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**ON THE COMPETENCES OF THE SHIPMASTER OF THE POLISH SEAGOING VESSEL
IN TERMS OF THE PREVENTION OF FATAL ACCIDENTS OF SEAFARERS ON BOARD
AND THE ACTIONS TAKEN IN THE CASE OF DEATH**

Keywords: ship, crew, shipmaster, law, death

*In memory of Jerzy Szopa, MSc Eng., minister of navigation in 1969–1973,
a hard man of the sea and a friend of people*

INTRODUCTION

A seagoing ship is a specific, perhaps even the most specific, working environment, completely different from any occupation on land, to a greater or lesser degree threatening the health and life of the people employed in the industry.¹ Many examples show that – also for this reason – legislation grants the master of the ship various functions which on land are reserved for separate entities.² The Act of 18 September

1 See e.g. Wiesława Majczakowa, *Wskazania higieny pracy przy środkach ochrony roślin i pierwsza pomoc w zatruciach* (Warsaw: Zespół Wydawnictw Centrali Rolniczej Spółdzielni “Samopomoc Chłopska”, 1965), *passim*; Robert Klementowski, *W cieniu sudeckiego uranu. Kopalnictwo uranu w Polsce w latach 1948–1973* (Wrocław: IPN, 2010), 205–267.

2 See: Barbara Zyzda, “Kapitan statku morskiego jako otoczenie administracji publicznej”, *Acta Universitatis Wratislaviensis. Przegląd Prawa i Administracji CXI* (2017): 199–200; Jerzy Młynarczyk, *Prawo morskie* (Gdańsk: Arche, 2002), 117.

2001 – Maritime Code³ – and some other acts, including those cited below, give the shipmaster the status of an entity similar to a public administration body, which may be controversial, since they are not even required to have Polish citizenship. I must precede the review of selected legal acts in force which concern the prevention of deaths and the procedures in the case of their occurrence with significant reservations. The terms “shipmaster” and “shipboard management” should be treated synonymously (the master of the ship at the same time manages and commands), the terms “officer”, “deck officer”, “ship officer”, “ship’s officer” may also concern the shipmaster, which does not apply to “the officer on duty” or “the officer of the watch.” For the necessary simplification, the expression “Polish seagoing vessel” in the title is interpreted as “a ship of Polish nationality” from Art. 9–12 MC. I do not refer directly to European law and the International Labour Organisation convention, but Polish law cannot be incompatible with them. Globalisation and Europeanisation of the Polish legal order has a huge impact on the legal situation of employees, but it should be borne in mind that the legal acts which are no longer binding in this matter did not diverge in this respect from those in the 21st century, to mention the Act of 28 April 1952 concerning work on Polish merchant marine ships engaged in international service⁴ in the first place.⁵

The position of maritime labour law in the legal system is still disputed, including its relations with maritime law and labour law.⁶ It is noticeable in this study, which draws on the author’s knowledge and experience in both these areas, but with the predominance of the former. The author’s treatment of the problem is primarily based on a formal and dogmatic research method, aimed at a detailed description of legal regulations. To a lesser extent, the empirical method is adopted, which uses descriptions of actual situations (also employing judicial practice). If, apart from comparing legal systems, we include – *sensu largo* – analysing one’s own old law among comparative legal methods, it could be added that this method was also used to a marginal extent (but only in the aspect of discussing provisions which are no longer in force). The research objective of the study was *par excellence* providing thorough and reliable information which serves further legal considerations – both on the public law status of the shipmaster and on the safety of work at sea.

3 Dziennik Ustaw (Journal of Laws) of 2018, item 2175 [hereinafter referred to as MC].

4 Journal of Laws of 1952, No. 25, item 171, as amended.

5 More in: Wojciech Morawski, Remigiusz Zaorski, “Ustawa o pracy na polskich morskich statkach handlowych w żegludze międzynarodowej”, *Rocznik Prawa Morskiego* (1954): 34–45.

6 More in: Władysław Misiewicz, “Miejsce morskiego prawa pracy w systemie prawa polskiego”, *Prawo Morskie I* (1986): 173–194. The same applies to maritime mining law, see: Dorota Pyć, “Morska działalność górnicza a zrównoważone zarządzanie środowiskiem”, *Górnictwo i Geoinżynieria* 4/1 (2011): 311–319.

WORK SAFETY OF SHIP CREW MEMBERS AND PREVENTION OF THEIR DEATHS IN THE LIGHT OF APPLICABLE LEGAL ACTS

I shall begin with the Maritime Code, as it is fundamental to legal relations at sea. The Maritime Code obliges the shipmaster to exercise due diligence and ensure “that the ship is seaworthy, and in particular that it complies with the requirements arising from the provisions and principles of good maritime practice regarding safety, manning the ship with an adequate crew, proper equipment and supplies” (Art. 57),⁷ to provide assistance to all people who are in danger at sea, provided that this does not endanger the master’s own ship and the persons on it (Art. 60(1)); to take all measures to protect the ship and people on it from damage (Art. 61(1)). In the face of a disaster, the shipmaster shall use all available means to save passengers first and then the crew; he or she leaves the ship last, taking care – if possible – to save logs,⁸ documents, maps, valuables and the cash box (Art. 61(2)). Art. 59 of the Maritime Code lists the situations in which the shipmaster is to personally navigate the ship, adding at the same time that, apart from the circumstances indicated *expressis verbis*, this also applies to any case of particular difficulty or danger (§ 1); moreover, the Code makes the shipmaster’s obligation to use pilotage or tugboat services (§ 2) dependent on the safety requirements of the ship (and thus also of the people on board). Any danger to the ship (including passengers and crew) is a circumstance preventing the master from leaving the ship, “unless absolutely necessary” (Art. 58). If the port of destination is blocked or at risk of war, the shipmaster shall call at the nearest safe port and “take all measures necessary to protect the ship and persons on it (...) against being captured by the enemy or against any other danger of war” (Art. 63).

