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Ratification by Poland of the European Agreement on major inland waterways of international importance (AGN)

Abstract: The purpose of this article is an attempt of describing the fundamental issues regulated by the European Agreement on Main Inland Waterways of International Importance (AGN). The paper analyzes the definition of international agreement functioning in public international law, as well as it presents the objectives of the AGN Agreement, worked out by the United Nations Economic Commission for Europe (UNECE). In addition, in the paper will be presented a synthetic description of the structure of the AGN Agreement.

Keywords: Agreement on Main Inland Waterways; AGN; International agreement; Treaty

Introduction

The aim of this work is to discuss the basic problems regulated in the European Agreement on major inland waterways of international importance (AGN), prepared as part of the work of the United Nations Economic Commission for Europe (UNECE), one of the UN regional commissions, whose subject matter is, among others creating legal regulations in the field of transport, including inland water transport [6].

The European agreement on major inland waterways of international importance, so-called AGN Agreement, was drawn up in Geneva on 19 January 1996 as part of the work of the United Nations Economic Commission for Europe. It has been signed by 17 countries Austria, Croatia, Finland, Russia, France, Greece, Lithuania, Luxembourg, Germany, the Netherlands, the Czech Republic, Moldova, Romania, Slovakia, Switzerland, Hungary and Italy. Currently, there are 18 States Parties to the Agreement: Austria, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Russia, Lithuania, Luxembourg, the Netherlands, the Czech Republic, Moldova, Romania, Serbia, Slovakia, Switzerland, Ukraine, Hungary and Italy.

The notion of an international agreement and its ratification in the Polish law

An international agreement is one of the basic sources of international law [2]. It was mentioned, among others in art 38 of the Statute of the International Court of Justice, in which, in para. 1 lit., it is pointed out that the Tribunal, whose task is to settle disputes submitted to it in accordance with international law, applies international treaties, either general or specific, laying down the norms of the leading dispute clearly recognized by the state [11]. In addition to custom, an international agreement is one of the basic sources of law in international relations. In the introduction to the Vienna Convention on the Law of Treaties of 1969, it was pointed out that International agreements played a significant role in the history of international relations and that the importance of international agreements as a source of international law and the development of peaceful cooperation between nations was constantly increasing [10]. An international agreement, unlike the custom, is more precise and clear, and thus easier to use and gives less opportunity for interpretation disputes [3]. In accordance with Article 2 of the Vienna Convention on the Law of Treaties of 1969, the expression "treaty" means an international agreement is concluded between states in writing, governed by international law, included either in one document or in two or more related

documents, regardless of its specific name [1]. Due to the mode of contract conclusion, we can divide into a complex or simple mode. Contracts concluded in the complex mode require ratification or approval, whereas contracts concluded in a simple mode do not [4].

The Republic of Poland has joined the European agreement on major inland waterways of international importance through ratification. Ratification, pursuant to art. 89 of the Constitution of the Republic of Poland of 2 April 1997 [9] was introduced by the Act of 15 December 2016 on the ratification of the European Agreement on Major Inland Waterways of International Importance (AGN), drafted in Geneva on January 19, 1996 [12].

The purpose of the agreement

The objective of the European agreement on major inland waterways of international importance is to promote and develop international inland waterway transport and to improve the quality of inland waterways in Europe. Inland road transport is much cheaper compared to other land transport modes, such as: road and railway has low costs and environmental benefits, and contributes to lowering the environmental impact of the entire transport sector. In addition, one of the main objectives of the European Agreement on major inland waterways of international importance is the establishment of an international legal framework necessary to plan the development and construction of inland waterway networks of international importance. This development is to take place in accordance with the agreed infrastructure parameters.

The waterway network described in the AGN Agreement has been divided into nine main routes with the length of over 27 thousand km that connect ports over 37 European countries. On the territory of the Republic of Poland, within the framework of the European system of inland waterways of international importance, sections of three main water routes are located, i.e.:

1. The E30 waterway - running through the Oder Waterway connecting the Baltic Sea in Świnoujście with the Danube in Bratislava,
2. The E40 waterway - connecting the Baltic Sea from Gdańsk with the Black Sea in Odessa,
3. Waterway E70 - connecting the Oder with the Vistula Lagoon and forming part of the European East-West communication route connecting Klaipeda with Rotterdam.

In the European agreement on major inland waterways of international importance, twelve inland ports of international importance were located in ten cities in the Republic of Poland:

1. Świnoujście,
2. Szczecin,
3. Kostrzyn,
4. Wrocław,
5. Koźle,
6. Gliwice,
7. Gdańsk,
8. Bydgoszcz,
9. Warszawa,
10. Elbląg.

