusions that will finally be exposed.

Theoretical background

In the waters in which Spain exercises sovereignty, sovereign rights or jurisdiction, for the purpose of safeguarding the safety of navigation and preventing pollution of the marine environment, the Ministry of Development through the Port Authorities and Maritime Captaincies may visit, inspect, condition anchoring, seize, initiate legal proceedings and, in general, adopt the measures deemed necessary with respect to ships that violate or may violate said legal rights.

The previous measures referred may be adopted without prejudice to those that, for this purpose, may be decided by other bodies or Public Administrations competent in matters of preservation of the marine environment. There are many different measures that can be applied to achieve effective security.

Main findings

Main guarantee measures of port activity and navigation in Spain enacted on Royal Legislative Decree 2/2011, of September 5, approving the Consolidated Text of the Law on State Ports and the Merchant Navy

Protection of free navigation. - In the event that one or several vessels impede or hinder free access to a port, canal or waterway, or free transit through them, or when a vessel has gone to sea in serious breach of clearance regulations, or disobeys the orders of the competent Maritime Captaincies, they may take, immediately, and for the duration deemed necessary, all the measures that are necessary, in accordance with the legal system, to restore the legality infringed or the free navigation affected. For these purposes, the Maritime Captain will give the appropriate orders to the respective captain of the ship, or whoever acts as such. Those orders must be complied with by the interested party and by all those who are on the ship, without prejudice to the exercise of the corresponding actions in accordance with the laws, to those who believe they have been harmed. If necessary, the Maritime Captain may impose the detention, anchoring and retention of the ship in the place determined, during the essential time, until normality is restored.

Assistance and shelter.- The General Director of the Merchant Navy is the competent authority for decision-making with respect to ships in need of assistance, understanding as such those that, due to their own situation or due to external circumstances, are in danger of sinking or that, in general, they pose a threat to navigation or the integrity of the marine environment. In this regard, the governing body shall adopt, with full independence of criteria, any measures it deems pertinent to vessels in need of assistance to: a) Eliminate or reduce the risk of shipwreck of such vessels; b) Safeguard the safety of navigation and human life at sea; c) Prevent or fight against pollution of the marine environment. These provisions must be understood without prejudice to national and international regulations on the rescue of human lives at sea.

Dangerous situation on board.- Captains of ships or those who act in their place may adopt, on an extraordinary basis, as many police measures as they deem necessary for the good regime on board in case of danger.

Prevention of illegal activities and prohibited traffic. - For the purposes of preventing the performance of illegal activities or the exercise of any prohibited traffic, the Government may prevent, restrict or condition the navigation of certain categories of civil vessels in internal waters, the territorial sea or the contiguous zone.

Derelict ships. - Once the ship has been declared abandoned by the Board of Directors of the Port Authority, the Port Authority will either proceed to sell it at public auction, paying the proceeds of the sale to the Public Treasury, after deducting the credits accrued in its favor for the corresponding fees. and port fees, as well as the costs of the procedure; or proceed to the sinking of the ship when, due to its condition, it is advisable for reasons of maritime safety.

Scrapping operations. - In shipbreaking operations, maritime installations and useless material carried out in port waters, the binding report of the Maritime Captain will be previously required for the purpose of complying with maritime safety regulations.

Ship sinking. - In the event of the sinking of ships in the waters of a port that, either by the ship itself or by the cargo transported, affects port activity or constitutes a serious risk to people or property or the environment, The Port Authority will require its owners, ship-owners, consignees or insurance companies to proceed with its removal and will indicate where they must place their cargo, fuel, its remains or the ship once refloated, within the period determined for that purpose, as well as the guarantees or security measures to be taken to avoid a new collapse. The Port Authorities may, for reasons of urgency, even before the established period begins, demand that measures be adopted or adopt them at the expense of the obligated parties, such as signage, lighting or any other deemed appropriate, in order to reduce or avoid actual or potential danger. If they fail to comply with the orders or agreements of the Port Authority, the latter may use for the removal of the sunken ship, its fuel or the cargo that is on board, or has fallen from it, the means of forced execution provided for in the legal system, being obliged, in any case, the owner or ship owner to bear the expenses incurred. If the latter does not pay the amounts accrued for the removal within the established period, the Port Authority may proceed to dispose of the remains of the ship, deducting the costs incurred from the amount obtained. If it is not enough, the difference will be demanded by way of urgency.

MAIN RESULTS AND CONCLUSIONS

Guarantee measures of port activity and navigation in Spain enacted on Royal Legislative Decree 2/2011, of September 5, approving the Consolidated Text of the Law on State Ports and the Merchant Navy are outdated because at this moment there are other challenges that this regulation does not prevent. Current regulation should consider other remarkable regulations and international agreements. Regarding it, the future amendment of the current regulation should integrate the recent Treaty of the High Seas to protect the ocean, tackle environmental degradation, fight climate change, and prevent biodiversity loss signed on March 4, 2023. The new agreement would bring United Nations Convention on the Law of the Sea (UNCLOS) up to speed with the developments and challenges that have occurred since it was developed thirty years ago and would further support the achievement of the Agenda 2030 for Sustainable Development, in particular Sustainable Development Goal 14 ('Life Below Water'). The Agreement shall enter into force once 60 States will have ratified. The European Union and the State Members will have to adapt their national regulations including new measures to deal with the mounting pressure from pollution (including noise), overexploitation, climate change and decreasing biodiversity.