The shipmaster may retain, in a separate room, a person whose behaviour on the ship threatens the safety of the ship, people (and therefore their lives) and property (Art. 68(1) MC),⁹ and if a crime was committed on the ship (including a crime against life), the shipmaster has, among others, the obligation to secure evidence, notify the

7 More in: Jerzy Puchalski, “Odpowiedzialność kapitana za zdatność statku do żeglugi (artykuł dyskusyjny)”, *Prawo i Rzecznictwo Morskie* 11–12 (1988): 7–31. The comments and observations in this article remain up-to-date even though they were expressed when the previous Maritime Code was in force.

8 In Art. 64(2) and Art. 71(1) MC the term “ship’s logbook” is used; however, the Ordinance of the Minister of Infrastructure of 18 June 2004 on log keeping on ships of Polish nationality (Journal of Laws of 2004, No. 162, item 1696, as amended) [hereinafter referred to as ord. MI 2004], issued pursuant to Art. 52 MC, uses the term deck logbook (§ 4(1)(1)), as well as deck and machine logbook, kept in domestic shipping by some vessels, including all fishing vessels (§ 4(2)), and in international shipping by fishing vessels up to 24 m in length (§ 4(3)), and records in any form kept on open crafts (§ 4a).

9 See: Młynarczyk, *Prawo*, 113, 202–203. I agree in this respect with Gabriela Sidor (“Zatrzymanie osoby przez kapitana statku morskiego”, *Studia Iuridica Lublinensia* 21 (2014): 212–213), according to whom it is preventive detention.

prosecutor at the home port, take appropriate measures to prevent the suspect from evading liability, and to hand over that person along with the notification of a crime to the competent authority in the Polish port at which the ship calls, or to a vessel of the Polish Navy, Border Guard or Police (Art. 72(1) MC,¹⁰ § 2–7 of the Ordinance of the Minister of Infrastructure of 23 February 2005 on the procedure to be followed by the shipmaster against a person suspected of committing a crime against maritime safety).¹¹

No less important is the Act of 5 August 2015 on maritime labour.¹² It is on the basis of Art. 38 of this act that the shipmaster supervises the work on the ship and represents the shipowner before the crew (para. 1), makes an entry in the logbook of each important event concerning the crew (para. 2), or records in it every complaint received by him or her regarding the working and living conditions on the ship, and documents the results of the inspection referred to below (para. 3–4 and 6); it is also the shipmaster or a person authorised by him or her who carries out these inspections: once a week – inspections of supplies and storage facilities for food and drinking water, as well as the galley and appliances used for preparation and distribution of meals, and at least once a month – inspections of the condition of living quarters, in particular in terms of maintaining cleanliness and order (para. 5–6). In addition to complaints, in relation to which the master proceeds pursuant to Art. 97(2, 4–6), he or she also examines interventions reported to him or her by a crew member, representing the crew before the shipmaster and chosen by them at a meeting, which the master conceded to; the shipmaster examines the intervention without delay and notifies the ship's crew representative of the decisions made; the intervention is recorded in the logbook (Art. 40 and Art. 41(3)). It is the shipmaster who makes entries in the seaman's book confirming the course of a seafarer's and trainee's employment on the ship (Art. 8(2–3)). It is in agreement with the shipmaster that the shipowner determines the types of personal protective equipment as well as work clothing and footwear necessary for specific workplaces (Art. 66(3)). The shipmaster may order a seafarer to disembark in a port if the safety of the ship, crew or passengers so requires, and when, due to a lack of required psychophysical fitness or actual professional qualifications, the seafarer is not able to properly perform the duties determined in the seafarer employment agreement, with the provision that the instruction in this case must be accompanied by a justification, must be in writing and must be given to the seafarer and recorded in the logbook

10 Once again I agree with Sidor ("Zatrzymanie", 217–221), who qualifies this type of detention as proper detention; see also: Młynarczyk, *Prawo*, 117; Zyzda, *Kapitan*, 204; more in: Krzysztof Woźniowski, "Publicznoprawne funkcje kapitana statku z art. 72 § 1 kodeksu morskiego w sferze prawa karnego procesowego – zarys problematyki", *Gdańskie Studia Prawnicze* XXIX (2013): 279–290.