Unfortunately, at the present time, waterways indicated in the AGN Agreement, located in Poland, do not meet the minimum international navigability conditions set out in the Agreement. The exception are short sections on the lower Odra and lower Vistula. However, it should be noted that pursuant to art. 2 AGN agreements on waterways located on the territory of the Republic of Poland, waterways of international importance may be included due to the fact that this action is justified by the need to include selected Polish waterways into the European waterway network.

The Republic of Poland, as a member of the European agreement on major inland waterways of international importance, undertook to ensure navigational conditions meeting the criteria applicable to inland waterways of international importance, so-called class "E". It is worth noting that the deadline for fulfilling this obligation is not specified. The E-class navigable routes authorize the use of TEN-T funds (trans-European transport corridors of the European Union).

UN Economic Commission for Europe (UNECE)

The United Nations Economic Commission for Europe (UNECE) is one of the United Nations Regional Commissions, established in 1947. The seat of the Economic Commission for Europe is Geneva.

The UN European Economic Commission is a body that facilitates cooperation and economic integration between Member States and promotes sustainable development and economic prosperity. These activities are carried out, among others through political dialogue, negotiation and development of international legal provisions and norms, exchange and use of best practices as well as economic and technical knowledge. UNECE contributes to increasing the effectiveness of the United Nations through regional implementation of the results of global UN conferences and summits [5].

At present, the UN European Economic Committee has 56 members (European states, Israel, Canada, USA). UNECE deals with, among others the following issues: economic cooperation and integration, environmental protection, forests, housing, population, energy, statistics, trade and transport. In the field of inland waterway transport, the United Nations Economic Commission for Europe deals with, among others regulations under the European agreement on major inland waterways of international importance (working groups SC.3 [7] and SC.3 / WP.3 [8]).

Structure of the AGN Agreement

The European agreement on major inland waterways of international importance (AGN) is a relatively short international agreement consisting of a preamble, 18 articles and 3 annexes.

In the preamble, the Parties to the AGN Agreement have indicated the needs of facilitating and developing international transport through the use of inland waterways in Europe, the expected increase in international freight transport resulting from growing international trade and the important role of inland waterway transport compared to other land transport modes. Attention was also paid to economic and ecological benefits as well as untapped potential of infrastructure and vessels, the use of which can significantly reduce social costs and have a negative impact on the transport environment as a whole. It was also stressed that increasing the efficiency and attractiveness of inland water transport in Europe requires the establishment of a legal framework that will give the basis for a coordinated plan for the development and construction of an inland waterway network of international importance based on established infrastructure and operational parameters.

Article 1 entitled Designation of the network defines the concept of a network of inland waterways, which are defined as "networks of inland waterways of international importance" or "waterways networks with the designation E". The E-waterway network consists of inland waterways and ports of international importance, described in detail in Annex I and I to the AGN Agreement. After the changes that came into force on January 31, 2008, the AGN Agreement Parties decided to take the necessary measures to effectively protect the anticipated inland waterways of significance E, which at the moment do not meet the parameters of the AGN Agreement. The purpose of this activity is to adjust them to meet the parameters set out in the AGN Agreement.

In Article 2 entitled Technical and operational characteristics of the network, it has been pointed out that the network of inland waterways of international importance will meet the technical and operational characteristics detailed in Annex II of the AGN Agreement or will be adapted to compliance with the provisions of Annex II by introducing improvements in the future. In addition, the AGN Parties agreed that they will seek to establish national action plans and bilateral or multilateral agreements such as treaties, guidelines, joint research and memorandum of understanding aimed at eliminating existing bottlenecks and completing missing links between E-waterways territories of the parties to the AGN Agreement.

In Article 3, Annexes, it was pointed out that the annexes to the AGN Agreement constitute its integral part.

In Article 4, entitled Designation of the depositary, the Secretary General of the United Nations is assumed to be the depositary of the AGN Agreement.

Article 5, named Signature indicates that the AGN Agreement will be available for signature by countries that are members of the United Nations Economic Commission for Europe or have been admitted to the Commission in an advisory capacity from 1 October 1996 to 30 September 1997, and the signatures will be subject to ratification, acceptance or approval.

Article 6, entitled Ratification, Acceptance or approval, assumes that AGN Arrangements shall be subject to ratification, acceptance or approval, which shall be effected by submitting a document of the AGN Agreement to the Secretary-General of the United Nations.

Article 7, named Accession, indicates that any country referred to in Article 5 of the AGN Agreement may accede to the AGN Agreement as from October 1, 1996, and that accession is effected by submitting a document to the Secretary-General of the United Nations.

