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Comparative Analysis of Collision Avoidance Rules of 1996 and 2013

Abstract

By applying the research method of comparative analysis, this paper compares provisions of the Ordinance on Safety of Maritime Transport in Internal Waters and Territorial Sea of the Republic of Croatia and on the Manner and Conditions of Vessel Traffic Management and Information, inclusive of Collision Avoidance Rules given in its second part, with Collision Avoidance Rules 1996. The authors critically discuss the disparities between the Rules and the Ordinance. Most of the recent rules represent essential elements of navigational safety and any discrepancies in that area are unacceptable. The consistency in prescribing all issues in the area of avoidance of collision at sea is seen in the International Regulations for Preventing Collisions at Sea, 1972 (COLREGs), as the basic and comprehensive rules for avoiding collision at sea. COLREGs are an example of a thorough analysis of all rules and generally of all subjects the rules apply to. The aim of this comparative analysis is a thorough examination of inconsistencies and disparities of specific articles, i.e. the omission of essential and important parts. The evaluation and awareness of the need to observe international rules and to incorporate them into existing legal and legislative acts of the Republic of Croatia without any discrepancies are the foundation and essence of law.

Keywords: Regulations for Preventing Collisions at Sea, 1972, COLREGs, comparative analysis, International Rules, International Conventions

1. INTRODUCTION

Since its independence, the Republic of Croatia has been a signatory state to many international conventions relating to the safety of navigation. By adopting the Convention on the International Regulations for Preventing Collisions at Sea 1972 [3] (COLREGs), the Republic of Croatia obliged itself to apply all its protocols and

codes. Consequently, it also accepted the obligation to implement and incorporate the provisions of the Convention into its legal system. The Convention on the International Regulations for Preventing Collisions at Sea 1972¹ (COLREGs) was adopted under the auspices of the IMO (*International Maritime Organization*) and constitutes a core convention on the rules for collision avoidance at sea.

The main goal of the paper is to examine the articles by the method of comparative analysis i.e., comparing individual articles of the Collision Avoidance Rules 1996 [5] with the Collision Avoidance Rules 2013 [6] adopted within the framework of the Ordinance on Safety of Maritime Transport in Internal Waters and Territorial Sea of the Republic of Croatia and on the Manner and Conditions of Vessel Traffic Management and Information. It analyzes the meaning and use of specific terms, as well as the content and scope of specific provisions.

This paper examines the corresponding levels of compliance between the Regulation on the Collision Avoidance Rules 1996 and the Collision Avoidance Rules 2013 and the current international regulation in this area, namely, the International Regulations for Preventing Collisions *at Sea* (COLREGs). It points out important issues that may arise due to certain deficiencies of provisions of the Rules and the absence of systematic regulation of all relevant issues that may arise in practice. The comparative analysis of these Rules has been carried out within the framework of this research.

The proposed changes and disparities covered by this research show an integral and systematic consideration of all relevant issues. Defining of these institutes by special provisions will provide a higher level of legal certainty and a higher level of navigational safety in the Adriatic, of protection of human lives, environment, natural resources and other related interests.

Collision at sea is not legally defined [1]. Collision at sea is such an event in which one or more vessels come into a direct contact with each other (impact) or an event in which one vessel indirectly causes harm to the other vessel, property or persons on board [2]. A naval collision is considered to be a case of direct or indirect collision [2]. Such an event may have unimaginable consequences, apart from damage to property or persons and pollution of marine environment, which is a serious problem.

2. ANALYSIS OF AMENDMENTS TO THE COLLISION AVOIDANCE RULES OF 1996 AND OF 2013 RESPECTIVELY

In the second part of the Ordinance on Safety of Maritime Transport in Internal Waters and Territorial Sea of the Republic of Croatia and on the Manner and Conditions of Vessel Traffic Management and Information related to the Collision

¹ The Convention was adopted by the IMO in 1972 and entered into force on 15 July 1977.

Avoidance Rules in its Article 4, the provisions of this Rule are expanded to include a maritime craft, while the provisions of the Collision Avoidance Rules 1996 applied to all merchant vessels and warships, as well as sailing boats and fishing vessels, irrespective of their nationality.