11 Journal of Laws of 2005, No. 42, item 405.

12 Journal of Laws, item 616, as amended [hereinafter referred to as Aml].

(Art. 39). The specificity of work at sea is evident in Art. 42: for a period justified by the needs of the ship (but no longer than 6 weeks), the shipmaster may order a seafarer to perform work corresponding to their professional qualifications other than that specified in the seafarer employment agreement, while providing them with remuneration not lower than that specified in that agreement or additional remuneration if they continue to perform the work covered by this agreement (para. 1–2); the shipmaster may take similar steps, but without any time limit and with excluding one from the work determined in the agreement, in relation to a seafarer who, after the start of the voyage, demonstrates the lack of medical fitness or professional qualifications required in their position (para. 3). Another situation is regulated by Art. 81(1), according to which the shipmaster may order a seafarer to perform certain work in the event of danger threatening the ship (in particular, the danger of sinking, crashing, fire), or in the event of the need to help another ship or persons in distress at sea, provided that the work does not expose the seafarer to immediate risk of losing health or life. When a ship is at berth at a port, the shipmaster allows the seafarer to take advantage of their free time ashore, unless he or she has himself/herself obliged them to perform work other than that specified in the employment agreement (Art. 49). As a result of the sinking of the ship or its loss in any other way, the seafarer employment agreement terminates *ipso facto* (Art. 29(1)(2)).¹³ The safety of work on the ship is largely related to the issuing of the crew list (muster roll) by the shipowner or by the shipmaster on his or her behalf; the name of every seafarer and trainee is entered on the list – upon the ship’s departure at the latest – taking into account the type of seafarer employment agreement, the position taken on the ship and the place and date of the commencement of the work on it (Art. 36(2–4)). A muster roll is issued for each sea voyage, as provided for in § 2 of the Ordinance of the Minister of Maritime Economy and Inland Navigation of 5 July 2016 regarding the crew list.¹⁴ Regardless of the list, the act requires the shipmaster to supervise the work and rest time records for each seafarer and to sign their individual forms (Art. 50(1, 3)). The shipmaster also puts the information on the work schedule for each position on board in an available place on the ship (Art. 51(1)). It should also be mentioned that the shipmaster orders crew musters, training and drills (including ship evacuation and fire-fighting drills); however, these should be organised in such a manner that they interfere as little as possible with the period of rest and do not make seafarers exhausted (Art. 43(2), Art. 45(3)). In the light of Art. 47(6), the ship’s master and heads of departments on the ship are subject to provisions specified in Art. 151⁴

13 It does not refer to an employment agreement concluded for an indefinite period. As Art. 29(1)(1) Aml provides for the termination of the agreement in all cases specified in the Act of 26 June 1974 – the Labour Code (Journal of Laws of 2018, item 917, as amended) [hereinafter referred to as LC], it should be emphasised that the most obvious and definitive by its nature is the death of a seafarer (Art. 63¹(1) LC).

14 Journal of Laws of 2016, item 1016.

LC, regulating overtime work, including overtime work of employees managing the work establishment in the name of the employer.

The master is directly responsible for compliance with the rules and principles of occupational health and safety on the ship (Art. 67(1)), in which he or she is advised by – on ships with a crew of a minimum of 5 seafarers – an occupational health and safety committee set up by the crew (Art. 67(2–5)). This is also associated with the shipmaster’s obligation to ensure the training of a seafarer in health and safety on board before allowing them to work at a particular workstation (Art. 68(2)). If a seafarer suffers an accident at work, the shipmaster shall determine the circumstances and causes of the accident, as well as immediately notify the shipowner of the occurrence of such an accident and of suspicion of an occupational disease (Art. 69(1, 3)).

The shipmaster is personally responsible for keeping the first aid kit and for medical care on board being provided by a medical practitioner or a properly trained seaman, while the shipmaster or a person authorised by him or her keeps medical records for each seafarer (Art. 71(5–6)).¹⁵

Since a seafarer (trainee) cannot bring or carry on board any items posing a threat to the safety of the ship, people and cargo (Art. 80(1)), in the event of a justified suspicion of them possessing such items, the shipmaster may order a search of the seafarer’s (trainee’s) room and property in their presence and with a record taken of the search, and in the event of finding such items – the master may remove them from the ship or hand them over to the competent authorities (Art. 80(2–4)).

The master of the ship or a person authorised by him or her shall make official premises available to the Chief Labour Inspector, the district labour inspector and the labour inspector or controller acting on behalf of an inspection body, as well as – at their request – the original documents and materials regarding the records of seafarers’ time of work and rest and the schedule of work (Art. 95(5–6)). Although Aml oddly does not mention the presence on board of the bodies of the State Sanitary Inspection, the provisions quoted in the previous sentence should also refer *in fine* to the control which, pursuant to Art. 5(6) and Art. 25(1)(c) of the Act of 14 March 1985 on State Sanitary Inspection,¹⁶ may be carried out on the ship by the Chief Sanitary Inspector and the state sanitary inspector.¹⁷

15 It is surprising that it is not noticed by Dominika Rydlichowska, “Regulacje prawne w zakresie ochrony zdrowia załogi oraz pasażerów na statku morskim”, in: *Monografia pokonferencyjna. I Konferencja Naukowa Pomorskiej Izby Adwokackiej w Gdańsku “Prawo Medyczne i Farmaceutyczne”*, eds. Dominika Rydlichowska, Karol Pachnik (Warsaw: MakPrint, 2016), 129–140.