Article 8, entitled Entry into force, states that the AGN Agreement shall enter into force 90 days from the date on which the Governments of the five countries submit instruments of ratification, acceptance or approval, provided that at least one waterway belonging to networks of inland waterways of international importance in a continuous manner connect the territories of at least three countries that have submitted such a document. The AGN Agreement also provides that if the above-mentioned condition will not be met, the AGN Agreement will enter into force 90 days after the date of deposit of the instrument of ratification, acceptance, approval or accession, which will mean that this condition is met. However, for each country submitting a document of ratification, acceptance, approval or accession after the beginning of the 90-day period referred to above, the AGN Agreement shall enter into force 90 days from the date of submission of the abovementioned document.

In Article 9, entitled Limits to the application of the Agreement, it has been pointed out that none of the provisions of the AGN Agreement shall be construed so as to prevent any of the Parties to the Agreement to act in accordance with the provisions of the United Nations Charter and limited by the need of the situation that will be considered as necessary to ensure its external or internal security, and that the application of such measures, which must be temporary, should be immediately notified to the depositary, specifying their nature at the same time.

In Article 10, entitled Settlement of Disputes, it is provided that all disputes related to the interpretation or application of the AGN Agreement that have arisen between the Parties to the Agreement and can not be resolved by negotiation or other means by these Parties will be directed to arbitration, if any of the Parties involved in the dispute applies such an application submitted to at least one arbitrator selected by mutual agreement of the parties involved in the dispute. If the parties involved in the dispute do not agree on the choice of the arbitrator or arbitrators within three months from the submission of the arbitration request, either of these Parties may request the Secretary-General of the United Nations to appoint one

arbitrator to which the dispute will be submitted. It was also indicated that the solution presented by the arbitrator or arbitrators will be binding for the parties involved in the dispute.

Article 11, entitled Reservation, stipulates that upon signing the AGN Agreement or submitting a document of ratification, acceptance, approval or accession, each state may declare that it does not consider itself bound by the content of art. 10 of the AGN Agreement regarding the method of resolving disputes established in the AGN Agreement.

In Article 12, entitled Amendment of the Agreement, it is provided that the text of the AGN Agreement may be amended at the request of a Party that may submit the text of each amendment submitted to the AGN Agreement. The amendment will be considered by the Chief Working Group on Inland Water Transport of the United Nations Economic Commission for Europe. If the text of the amendment is accepted by a two-thirds majority of the present and voting Parties to the Agreement, the Secretary-General of the United Nations shall transmit it to all Contracting Parties for approval. Furthermore, each amendment notified shall enter into force for all Contracting Parties for three months after the expiration of a twelve-month period running from the date of such amendment, provided that in the relevant 12-month period no Contracting State Party objects to the Secretary-General of the United Nations. In the aforementioned article, it was also stated that in the event of opposition to the submitted amendment, the amendment would not be considered to be accepted and would not have any power. The procedure described in Article 12 shall not apply to situations provided for in Article 13 (amendments to Annexes I and II) and in Article 14 (amendments to Annex III).

In Article 13, entitled Amendments to Annexes I and II, Annex of annexes I and II, it is envisaged that amendments to Annexes I and II to the AGN Agreement may be made at the request of a Party. Any amendment proposed by the Party to Annexes I and II to the AGN Agreement will be considered by the Chief Working Group on Inland Water Transport of the United Nations Economic Commission for Europe. In the event that the text of the proposed amendment is adopted by a majority of the present and voting Contracting Parties, the Secretary-General of the United Nations shall submit it for approval to the Contracting Parties directly affected by the proposed amendment. The amendment shall be directly relevant to a Contracting Party if, in the case of adding a new inland waterway or port of international significance or making changes to them, the inland waterway passes through the territory of that Party or the port is located on its territory. Any notified amendment shall be deemed accepted if, within six months after the date of its being forwarded by the depositary, none of the Contracting Parties whose proposed amendment is directly concerned shall notify the Secretary-General of the United Nations of their objection to the amendment. Amendments accepted in the manner described shall be communicated to all Contracting Parties by the Secretary-General of the United Nations and shall enter into force three months from the date of their publication by the depositary. In the event of opposition to the submitted amendment, the amendment will be considered not accepted and will not have any power. The depositary shall be promptly informed by the secretariat of the United Nations Economic Commission for Europe of the Contracting Parties whose proposed amendment is directly relevant.

