



Importance of the CLNI Convention 2012 for Danubian countries

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Overview

- The present situation
- The challenges of CLNI 2012 on the Danube
- Limitation of liability
- Operation of limitation funds
- Conclusions

The present situation I.

International conventions

- CLNI 1988 not applicable
 - 1976 London Convention (1996 Protocol) applies in
 - Hungary
 - Croatia  also for inland navigation
 - Bulgaria
 - Romania
- (Ukraine – local law incorporating London Convention)
- 1960 Geneva Convention – 4 Danube countries – no relevance

The present situation II. Local laws – no limitation

- Hungary
- Slovakia
- Romania
- Ukraine




The present situation III. Local laws –limited liability

- Croatia – 1976 London Convention
- Austria (value of ship, exception: pollution)
- Bulgaria (value of ship, exception: pollution)

The challenges of CLNI 2012 on the Danube

- No limitation = less traffic?
- Ratifying CLNI 2012
 - Unified limitation – different systems
 - Limitation funds – introducing a new phenomenon into the legal system

Limitation of liability I.

- Different countries – different challenges
-  Lower limits (London Convention)
-  Higher limits (ship value)
-  Limitation newly introduced (in general or to certain areas – see pollution)
- Public international law – easy solution?

Limitation of liability II.

Example – Hungary 1.

- No limitation either for delictual or contractual liability
- Liability for personal injury cannot be limited by agreement
- International conventions
 - Contractual liability – tradition of limitation in international transport
 - Delictual liability – no previous examples of limitation (except for a few areas - no practice)

Limitation of liability II.

Example – Hungary 2.

- International conventions take precedence over national law
- Not necessary to modify civil liability rules
- Lack of tradition = resistance by claimants and courts
- Special areas – environment protection – problems of interpretation

Operation of limitation funds I.

- Unknown in most Danube countries
- No special local law rules
- Despite (partial) applicability of 1976 London Convention
- Exception: Croatia
- Issues to be addressed → see next slide

Operation of limitation funds II.

Issues to be addressed

- Choosing and preparing the right organization (court vs. Authority)
- Legal form of the limitation fund
- Procedural rules (claim against the fund)
- Option to exclude limitation if no fund is established

Operation of limitation funds III.

Example – Hungary 1. - Establishment of the fund

- Deposit
 - Deposit at courts – possible, but not in this case
 - Deposit at an authority – not existing, hard to imagine
- Guarantee
 - Bank guarantee – the beneficiary and the duration must be defined → not suitable
 - Other guarantees – no legal background
 - How the court/authority shall decide on the adequacy?

Operation of limitation funds IV.

Example – Hungary 2. – Operation of the fund

- Claim against the fund
 - The classical fund concept (a distinct part of the assets of an entity destined for a specific purpose) does not exist → claims to be made against the „vessel owner”
 - If the fund was a deposit or guarantee – its administration would mean a new and until now not regulated task for the court/authority
- How to make CLNI 2012 work? → Specific regulation!

Conclusion

- CLNI 2012 – a further step forward
- The limitation amounts will bring about changes everywhere, even if the measure of the change will be different
- The concept of the limitation fund will cause practical problems
- Shall it slow down the ratifications on the Danube?
- A potential answer → model regulation by IVR?

THANK YOU FOR YOUR ATTENTION!

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