

Port and berth: safe or unsafe?

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Keywords: Safe port, safe berth, abnormal occurrence, grounding, meteorological/natural risks, berth characteristics, port set-up, SS Santore case.

Abstract:

Nowadays, ensuring safety in ports and berths is one of the most important issues in the maritime law. But, in what extent should we understand the notion of safety in ports/berths and which obligatory measures should be taken for providing this safety? This article will try to concisely answer those questions and show through the case law that how the measures can work out. In addition, the article will comprise of some specific legal implications from Azerbaijani law, as well as will introduce some critical technical matters to be done in ports and berths for the sake of safety.

Açar sözlər: Təhlükəsiz liman, təhlükəsiz lövbər salma yeri, anormal hadisə, sualtı obyektlər, meteoroloji və təbii təhlükələr, lövbər salma yerinin xarakteristikaları, liman quruluşu, SS Santore keysi

Annotasiya:

Günümüzdə limanlarda və lövbər salma yerlərində təhlükəsizliyin təmin edilməsi dəniz hüququ çərçivəsində ən mühüm məsələlərdən birinə çevrilib. Lakin, bu təhlükəsizlik anlayışını biz necə başa düşməliyik və sözügedən təhlükəsizliyin təmin edilməsi üçün hansı məcburi addımlar atılmalıdır? Məqalə bu suallara qısa şəkildə cavab tapmağa çalışacaq və keys hüququ vasitəsilə məcburi alınmalı tədbirlərin necə işləyə biləcəyini əks etdirəcək. Əlavə

olaraq, məqalə Azərbaycan qanunvericiliyinin spesifik normalarını nəzərdən keçirməklə bərabər, liman və lövbər salma yerlərində təhlükəsizlik üçün yerinə yetirilməli olan vacib texniki məsələlərə toxunacaq.

Ключевые слова: Безопасный порт, безопасная якорная стоянка, аномальное явление, подводные объекты, метеорологические и природные опасности, характеристики якорных стоянок, строение порта, дело SS Santore.

Аннотация:

В настоящее время безопасность в портах и якорных стоянках стала одной из важнейших проблем морского права. Но как мы должны понимать эту концепцию безопасности и какие обязательные меры следует предпринять для ее обеспечения? Статья отражает в себе краткие ответы на данные вопросы, а также способ работы посредством обязательных правовых методов. В дополнение, в статье будут рассмотрены важные технические вопросы, которые необходимо учитывать для охраны портов и якорных стоянок наряду с рассмотрением специфических положений законодательства Азербайджана.

Introduction

The classical definition of the safe port (it can be applicable to the safe berth as well) was provided by the case law :

- A port will not be safe unless, in the relevant period of time, a particular ship can

reach it, use it and return from it without, in the absence of some abnormal occurrence, being exposed to danger which cannot be avoided by good navigation and seamanship.

The definition encases 4 fundamental elements such as the following:

a. The safety should cover a particular period of time. It means that weather conditions matter in defining port/berth to be whether is safe or not;

b. Safety pertains to a particular ship. As such, a ship can suit or cannot suit the purposes of the port/berth. For instance, ship with different draft or length, or technical handling capabilities might not suit the intended docking procedures of the port/berth;

c. Safety covers 3 main acts carrying out in and from the port: reaching, using and returning;

d. Any damage does not fall into scope of safety provided that good navigation and seamanship have been conducted.

Together with above-mentioned elements of the safety in ports and berths, another factor that should be taken into consideration is an absence of abnormal occurrence. The abnormal nature of occurrence which causes the loss is also relevant in a different way, in that it bears upon the question where there is a breach of warranty if the ship does comply with the order and suffers damage in the port. All occurrences or omissions in this context will define the liability between the parties.

Legal background

As regards the predominant features, by and large they are a true combination of legal and technical matters, that failure in concluding them can turn a safe port/berth into unsafe. They have been listed below:

1) Grounding – banks, bars, rocks, submerged objects. Grounding objects are one of the most essential matters that ship may encounter while entering/reaching/returning the port. That is because an approaching vessel may not have information on the characteristics of the port and in these situations she should be guided by professionals. Azerbaijani law defines a “ship agent” and “maritime pilot” for that purpose. According to the Merchant Shipping Code of the Republic of Azerbaijan (“MSC”), ship agent is a legal or natural person being compatible with rules

on ship agents adopted in UN Conference on Trade and Development, who deals with protection of ship-owners’, charterers’ or carriers’ (or other persons who have bailment relationship with the ship) interest in the port while approaching, entering or getting out of by the vessel, also represents them before the state bodies and port authority. The main duties of ship agent in respect of entering or approaching of vessel to the port are:

a. to notify ship owner, charterer etc. about requirements of Azerbaijani laws related to maritime and ports;

b. to give an overview about port customs;

c. to carry out legalization of activities of the vessel with regard to entering, approaching or getting out.