16 Journal of Laws of 2019, item 59.

17 More in: Maciej Rydlichowski, “Kontrola sanitarna na statkach morskich”, in: *Monografia*, 141–149.

The Ordinance of the Minister of Foreign Trade and Maritime Economy of 25 June 1979 on occupational health and safety on merchant marine ships,¹⁸ issued without a doubt in order to meet the increasing requirements regarding “conditions of work, its safety and hygiene”,¹⁹ is an example of a great piece of legislation, as demonstrated by 40 years during which it has been valid in an unchanged form.²⁰ For the interpretation of this act in its entirety, § 4 is of key importance, which reads *in extenso*: “In the event of a failure of the ship or the need to help another ship or persons in distress, the shipmaster may order that the specific provisions of this Ordinance be waived.” It is also important that the shipowner’s duty is to provide the texts of the provisions regarding occupational health and safety on board to shipmasters, section heads, staff representatives and independent labour inspectors, who make them available to other crew members (§ 147). § 5(3) orders the relevant service manager to instruct each crew member that is newly admitted, transferred from another ship, or taking up a new function in the occupational safety and health conditions on a given ship and in a particular workplace. An officer or boatswain shall inspect ropes and lifting equipment for safety prior to each use (§ 14(1)). Boatswain or a person appointed by him or her is to manage and supervise overside work (§ 22(1)), whereby the boatswain himself/herself checks overside equipment and accessories prior to every use (§ 23(3)). Work at heights performed while the ship is underway is a reason for the shipmaster or the first officer to decide to change course or reduce the speed of the ship (§ 22(3))²¹ – if work at heights requires putting up scaffolding, the method of erecting it is determined by the section head, who also examines it before use (§ 23(7)). The officer checks the technical condition of ladders before the crew members go down to the hold (§ 24(1)). A crew member supervising work on rafts, pontoons or boats decides whether crew members working there should wear a life jacket in the absence of safety vests (§ 25(1)), while a crew member supervising work at heights is required to check after their completion whether all previously brought tools and equipment have been taken away from the workplace (§ 26(1)). The section head who directly supervises the safety of crew members working in storm conditions outside of normal watch keeping and being on duty (§ 28(4)) has significant responsibilities;²² however, it depends on the consent of the

18 Journal of Laws of 1979, no. 14, item 96 [hereinafter referred to as ord. MoFTaME 1979].

19 [Ireneusz Bulski], “Wstęp”, in: *Przepisy bhp na statkach rybackich wraz z wyborem przepisów bezpieczeństwa życia na morzu i ochrony przeciwpożarowej*, selection and introduction by Ireneusz Bulski (Gdańsk: Wydawnictwo Morskie, 1978), 11.

20 This ruby anniversary falls on 1 January 2020.

21 This is clearly a factual mistake, because in relation to the ship’s movement, the physical quantity of “velocity” should be used, as aptly demonstrated by Jan Lasoń, “Prędkość czy szybkość statków wodnych?”, *Nautologia* 2 (2000): 55.

22 This includes examining the conditions of the intended work (subparagraph 1), discussing with the crew the way in which the work is to be performed (subparagraph 2), checking crew members’

shipmaster himself/herself whether deck work and communication between ships will take place in such conditions (§ 28(3)). Overhaul and maintenance work may only be carried out with the consent of the section head (§ 29), who determines how the equipment and mechanisms should be overhauled; however, supervision over these works is carried out by an officer (§ 30(1)). Without the consent of the officer on duty (the officer of the watch) and without supervision, it is forbidden to enter the holds, engine crankcases, the shaft alley, tanks, cofferdams, etc. (§ 32(1)).²³ Any repairs during the operation of machinery and equipment are forbidden; however, if activities related to the adjustment or repair of the mechanism require removal of the cover, such works, as well as repair work on equipment under pressure, can only be carried out under the supervision of an officer (§ 34(1) and § 37), while the mechanic officer designates employees with appropriate qualifications to repair machines and equipment, in particular with respect to operating electrical equipment (§ 34(5)). Section heads designate qualified persons to conduct daily inspections of machinery and equipment (§ 35(1)). If there is a need to carry out welding works outside the welding shop, they can only be carried out with the consent of the head of the machinery department and the head of the department in which these works are to be carried out (§ 110(2)).²⁴ The first engineer shall maintain the liquid and solid waste disposal system in full working order (§ 132(1)). As regards rodent extermination, the decision to use rodent poison during a voyage can be issued and supervised by a physician, and in the absence of one such a decision and the supervision of its implementation become the competence of the shipmaster (§ 141(3)). The officer on duty should check the condition of the appliances for leaving the ship and returning from the shore or another ship before they are lowered, as well as of the equipment used to lower them (§ 44(1)), while the shipmaster decides on the type of safe means of transport if it is not possible to use permanent gangways between ships or between a ship and a dolphin (§ 46(1)). The shipmaster or the section head designates a person to supervise the work related to mooring, anchoring or towing (§ 49(1));²⁵ in turn, the deck officer oversees covering and uncovering

protection prior to work commencement (subparagraph 3), procuring that the working area is prepared and secured (subparagraph 4), supervising work progress and managing work in a way ensuring crew members' safety (subparagraph 5).