When taking into account the provisions of the Maritime Code of the Republic of Croatia [7] that defines a maritime craft as a craft intended for navigation at sea (waterborne craft) or a craft permanently moored or anchored at sea (floating facility), i.e. an object entirely or partly embedded into the seabed or positioned onto the seabed (fixed offshore facility), it is easy to conclude that the provisions of the Collision Avoidance Rules 2013 apply to the group of vessels by far wider than those of the Collision Avoidance Rules 1996 that applied to ships only.

Although the Collision Avoidance Rules 2013 extended the application of their provisions to maritime crafts that is to objects to which those Rules were applicable, on the other hand they consequently reduced the territorial application of their provisions. Specifically, the provisions of the Collision Avoidance Rules 1996 were applicable to all merchant vessels and warships flying the Croatian flag and sailing in the high seas, as well as to the ships flying foreign flags (foreign vessels), irrespective of their area of navigation, sailing in the territorial waters of the Republic of Croatia and the internal waters navigable for vessels. The Collision Avoidance Rules 2013 retained the right to apply their provisions solely to maritime crafts of Croatian nationality irrespective of their area of navigation, which had been also prescribed within the provisions of the Collision Avoidance Rules 1996, but unfortunately, they failed to extend this application to all foreign flagged ships (foreign vessels) sailing in our territorial sea and internal sea waters, which provision had been clearly prescribed in the Collision Avoidance Rules 1996.

Paragraph 2 of the same article contains a passing provision stating that provisions of that section of the Rules apply to internal sea waters and the territorial sea, unless otherwise provided for by the Rules and special regulations. It is assumed that this provision only applies to the Croatian territorial sea and its internal sea waters, because it is not possible for Croatia to exercise its authority in the territorial sea and internal sea waters of another state. Although this is a valid assumption, in order to prevent confusion the provision should provide more details to avoid any further misunderstandings. However, this is not the only downside of this paragraph as it does not specify what the provisions of the Rules shall apply to, and therefore it is necessary to go back to the original provision of Paragraph 1 of Article 4 that states that these provisions shall only apply to a maritime craft of Croatian nationality. This shows the redundancy of this provision and the failure to determine the manner the provisions of the Rules shall apply to foreign vessels.

There is no logic for a sovereign state to waive its constitutional right to enforce order, law and control over its territorial sea and internal waters on foreign ships,

especially when it is assumed that such a right is guaranteed to all Member States signatories to the UN Convention on the Law of the Sea [8].

The Rules 2013 also broaden the General Definitions in relation to the Rules 1996, so that a WIG craft² is also covered by the term “vessel”, and the term “vessel restricted in her ability to maneuver”, i.e. its part referring to *ships engaged in towing operations* also includes *their tow engaged in towing, which restricts the towing vessel and her tow in their ability to deviate from their course*. Rules 1996 only mention *a vessel engaged in towing which restricts her ability to deviate from the course*. The extended term “vessel restricted in her ability to maneuver” with a special emphasis on *vessels engaged in towing* is in accordance with the COLREGs provisions, Rule 18. There are mutual obligations of ships, as it is justified to consider that certain categories of vessels fall within the group enjoying special privileges provided that all mentioned requirements of the General Definitions Rule 3 are met and that the lights or shapes prescribed in Part C of the Lights and Shapes are indicated. A vessel engaged in towing can be privileged in relation to other ships only if severely restricted in her ability to deviate from the course.

Paragraph 5, which had not been included in Rules 1996, was added in Article 11 of Rules 2013 that regulates the collision avoidance action. It states that if it is necessary to avoid collision or allow more time to assess the situation, a vessel shall slacken the speed or take all way off by stopping or reversing her means of propulsion. It is necessary to bear in mind the provision of Rule 8 for application of this provision. According to COLREGs the action to avoid collision shall be applied in any condition and must therefore be complied with by vessels in visual sight of one another. Any alteration of course and/or speed to avoid collision shall be large enough to be readily apparent to another vessel. It is necessary that the action taken to avoid collision is such as to result in passing at a safe distance.