Azerbaijani law also specifies a “maritime pilot” known as pilotage, for maintaining safety in ports and berths. Generally, ships are steered by help and guidance of the pilots. Pilot should have Azerbaijani citizenship and they should get certified by the relevant state authority. Master of ship should provide the pilot with the information on shipboard measurement, especially beam, complement, tonnage, cube, draft and depth of the vessel. Master can permit pilot to operate the vessel or order to helmsman how to operate and where to steer, but that does not exempt the master of ship from the liability if any damage or loss will occur as a result. On end of pilot, s/he should not leave the vessel without permission of master unless pilot brings the vessel to safe place or steers her to the open sea, or just makes her anchor accordingly and safely in the port.

2) Meteorological/natural risks – storms, swell, ice, earthquakes, volcanoes, tsunamis. These risks are mostly met where weather condition is not stable and comfortable for navigation. Moreover, a ship might encounter with bad weather, excessive heat, wind, waves etc. in normal weather conditioned ports. The essence of matter is especially as to whether port is available all over the year or not, or just in particular parts of the year. For example, the port of Red Dog located in Northeast of The Bering Strait in Alaska, gets in ice as of July and ends in late April at each year. Most probably, this port is not regarded as safe for the vessels which lack icebreakers. So, a port can be safe for one ship, but might be unsafe for an-

other one at the moment. Azerbaijani law defines some key points in relation to measures to be taken in the unfavourable hydrometeorology circumstances, such as :

- a. Operators of the port, as soon as getting information, should inform masters, ship owners and ship agents;
- b. Masters should take all reasonable measures in bad weather conditions;
- c. If there are not “hideout” places for the particular vessel in port, she should get out of the port/berth;
- d. Once risks are announced and the speed of wind is minimum 17 m/s, at least the minimum number of vessel crew should be ready to act;
- e. Master of ship should abide by all reasonable orders of port authority and operator;
- f. All ship should make ready all whale boats, for in case of emergency.

3) Political – war, terrorism. Wars, riots etc. may cause port and berth to be unsafe for all type of commercial ship. Azerbaijani law specifies rules to be conducted in case of illegal assaults to ensure safety in ports/berths which are complied with the Convention on combating illegal activities against navigation . Those rules indicate:

- a. Immediately and duly informing port authority, Azerbaijan State Maritime Administration, International Maritime Organization, Embassy/Council of foreign state, provided that vessel in distress belongs to that;
- b. Organizing commission to combat against illegal acts;
- c. Providing minimum requirements as prescribed by International Code on security of ship and ports;
- d. Implementing security plan and system covering compulsory measures to be taken;
- e. Putting surveillance over all measure being applied.

Technical background

1. Berth characteristics – fendering, air draft, deep draft, obstructions and configuration. Slight difference between port and berth is that a berth is simply the space that could be occupied by one ship, it is not a fixed size, but

would rather depend on the size of ship usually found in that place , but a port is defined as an area on both land and water, whether on the sea or river, that provides facilities for shipping vessels to load and unload their cargo . Notwithstanding the differences, berths need to assure safety insofar as the safety is provided in ports. From practical standpoint, there are four main constructions/structures that should be duly installed/complied within berths in order to ensure safety of vessels:

- a. Fendering: Marine fenders are used at berths and docks on quay walls. They absorb the kinetic energy of a berthing vessel and therefore prevent damage to the vessel. If the berth is not properly equipped, that berth can be considered as unsafe for the berthing vessel;
- b. Air and deep draft: Air draft is a distance from the surface of water to the highest point of the vessel. For example, a 50ft air draft vessel could not definitely transit under a 49ft clearance bridge. On the other hand, deep draft is a distance from the water surface to the hull of vessel and it determines the minimum depth of water a ship can safely navigate. In case there are some obstructions under the water a vessel will not able to berth at the deck.
- c. Obstructions: The berth might have some obstructions, for instance power lines, cables or other barriers, near it which might damage the vessel. In that situation, the berth is considered as unsafe for the vessel too.
- d. Configuration: Configuration, in this context, is mostly peculiar to vessels. For instance, if a ship with different cranes differing from dockside ones of the berth wants to berth at the deck which is mentioned to boats, she does not practically manage to do this, since her configuration is not compatible with the purpose of the berth.