- 23 The consent to enter above-mentioned and similar rooms may only be granted by the officer on duty (the officer of the watch) after ensuring that the air in such rooms does not contain any substances harmful to health in concentrations higher than the permissible concentration and that it contains enough oxygen; if the ship cannot be equipped with equipment for determining the degree of risk, entry to such rooms shall only be possible while wearing appropriate personal protection equipment and clothing (§ 32(2)).
- 24 It follows from it that if welding outside the welding shop is to be performed within the machinery section, the consent of the head of this section is sufficient.
- 25 Lowering an anchor and fastening it to the boat in case of carrying it in a boat or boats shall be carried out under personal supervision of an officer (§ 60(1)). Before the anchor is let go, the officer managing

hold hatches (§ 61(1)), while cargo handling operations performed by the ship's crew should be organised by an officer (§ 72(1)). However, it is the shipmaster who always makes the decision to carry out work on covering and uncovering the hold as well as furling operations while the ship is moving (§ 70(2)).²⁶ Transshipment also applies to § 73, according to which masters of ships moored to each other decide on commencing or discontinuing transshipment, taking into account current weather conditions and the safety of crews.²⁷ Additional restrictions are imposed by the specificity of fishing operations: the deck officer and the boatswain supervise all work related to releasing and hauling in the fishing gear (§ 77(1)), while the deck section head assigns work stations and determines the manner in which they should communicate – in each voyage before the commencement of work related to the releasing of the fishing gear (§ 77(2)); the shipmaster or the first officer should supervise the work carried out until all the gear has been hauled in, in the event of one of the trawl warps breaking (§ 81(5)); similarly, when in stern trawling sizeable fish catches are being hauled in, this process should also be supervised by the shipmaster or the first officer (§ 89). On the day of issuing the 1979 ord. MoFTaME, it should be considered as complementary to other acts of that minister: the ordinance of 21 June 1975 on equipping seagoing ships with portable fire-fighting equipment²⁸ and ordinance No. 57 of 10 July 1975 on standards for equipping seagoing ships with portable fire-fighting equipment,²⁹ as well as older ordinances of the Minister of Navigation, including the ordinance No. 213 of 20 October 1954 on navigational hazards encountered by seagoing vessels³⁰ and of 11 February 1970 on alarms on seagoing vessels.³¹

But for me the quintessence of the 1979 ord. MoFTaME is § 123, which in para. 1 requires the ship to be supplied with the necessary fresh water supply prior to the

the operation shall make sure that no vessel is under the anchor or near the place where it is lowered into the water (§ 57(1)).

- 26 A total of two conditions must be met: the ship is moving on sheltered waters and current conditions do not pose any direct threat to crew members' health or life. It does not apply to ships used for fishing (§ 70(3)).
- 27 If there are two ships, this is a manifestation of making a co-decision not by a single person and not collegially, but by two persons (*dumvirate*), a situation unique in Polish law, which may arouse associations with the two-person composition of the head of state in Andorra and San Marino.
- 28 Journal of Laws of 1975, No. 22, item 122.
- 29 Dziennik Urzędowy (Official Journal of Laws) of MoFTaME 1975, No. 7, item 54.
- 30 Unpublished.
- 31 Official Gazette of the Government of the Republic of Poland (Monitor Polski) 1970, No. 7, item 69. I still do not agree with Eugeniusz Jabłoński's criticism of this ordinance; E. Jabłoński, "Zmiany w przepisach międzynarodowych w sprawie alarmów próbnych i ćwiczeń na statkach morskich (Prawki z 1983 r. do konwencji SOLAS-74)", *Prawo i Orzecznictwo Morskie* 1 (1986): 42.

voyage³² and establishes the basis for its calculation,³³ whereas in para. 2 it gives the shipmaster the right to order water rationing in the event of special needs, especially when the ship's presence at sea or an anchorage has been extended. It is not for the first time and not only in this act of the minister that legislation demonstrates the most far-reaching humanity, in this case guided by the belief that water is not a commodity but a commonly available good, a gift of nature, a universal value.³⁴ Undoubtedly, the Maritime Code follows similar assumptions, entitling the shipmaster to requisition edible cargo for an even distribution (Art. 70(1)), as well as to sell part of the cargo or unnecessary belongings of the ship, if required by the critical need to supply it (Art. 69(1–3)).

The shipmaster enjoys special competences in the field of occupational health and safety when the ship he or she commands is in port; these are regulated by the Ordinance of the Minister of Transport and Maritime Economy of 6 July 1993 on occupational health and safety in maritime and inland ports.³⁵ Namely, the ship's management should allocate a toilet for the needs of employees working in cargo holding operations (§ 13(5)).³⁶ Preparation for transshipment begins with the acceptance of ship's lifting equipment and ready workstations by the representative of the work establishment carrying out cargo holding operations in the port from the shipmaster or the officer designated by him or her (§ 125); before cargo holding operations begin in the holds when the beams are left in place (as a rule, they are removed before loading), the loading foreman shall check their fastening and if he/she (or anyone else) notices damage to the beams and hatch covers, this person is to immediately notify the ship's officer (§ 128(2–3)). If a barge is to be placed next to the ship's side for transshipment, this should be agreed in advance with the shipmaster (§ 132).³⁷ § 170(2) concerns wood and general cargo transshipment, making the temporary storage of heavy loads on hatch covers subject to the consent of the ship's officer; in turn, a plan for loading and unloading a specialised vessel should be prepared and agreed upon with all persons concerned before the commencement of transshipment operations (§ 175(1)). It is important to bear in mind that on the basis of § 197(2) with respect to facilities and equipment in operation on 7 September 1993, the ordinance in force – until they are rebuilt

32 Art. 63(3) Aml concerns the shipowner's obligation to provide seafarers with drinking water and free food.

33 Determining i.a. the minimal daily consumption of water per person (both crew members and passengers) in the amount of 100 l, including 30 l of fresh water (subparagraph 3).

34 See: e.g. Piotr Kowalczyk, *Konflikty o wodę* (Przeźmierowo: Kurpisz, 2007), *passim*.

35 Journal of Laws of 1993, no. 73, item 346 [hereinafter referred to as ord. MoTaME 1993].

36 This does not apply to situations in which due to the technical equipment of the ship and the local conditions of the port (these conditions must be met cumulatively) the use of the toilet when the ship is in port is prohibited.