Article 13 of Rules 2013 governing the Traffic Separation Scheme in its Paragraph 4 introduces a provision copied from Article 10, paragraph 5 of Rules 1996. Unfortunately, without taking into account that Rules 2013 have merged two articles that had been previously given separately in Rules 1996, a provision was inserted by mistake in paragraph 4, which states that, notwithstanding the provisions of paragraph 4 of this Article, the vessel may use an inshore traffic zone when on route to or from a port, offshore installation or structure, pilot station or any other place situated within the inshore traffic zone or to avoid immediate danger. The provision construed in such a manner excludes its own application, so instead of reading *regardless of the provisions stated in paragraph 4 of this article*, it should actually read *regardless of the provisions stated in paragraph 3 of this article*. Only then would this provision

² Wing-In-Ground (WIG) craft” means a multimodal craft which, in its main operational mode, flies in close proximity to the surface by utilizing surface-effect action.

make sense and the error caused by non-selective copying of the provision of Rules 1996 would be corrected.

In line with the amendments to the Code, Rules 2013 went along with these changes and replaced the Rules for the Statutory Certification of Ships, Maritime Equipment [9] issued by the Croatian Register of Shipping³ with which all the lights and shapes listed in Rules 1996 had to comply. Rules 2013 require that all lights and shapes listed in the Rules comply with the Rules for the Statutory Certification of Ships.

Article 29, relating to fishing vessel, contains a provision in its paragraph 3 stating that “two all - round lights placed vertically on top of each other, of which the upper is red, below is white...” The part of the sentence which says that *below is white* can cause confusion when it comes into relation with a part that says the upper light is red. The sentence construed in such a manner can cause confusion because it does not make it clear whether one light is divided into two parts, the upper half of which is red and the lower half is white, or the white light is actually placed under the red one, which may only be concluded from further reading of the contents of this article, where the terms upper and lower light are used.

Regrettably, this provision has been simply copied from the Rules 1996; therefore, in order to prevent confusion, the terms used in the Rules should be harmonized. Accordingly, that provision could be defined as in Rule 26 of the COLREGs Fishing Vessels, which clearly states that a vessel engaged in fishing other than trawling shall exhibit two all-round lights in vertical line, the upper being red and the lower white.

Article 36 of the Rules 2013 relating to sound signals, actually to the equipment for sound signals, was expanded in relation to Article 33 of the Rules 1996, insofar as the application of paragraph 1 was expanded by a provision that a vessel of 20 meters or more in length shall be provided with a bell in addition to a whistle.

Article 38 of the Rules 2013 regulating audible signals in reduced visibility was added paragraph 9, which had not been included in the corresponding provisions of the Rules 1996. The new paragraph stipulates that a vessel of 12 meters in length or more, but less than 20 meters is not obliged to give the bell signals prescribed in items 7 and 8 of this Article, but if she does not give them, she must provide some other effective sound signals at intervals of no more than two minutes.

Article 40 of the Rules 2013, regulating distress signals, was improved in relation to provisions of Article 37 of the Rules 1996 that had regulated the same matter. This improvement can be seen in a radio signal consisting of the pronounced word “MAYDAY” sent via VHF channel 16. The distress can be transmitted via a DSC (*Digital Selective Call*)⁴ sent to the VHF channel 70 or MF / HF at 2187.5 kHz, 8414.5 kHz, 4207.5 kHz, 6321 kHz, 12577 kHz or 16804.5 kHz. The possibility

³ CRS - Croatian register of shipping

⁴ DSC - digital selective call

of signaling the distress via INMARSAT⁵ or the ship's terrestrial station of another mobile satellite service provider was also added.

The third part of the Rules 2013 relating to the safety of navigation in internal waters and the territorial sea of the Republic of Croatia has been considerably expanded compared with the sixth part of the Rules 1996 that regulates the avoidance of collision at sea in Croatian ports and sea areas of internal waters in which navigation has been hampered. That part of the Rules 1996 contains only four articles that briefly regulate the area, what appears negligible when the number and content of these articles are compared with the seven articles together with all the paragraphs that regulate this matter in the Rules 2013.