2. Port set-up – berthing procedures, tugs, pilotage arrangements and marks for safe navigation. In contrast to berths, ports contains much more procedures to be done including safety requirements considered for berths. Additionally, ports have own specifications and in case of failure, that might pave the way vessel to get damaged or incur the loss of cargo.

- a. Tugs: In general, it would be hard to enter/reach/return a port for the vessel which can

be not steered properly or does not have appropriate engine, e.g. propeller system. In those cases, tugs are the most used way in steering the vessel to port. If tugboats (are required in working order), in general tug system, of the port are not in proper condition or capability for a particular ship to guide her inside, then this port is considered as unsafe for that particular ship.

b. Pilotage arrangements: As above-mentioned, pilot arrangements play crucial role in guiding vessel and failure to that results in being unsafe of the port.

c. Marks for safe navigation: In modern maritime, marks for safe navigation are used for ensuring safety at the sea and notifying the vessel with the hazards, submerged rocks or just where to anchor or sail through. The most well-known and being applied marking system is IALA which has been applying in two regions: A and B, depending on geographical division. These systems are very crucial for safe navigation in ports and if port authorities fail to carry out accordingly, then that port is considered as unsafe for the navigation and vessels.

Case law

Through the case law, it might be shown that how the above-mentioned can work out and what key points can cause port or berth to be unsafe. The court decision we are going to look through was stated by United States Court of Appeals, Second Circuit in June 13, 1974.

Facts:

- On April 24, 1964, the SS Santore – ship, owned pro hac vice by Venore Transportation Company (“Venore”), was time chartered to Oswego Shipping Cooperation (“Oswego”) and then voyage chartered to Banco do Brasil (Banco) provided that Banco would assure safe berths in Salvador, the Brazilian port at which the SS Santore was to discharge her cargo;

- On May 8, 1964, the SS Santore arrived in Salvador. Two days prior to the Santore’s arrival, Captain Edward Long, Oswego’s port captain, had arrived in Salvador to arrange for the ship’s docking and the expeditious discharge of cargo. Captain Long inspected the wharf and concluded that it was satisfactory

in all respects. While there, he noticed that two pontoons were placed between the pier and the discharging vessel then lodged there, the purpose being to prevent the ship from striking against the concrete pier and to enable the vessel to float in water deeper than its draft while docked.

- On May 10, the SS Santore proceeded to the Coal Wharf for docking. As the ship neared the dock, it was noticed that one of the pontoons was missing. Relying on assurances provided by Captain Long, Captain Edelheit – master of SS Santore, who had no familiarity with the port at Salvador and had had no prior experience with pontoons, proceeded to dock the ship. After a while, the weather changed. First there were brief squalls and intermittent rain; thereafter there were torrential rain, thunderstorms, and squalls.

- Further investigation revealed that the bow of the ship had been sharply dented and that several of her hull plates had been pushed in as a result of the ship’s smashing against the dock and the pontoon.

Judgement:

The court did not uphold the appeal and stated a judgement in favour of Venore by defining all compensation and cost to be paid by defendant – Banco which should have assured to provide SS Santore with the safe berth.

Analysis

While analysing the case it is shown that, when the berth had two pontoons that was considered as a safe one, whereas lacking of one of them can cause the berth to regard as unsafe for the SS Santore. So, we can say that Salvador berth was unsafe in ground of:

1. Insufficiency in installations;
2. Changing weather suddenly.

Failing to ensure the above-mentioned had resulted in unsafety in the berth. Despite the fact that master or agents might have prevented the damage to Santore, the berth would be regarded as unsafe for insufficiency and then the charterer had have responsibility for that.

Conclusion

A vessel entering or getting out of a berth or port can come across various coincidences including hazards that might damage to the navigation and she might end up in getting damaged or loss of cargo on board. In order to refrain from these unpleasant consequences, she should ensure in entering (or getting out of) safe port or berth. Through the article, we pointed key factors that may influence ports and berths in an unsafe way and brought examples from the case law. Taking into account those points, ship owners and/or charterers may use them to get to know what measures should be taken in ports/berths because failure in that may pave the way future disputes and may devastate business relationships. In addition, above-mentioned issues matter in defining the liability of the parties of vessel over the dispute arising out of its collision, damage or loss of cargo in ports/berths.

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