37 It is forbidden to put barges between two vessels.

or modernised – is that of the Minister of Navigation of 6 September 1967 on health and safety at work at sea ports and inland ports,³⁸ including § 130(4) (“In the event of positioning a ship on which cargo holding operations are to take place along the side of a second ship moored to the quay, the shipmaster of the latter shall allow free and safe access to the ship, and if necessary – to provide assistance with organising safe access”); § 141, § 148(3) and § 223 (with the content analogous to, respectively, § 125, § 128(2–3) and § 13(5) of the 1993 ord. MOTaME); § 142(1) (“Holds should be opened and closed by the ship’s crew or experienced port workers designated by the foreman, under the supervision of a ship’s officer”); § 152(1) (“Preparation of the boom for cargo holding operations may take place only in the presence of a ship’s officer”) and § 152(3) (“In the absence of markings of the derrick or – if its markings raise any doubts – at the foreman’s request, the allowable boom capacity should be provided by the ship’s officer on the basis of current ship documents”); § 154(2) (“It is forbidden to place a barge under the ship’s hatch or stern near the propeller without consulting it with the ship’s management”); § 170(2) (“During loading and unloading, the barge master should ensure that the barge is evenly loaded and unloaded, and the foreman should load the barge as instructed by the barge master”); § 193(1) (“Unmooring and casting off from the berth should be carried out only on the orders of the ship’s officer”). Reading the provisions of both ordinances requires an ambivalent response to the comments made some years ago by S. Jaworski: he was right in saying that “[r]esponsibility for proper loading and unloading cannot be shifted to dockers” and that “[t]hese operations must be personally monitored by the cargo officer”,³⁹ but he was wrong in disregarding the duties of the shipmaster in this respect, although he sometimes mentioned that “[s]hip’s authorities must know exactly which rooms are excluded (...) from measurement.”⁴⁰

Moreover, the provisions of the Act of 16 March 1995 on the prevention of pollution of the sea by ships⁴¹ cannot be disregarded. Art. 10(1–2) imposes on the shipmaster (with some exceptions for some vessels) the obligation to inform the port (before entering it) about the waste on board. If the ship is sailing on a regular line between Polish ports or between a Polish port and a port of another EU Member State for at least a month, its shipmaster shall notify the director of the maritime office or the port of destination of at least 3-hour changes in relation to the estimated time of arrival at the port of destination or a pilot station (Art. 10a(3a)). If the shipper brings dangerous or polluting goods to be loaded onto the ship for transport, they may do so no earlier than upon the submission of a declaration of these goods to the master, together with a declaration that the goods correspond to the information contained therein,

38 Journal of Laws of 1967, No. 39, item 200, as amended.

39 Stanisław Jaworski, *O ładunkach w transporcie morskim* (Gdańsk: Wydawnictwa Morskie, 1951), p. 9.

40 Ibidem, 112.

41 Journal of Laws of 2017, item 2000.

and the master shall forward this declaration to the shipowner before leaving the port (Art. 10b(1–2)). The master of a ship of Polish nationality outside Polish maritime areas who notices pollution at sea or an accident causing or likely to cause an oil spill or other type of pollution shall immediately inform the shipowner and the coast radio station of the nearest coastal state (Art. 11(1)), and if it happens in Polish waters – the shipowner and the nearest coast radio station or Ship Traffic Control Service, i.e. the Vessel Traffic Service (Art. 11(3)). The obligation to immediately inform these and the director of the maritime office competent for the ship’s home port rests on the master of the ship of Polish nationality which is involved in an accident causing pollution of the marine environment or threat thereof, and on which an event with such effects occurred (Art. 11(2)); and if the ship is in Polish maritime areas, the shipmaster shall notify the shipowner and the nearest shore station or VTS (Art. 11(4)). If a ship is involved in an accident causing or likely to cause oil spills or other pollution, its master shall immediately take all necessary measures to prevent, reduce and remove pollution of the marine environment (Art. 12(1)); in turn, in the event of an accident on the ship or finding damage that seriously affects the technical condition of the ship, its devices and equipment and causes a threat of polluting the marine environment, the shipmaster should immediately notify the Polish inspection authority (Art. 13(1)). It is the shipmaster who shall check and ensure that the ship complies with the requirements for the prevention of sea pollution and has a plan of protection against such pollution, that the required oil, cargo, waste management and fuel records are kept on an ongoing basis, and that it is manned with a crew that have been properly trained in this respect (Art. 9).