What should be emphasized is that the Rules 2013 do not contain the Penal Code provisions of the Rules 1996. These provisions are of utmost importance as they provide the basis for a maritime offense fine to be imposed on a Croatian ship or the master, or other authorized person on board the vessel in the high sea or the territorial sea and in the internal waters of the Republic of Croatia. If the provision of Article 4 of the Rules 2013 were amended in the way to apply to foreign flagged ships as well, it would also be possible to have such ships sanctioned for maritime offenses.

With the entry into force of the Rules 2013, the Rules 1996 with their criminal offence provisions, which had made it possible for fines to be imposed for the listed offences, ceased to be valid. Now, without the addition of criminal offence provisions to the Rules it is not possible to punish violators of their provisions who have committed offenses after the date the Rules came into force. Therefore, in order to establish legal certainty, it is necessary for provisions of the Rules 2013 to include all the offences that should be sanctioned, as well as to stipulate the competent sanctioning authority.

3. CONCLUSION

On the day of the accession of the Republic of Croatia to the European Union, the Ordinance on Safety of Maritime Transport in Internal Waters and Territorial Sea of the Republic of Croatia and on the Manner and Conditions of Vessel Traffic Management and Information entered into force. Subsequently, the 1996 Regulation on the Collision Avoidance Rules at Sea was no longer valid. Although the new Ordinance introduced numerous innovations related to technological advancement and in that respect it appears predominant in the light of provisions contained in the Rules of 1996. However, once its provisions were fully considered and thoroughly examined the significance of all those improvements diminished. Its provisions were revealed to contain essential limitations and their application will cause unforeseeable adverse consequences for the Republic of Croatia.

⁵ INMARSAT - International Maritime Satellite Organization

The most evident deficiency of the Ordinance is noted in Article 4 where the legislator had failed to extend the application of provisions concerning the avoidance of collision to foreign flagged vessels as well. Thereby, the Republic of Croatia lost a part of its sovereign rights within its own territorial sea and internal waters guaranteed by the Convention on the Law of the Sea, 1982. The Convention itself stipulates that a coastal state within the boundaries of its territorial sea enjoys sovereign rights, but also obliges that state to the duty of allowing the right of innocent passage for foreign vessels within the territorial sea. Of course, the Convention does not in any way restrict the coastal State from enacting laws and other regulations, including this Ordinance, relating to the regulation of the manner of vessel traffic management inclusive of foreign ships' obligation of safe conduct and observation of such regulations. By this act, the legislator explicitly disallowed itself in its direct intentions which had preceded the adoption of the Ordinance, i.e. to ensure the safety of navigation by regulating how to avoid collision at sea and the conditions of maritime navigation that need to be observed by ship masters, crew members, boat or yacht operators and crew members, and seaplane pilots in internal waters and the territorial sea of the Republic of Croatia. Thus, it allowed foreign ships to sail the Croatian territorial sea without having to comply with those rules and, consequently, prevented its own bodies from dealing with and treating such vessels in accordance with those rules.

Another failure of the Ordinance is identified in the absence of penal provisions contained in the Rules of 1996. The existence of such provisions is of utmost importance because it is only on the basis of the Rules that a fine may be imposed for a maritime offense upon the master or other authorized person on a Croatian flag vessel or a foreign flag vessel that has committed such an offense in territorial waters and internal waters of the Republic of Croatia. With the Rules 2013 having entered into force, the Rules 1996 that contained penalty provisions, which had made it possible for fines to be imposed for listed offenses, ceased to be applicable since superseded by the Rules 2013 with the effect that made provisions of those Rules no longer enforceable. Since the Ordinance has not been amended to include penalty provisions, it is not possible to impose fines on offenders for violation of its provisions since the day the Ordinance came into force. In order to prevent harmful consequences that may arise from the Ordinance being incomplete, it is necessary to commence the procedure of its amendment as soon as possible, as this is the only precondition for ensuring safety of navigation in Croatian territorial waters and internal waters, both for Croatian and foreign flagged vessels.

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