



Harmonization of the Pan-European legal framework in Inland Navigation

State of ratifications and national implementations - Republic of Serbia –

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1. National Legislation in Inland Navigation

- **Maritime Inland Navigation Act (MINA)** in force 1978 - 2015 (systemic law)
(Safety of Navigation; Nationality, Identification and Registration of Ships; Ownership Relations; Contractual and Other Relations; Navigational Casualties; Procedure of Execution and Security on Board Ships; Competent Law and Jurisdiction of Courts for Disputes with International Elements; Penal Provisions)
- **Inland Navigation and River Ports Act** ("Official Gazette of RS", no. 73/2010)
- **Maritime Navigation Act** ("Official Gazette of RS", no. 87/2011)
- **Flag State and Ship Registration Act** ("Official Gazette of RS", no. 10/2013)
- **Commercial Shipping Act** ("Official Gazette of RS", no. 96/2015 and 113/2017)



2. International Treaties - Implementaion into National Legal System of RoS

State's consent to be bound by and apply the rules of international treatie(s)

1. By signature – by signing the treaty a state consents and is obliged to apply the rules of a treaty
2. Ratification - law on ratificaton of international treaty (instrument of ratification as a final international act by which state consents and is obliged to apply the rules of a treaty
3. Acceprance or approval - a state provides it acceptance to a treaty without prior signing or after signing
4. Accession - when the state neither took part in negotiation/drafting of the treaty nor signed the text of the treaty



2. International Treaties - Implementaion into National Legal System of RoS

Constitution of the Republic of Serbia ("Official Gazette of the Republic of Serbia" No. 98/2006) - „Constitution“

Constitutionality and Legality - *Hierarchy of Domestic and International General Legal Acts (Articles 195 of the Constituion)*

The Constitution shall be the *supreme legal act of the RoS*. All laws and other general acts enacted in the RoS must be in compliance with the Constitution.

Ratified international treaties and generally accepted rules of it the international law shall be *an interal part of the legal system* of RoS and shall be applied directly. Ratified international treaties may not be in noncompliance with the Constitution.

Laws and other general acts enacted in the Republic of Serbia may *not be in noncompliance with the ratified international treaties* and generally accepted rules of the International Law (*Article 195 of Constitution*)



2. Cont. - Constitution

Adoption and Promulgation of Laws (Article 113 of the Constitution)

After the National Assembly had adopted a law, the President of the Republic shall be obliged to issue a decree on promulgation of laws or to return the law for reconsideration

Publication of Laws and Other General Acts (Article 196 of the Constitution)

Prior to coming into force, the Constitution, laws and by-laws of the RoS shall be published in the republic official gazette.... Laws and other general acts shall come into force no earlier than on the eighth day from the day of publication and may come into force earlier only if there are particularly justified grounds for that, specified at the time of their adoption (*vacation legis*)



2. Cont. – Conclusion and Enforcement

Law on Conclusion and Enforcement of International Treaties
("Official Gazette of the Republic of Serbia" no. 32/2013) - „LCEIT“

Procedure of Ratification of International Treaty
(Articles 11-17 of LCEIT)

Ratification procedure is initiated by Ministry of Foreign Affairs by providing the initial draft law on ratification of the international treaty

The Government determines the draft law which is provided to the National Assembly for adoption and promulgation by the President

National Assembly ratifies international treaties of military, political and economic nature, and treaties which have financial obligations imposed onto RoS and treaties which require adoption of new or amendments of positive laws and treaties which provisions differ from the current legislation.



2. Cont.

Law on ratification consist *inter alia* of:

- text of the treaty in Serbian language and also text in one of the treaty's authentic languages (if Serbian is not one of the authentic languages)
- reservations, declarations and interpretations in respect to the treaty (in form and content as provided by the treaty itself or rules and principles of international law)
- state body which is competent for the execution of the international treaty

Minister for foreign affairs is competent for signing the instruments of ratification and Ministry of foreign affairs is competent state body for notifying, sending, exchange and depositing of instrument of ratification and other actions provided for in accordance with the particular treaty



3. Budapest Convention of 2001 on the Contract for the Carriage of Goods by Inland Waterway (CMNI)

Convention de Budapest relative au contrat de transport de
marchandises en navigation intérieure

CMNI - abbreviation of French name:

Contract

Marchandises

Navigation

Intérieure



3. Cont. - CMNI

Law on Ratification of Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway (CMNI)

Two-step procedure for the convention to take full effect:

National level

1. Promulgated by President's decree of 17 May 2010, published in "Official Gazette of RS" – International Treaties, No. 1/2010) on 21 May
 - **entered into force as of 29 May 2010.**

International level

2. Ministry of Foreign Affairs, subsequently sent the instruments of ratification to the CMNI depositary (Government of the Republic of Hungary):
 - **the ratification date is 21 July 2010** (when depositary received the instrument of ratification) and
 - **entry into force 1 November 2010** (as per Articles 33 and 34 of CMNI)



3. Cont. - CMNI

When depositing its instruments of ratifications RoS **declared:**

"In accordance with Article 31 point (a) of CMNI, RoS **shall also apply** CMNI to contracts of carriage according to which the port of loading or the place of taking over and the port of discharge or the place of delivery are located in its own territory. "

RoS did not declare that it shall apply the CMNI to carriage free of charge.