The master’s competence to draw up a list of last ports of call, containing a list of the last ports at which the ship has called, also serves the purposes of the ship’s security. It is provided in the Act of 4 September 2008 on the protection of shipping and seaports⁴² (in Art. 9(3)), which also regulates the procedure for issuing the Continuous Synopsis Record by the director of the maritime office, taking into account, however, the jurisdiction of the shipowner or the shipmaster to complete the form or index of amendments (Art. 14(1, 4–5)), and in the event of loss or destruction of the record – to notify the director of the office in writing (Art. 15(1)). Art. 41(1) prohibits the unauthorised possession and transport to the ship of weapons, explosives and pyrotechnics, irritants or stunning agents, flammable and caustic chemicals as well as other chemical, biological or radiation materials, while Art. 43–50 regulate the obligations incumbent on the shipmaster before the ship enters the port, including presenting the above-mentioned Continuous Synopsis Record and the list of last ports of call to the director of the maritime office (Art. 45(2–3)). I shall mention the Act of 18 August

42 Journal of Laws of 2013, item 586.

2011 on maritime safety,⁴³ which imposes on the shipowner or shipmaster specific obligations regarding the flag state inspection (Art. 19(1)) and providing the captain of the port in Poland or another EU country at which the ship calls with information regarding ship identification, the number of persons on board and the port of destination, as well as the estimated time of arrival at and of departure from the port of call (Art. 87(1, 3)).⁴⁴ If events occur on a ship in Polish maritime areas that affect the ship's safety (e.g. collision, fire or stranding) or threaten maritime safety (damage to devices that may affect the ship's manoeuvring abilities or seaworthiness), the shipmaster shall immediately inform the nearest shore radio station or VTS and – although not immediately – the shipowner (Art. 88(1–2, 4)). In such a situation, the director of the maritime office may order the shipmaster to change course or use pilotage or tug-boat services (Art. 89(1)). The director also has other obligations to the shipmaster: in the event of a threat to human life or a serious threat of pollution of the sea due to the ship's condition or particularly bad weather, he or she informs the shipmaster about the weather and sea conditions, at the same time being entitled to recommend or prohibit entry to (exit from) the port or restrict or prohibit bunkering (Art. 95(1)), and in the case of navigation in ice conditions – informs the shipmaster about the ice situation, recommended routes and the assistance of icebreakers (Art. 6(2)).⁴⁵ At the same time, no one shall prevent or hinder the shipmaster from making or executing decisions that in his or her opinion are necessary to ensure the safety of life at sea and the protection of the marine environment (Art. 112). Ams contains such cardinal provisions as Art. 114, on the basis of which everyone who obtains information about a threat to human life at sea is required to immediately notify the Maritime Search and Rescue Service (SAR Service), maritime administration authorities, Polish Navy units, Border Guard, State Fire Service or Police. No less significant are Art. 86b(1), which prohibits operating a ship in a state of intoxication or under the influence of a narcotic drug,⁴⁶ and Art. 86a and 86b(2), authorising Border Guard officers to demand the

43 Journal of Laws, item 181, as amended [hereinafter referred to as Ams].

44 The competence referred to in Art. 87(1, 3) can also be performed by a representative of the shipmaster. In turn, Art. 87(5) obliges the shipmaster to notify the port's captain of the entry or exit from the port as well as to inform him or her about the ship's identification, destination, port of call and the list of persons on board.

45 Art. 96(1) Ams, subsidiary to the Maritime Code, obliges the shipmaster to exercise extreme caution when navigating in ice conditions and to use all means of manoeuvring, including information and guidelines provided by the director of the maritime office.

46 This is a crime covered by Art. 178a § 1 of the act of 6 June 1997 – the Penal Code (Journal of Laws of 2017, item 2204, as amended) [hereinafter referred to as PC] in reference to a motor vehicle and punishable by a fine, restriction of freedom or imprisonment of up to 2 years. On the other hand, only a fine can be imposed for navigating a ship other than a mechanical ship under influence, as well as any other floating object (not excluding pedal boats, flamingo-shaped pontoons or inflatable mattresses in the form of an eggplant) and only up to 1 NM from the shoreline, based on Art. 35 of the Act of 18 August 2011 on the safety of persons in water (Journal of Laws of 2018, item 1482).

person operating the ship – in the event of a justified suspicion – undergo an alcohol or drug test.⁴⁷ If boarding (*okrętowanie*) means the entry of any person onto the ship, signing on (*mustrowanie*) – the entry of crew members, and embarkation (*embarkacja*) – of passengers, the last one is the subject of Art. 103–105, which regulate the counting and registration of persons taking the voyage. The details of these are regulated by the Ordinance of the Minister of Transport, Construction and Maritime Economy of 23 April 2013 on counting and registration of persons travelling by sea,⁴⁸ which in § 2 lists the variants of counting, ending with “any other method ensuring the correct counting of passengers” (subparagraph 7).

A significant competence of the shipmaster is contained in Art. 27(8)(2) of the Act of 5 December 2008 on preventing and combating infections and infectious diseases among people.⁴⁹ Therefore, it is enough for the shipmaster to suspect that a crew member or passenger travelling on an international journey has a particularly dangerous and highly contagious disease, and this gives him or her the obligation to immediately report this fact through available means of communication – and the same in the case of a suspicion that the death of such a person that occurred on the ship was caused by such a disease. He or she does so in person or via the SAR Service, a ship’s agent or the harbour master’s office, by submitting a notification to the (poviat or border) state sanitary inspector competent for the planned crossing point of the state border or for the seaport,⁵⁰ but if suspicion of illness or death occurred after crossing the border, the notification is directed to the inspector competent for the place of suspicion.

I shall begin my brief considerations of the practical significance of the Act of 31 August 2012 on the State Marine Accident Investigation Commission⁵¹ with the general regulation of Art. 47(1) imposing on anyone who has found or noticed an abandoned ship, its debris or wreck, or pollution of the marine environment, or has witnessed a marine accident (incident), the obligation to immediately notify one of the entities listed in subparagraphs 1–7, including e.g. the Polish Navy (subparagraph 3), the Police (subparagraph 5) or State Fire Service (subparagraph 6), whereby the notified entity shall immediately notify the State Marine Accident Investigation Commission of the maritime accident (incident) (Art. 47(2)). A very important article is Art. 47(3), according to which the shipowner and the master of the ship affected by the accident

47 Applying Art. 129i and Art. 129j of the Act of 20 June 1997 – the law on road traffic (Journal of Laws of 2018, item 1990, as amended).