In Article 14, entitled Amendments to Annex III, Annex III, it is anticipated that amendments to Annex III to the AGN Agreement may be introduced at the request of a Contracting Party. The text of the amendment submitted by the Party to Annex III to the AGN Agreement will be considered by the Main Working Group on Inland Water Transport of the United Nations Economic Commission for Europe. In the event that the text of the proposed amendment is adopted by the majority of the present and voting Contracting Parties, the Secretary-General of the United Nations shall circulate it to all Contracting Parties for approval. Any proposed amendment shall be deemed accepted unless six months after the date of referral, at least one-fifth of the Contracting Parties notifies the Secretary-General of

the United Nations of its objection to the amendment. The amendments adopted shall be communicated to all Contracting Parties by the Secretary-General of the United Nations and shall enter into force three months from the date of referral to all Contracting Parties except those Parties which have notified the Secretary-General of the United Nations of their objection to the amendment within six months after the date of its transfer. If at least one-fifth of the Contracting Parties objects to the amendment, the amendment will be considered as unsuccessful and will not have any effect.

In Article 15, named Denunciation, it is provided that each Contracting Party may denounce this Agreement by written notification addressed to the Secretary-General of the United Nations. The denunciation shall take effect one year from the date of receipt of the notification by the Secretary-General of the United Nations.

Article 16, entitled Termination, states that if, after the entry into force of the Agreement, the number of Contracting Parties in any period of 12 consecutive months drops below five, the AGN Agreement will cease to apply for 12 months from the date on which the fifth State ceased to be Contracting Party.

Article 17, entitled Notifications and communication by the depositary, provides that, in addition to the notifications and notifications provided for in the AGN Agreement, the functions of the Secretary General of the United Nations as depositary comply with the provisions of Part VII of the Vienna Convention on the Law of Treaties drawn up on May 23, 1969.

In Article 18, entitled Authentic texts, it is indicated that the original AGN Agreement, copies of which are in English, French and Russian, are equally authentic, will be deposited with the Secretary-General of the United Nations.

Annex I lists the enumerated list of inland waterways of international importance. Annex II contains an enumerated list of inland ports of international importance. Annex III contains technical and operational characteristics of inland waterways of international importance.

Conclusions

It is anticipated that the European agreement on major inland waterways of international importance will contribute to the significant development of infrastructure of inland waterways and adjacent ports, and thus will increase the demand for transport services in the inland waterway transport sector, as well as transport multi and intermodal as well as all logistics related services. It is also assumed that following the development of infrastructure, the production of transport means will increase significantly, which will be the source of additional employment for employees. In addition, the development of infrastructure will contribute to the development of the tourism and recreation industry, which will have tangible effects in the revenues of both the state budget and local government budgets. On the other hand, in the strategic dimension, the benefits for Poland from joining the European agreement on major inland waterways of international importance will result from the development of the most important seaports, which may become an integral part of Polish transport, apart from road and rail transport, allowing its diversification, and to increase efficiency.

Summary

The purpose of this article is an attempt of describing the fundamental issues regulated by the European Agreement on Main Inland Waterways of International Importance (AGN). The paper analyses the definition of international agreement functioning in public international law, as well as it presents the objectives of the AGN Agreement, worked out by the United Nations Economic Commission for Europe (UNECE). In addition, in the paper will be presented a synthetic description of the structure of the AGN Agreement.

Source materials

- [1] Bierzanek R., Symonides J., Prawo międzynarodowe publiczne, Wydawnictwo Prawnicze LexisNexis, Wyd. 8, Warszawa 2005, s. 77
- [2] Góralczyk W., Sawicki S., Prawo międzynarodowe publiczne, Wydawnictwo Prawnicze LexisNexis, Wyd. 11, Warszawa 2006, s. 66
- [3] Góralczyk W., Sawicki S., Prawo międzynarodowe publiczne, Wydawnictwo Prawnicze LexisNexis, Wyd. 11, Warszawa 2006, s. 66.
- [4] Góralczyk W., Sawicki S., Prawo międzynarodowe publiczne, Wydawnictwo Prawnicze LexisNexis, Wyd. 11, Warszawa 2006, s. 69
- [5] http://www.unece.org/oes/nutshell/mandate_role.html
- [6] <https://www.unece.org/trans/main/sc3/sc3.html>
- [7] <https://www.unece.org/trans/main/sc3/sc3/sc3rep.html>
- [8] <https://www.unece.org/trans/main/sc3/wp3/wp3rep.html>
- [9] Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. (Dz. U. z dnia 16 lipca 1997 r.)
- [10] Konwencja wiedeńska o prawie traktatów (Dz.U. 1990 nr 74 poz. 439)
- [11] Statut Międzynarodowego Trybunału Sprawiedliwości (Dz.U. 1947 nr 23 poz. 90)
- [12] Ustawa o ratyfikacji Europejskiego porozumienia w sprawie głównych śródlądowych dróg wodnych o znaczeniu międzynarodowym (AGN), sporządzonego w Genewie dnia 19 stycznia 1996 r. (Dz.U. 2017 r. poz. 186)