RoS **did not declare any reservation** regarding application of CMNI.



3. Cont. – CMNI (Article 29)

If CMNI does not apply

Law agreed between the contracting parties, in absence of such agreement the law of the country to which the **contract of carriage of goods has the closest connection** shall apply.

Serbian Law on Conflict of Laws - contract of carriage shall be governed by the law of the place where the carrier had the permanent residence or registered seat at the time of the receipt of the offer

Commercial Shipping Act - principal place of business of the carrier is located at the time when the contract was concluded, if the port of loading or the place where the goods are taken over, or the port of discharge or the place of delivery or the shipper's principal place of business is also located in that State.

Where the carrier has no place of business on land and concludes the contract of carriage on board his vessel, it is to be presumed that the contract is most closely connected with the State in which the vessel is registered or whose flag it flies, if the port of loading or the place where the goods are taken over, or the port of discharge or the place of delivery or the shipper's principal place of business is also located in that State



4. Strasbourg Convention of 2012 on the Limitation of Liability in Inland Navigation (CLNI 2012)

Convention de Strasbourg de 2012 sur la limitation de la
responsabilité en navigation intérieure

CLNI - abbreviation of French name:

Contract
Limitation
Navigation
Intérieure

Whereas the geographical scope of application of the CLNI 1988 was limited to the rivers Rhine its tributaries and Mosel, the CLNI 2012 enlarges the scope of application in order to introduce the system of limitation of liability also in Danube countries (Danube, Elbe, Oder and Save).



4. Cont. CLNI (2012)

Law on Ratification of Strasbourg Convention of 2012 on the Limitation of Liability in Inland Navigation (CLNI 2012)

Two-step procedure for the convention to take full effect:

National level

1. Promulgated by President's decree and published on 22 May 2013, published in "Official Gazette of RS" - International Treaties, No. 1/2010) - **entered into force as of 30 May 2013.**

International level

2. CLNI depositary (Secretary General of Central Commission for the Navigation of the Rhine – CCNR):

- **the signature and ratification date is 18 June 2013** - first ratification instrument of CLNI 2012 has been deposited by Serbia
- **entry into force 1 July 2019** (Articles 17 para 1 of CLNI)



3. Cont. – CLNI (2012)

When depositing its instruments of ratifications RoS **declared:**

In accordance with Article 18 para 1 of CLNI (2012), RoS Serbia declared that it **shall not apply** the rules of the CLNI (CLNI) in respect of:

- (a) claims for damage due to a change in the physical, chemical or biological quality of the water and
- (b) claims mentioned in Article 2, paragraph 1 (d) and (e) of this Convention, i.e.:
 - (d) claims in respect of the raising, removal, destruction or the rendering harmless of a vessel which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board the vessel
 - (e) claims in respect of the removal, destruction or rendering harmless of the cargo of the vessel



3. Cont. – CLNI

If CLNI does not apply

- *Liability out of contract*

Law agreed between the contracting parties, in absence of such agreement the law of the country to which the **contract of carriage of goods has the closest connection** shall apply.

- *Liability arising out of tort*

Serbian Law on Conflict of Laws – for liability in tort law of the place where the action was undertaken or place where the damage has occurred, depending on which of the two laws is more favourable for the indemnifying party

Commercial Shipping Act - for limitation of liability of the vessel owner or other natural person or legal entity which is pursuant to this law treated as equivalent to the owner (CLNI - hirer or charterer entrusted with the use of the vessel, as well as the operator of a vessel) law of the country of vessel's nationality shall apply.

Subject to above provision, this law shall apply if its provision on limitation of liability stricter than the of the law of the county of vessel's nationality.



3. Application of CMNI and CLNI by Serbian Courts

Case law is based on application of MINA and Commercial Shipping Act, without reference to CMNI (CLNI)

Whether CMNI/CLNI apply if the contracting parties have agreed that the contract shall be governed by national law (Serbian or German law)?

Should the court apply the national law or apply the CMNI (or any other convention) having in mind that ratified international treaties and generally accepted rules of it the international law shall be *an integral part of the legal system* of RoS and shall be applied directly?



**Thank you
for your attention**

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Titel

Tekst