48 Journal of Laws of 2013, item 586.

49 Journal of Laws of 2018, item 151, as amended.

50 It is mentioned by Zyzda (*Kapitan*, 205), although she believes that the shipmaster reports to the state sanitary inspector the death caused by a disease characterised by the cumulation of the two conditions mentioned above, rather than the suspicion of a death on the ship being caused by such a disease. I do not agree with this view.

51 Journal of Laws of 2018, item 925, as amended.

(incident) shall secure its traces and evidence and immediately inform the State Marine Accident Investigation Commission about it, as well as the captain of the first Polish port which the ship is to enter after the accident (incident). The most aggravated form of a maritime accident is a very serious accident, and this term refers e.g. to such an accident which resulted in total loss of the ship or death of a person (Art. 2(1)(2)).⁵² The State Marine Accident Investigation Commission may refrain from investigating individual accidents (incidents), but never a very serious one (Art. 20(1-3)).⁵³ A significant and informative example of the operation of the State Marine Accident Investigation Commission in relation to the subject of the present study is the final report 47/15 on a very serious accident that occurred on 25–26 September 2015 at the port of Abidjan on M/V Nefryt.⁵⁴ On 24 September 2015 at 02:00 am, the loading and trimming of cargo of shea nuts was completed. During the closing of cargo hold covers and clearing of cranes, two persons arrived on board to perform the cargo fumigation. On the following day, starting from midnight, the crew (including the master) of the ship on the sea began to experience symptoms (stomach pains, vomiting, a feeling of cold, weakness); subsequently, the condition of some crew members began to deteriorate and on 26 September two persons (the chief officer and the third officer) died.⁵⁵ It was found that their death was caused by prolonged contact with phosphine, PH₃, which was emitted during fumigation and passed through the air conditioning ventilation duct to the crew's living quarters⁵⁶. In the hold, 120 bags had been laid out with approximately 18,500 pellets of the fumigating agent (*phoslumium* containing 560 g of aluminium phosphide, ALP, in one kilogram of preparation)⁵⁷ which in reaction with water (or acid) generates phosphine.⁵⁸

Pirate and terrorist attacks⁵⁹ are also a source of danger to the lives and health of seafarers, and examples of such criminal activities can be found in the more⁶⁰ and

52 Adjudication in cases of maritime accidents is the competence of maritime chambers, as stated in Art. 1(1) of the Act of 1 December 1961 on maritime chambers (Journal of Laws of 2016, item 1207).

53 See: Cezary Łuczywek, "Państwowa Komisja Badania Wypadków Morskich", *Prawo Morskie* XXVIII (2012): 300–301.

54 Accessed 8.01.2019, pkbwm.gov.pl/images/uchwały_raporty/raporty/Raport_koncowy_Nefryt.pdf.

55 See: *ibidem*, 4–5.

56 See: *ibidem*, 16–36.

57 See: *ibidem*, 9–10.

58 Phosphine (phosphane) can be obtained by hydrolysis of e.g. aluminium phosphide: $ALP + 3H_2O \rightarrow PH_3 \uparrow + Al(OH)_3$, as well as by the action of acids on metal phosphides.

59 More in: Iouri N. Semenov, "Akty piractwa morskiego oraz napadów zbrojnych i ich konsekwencje dla życia i zdrowia marynarzy", *Bezpieczeństwo Pracy – Nauka i Praktyka* 10 (2014): 24–28; Elżbieta Marczak, "Bezpieczeństwo człowieka na statku w świetle obowiązujących przepisów", *Zeszyty Naukowe Akademii Morskiej w Szczecinie* 18 (2009): 99–100.

60 See: Eugenia Giemborek, "Piracki napad na statek 'Praca' w świetle prawa międzynarodowego", *Państwo i Prawo* 2 (1954): 336–345.

less⁶¹ distant past. It is also necessary to mention homicides and similar crimes against life and health, the dark number of which probably outweighs the events whose perpetrators have been punished. This was probably the case of 26-year-old Karol Kizewski, 2nd officer at M/V Tsuru, whose tragic death on 26 May 2002 in Point Lisas (Trinidad and Tobago) was used by its perpetrators to smuggle to Poland (in his casket, including inside the body without bowels!) 160 kg of substances which have not been identified to this day, probably drugs.⁶²

Among all the causes of ship failures, the problem is the high percentage of incidents caused by a human factor, including the short work experience of the shipmaster and officers.⁶³ It is enough to mention that during the period of 40 years it was the cause of as much as 89–96% of ship collisions on a global scale,⁶⁴ and in the probably record year 1982 it amounted to 82.6% of work accidents in Poland⁶⁵. Undoubtedly, there is both a causal relationship between accidents and medical fitness (fatigue, illness, intoxication) or/and psychological fitness (weakened attention due to stress),⁶⁶ and the fact that the persons responsible for accidents are not always injured. It is the shipmaster who is co-responsible for working conditions, from concern for the condition of the deck (sometimes wet, slippery, snowy), or responding to, for example, cluttered passages on communication routes that may result in tripping. A feedback effect can be observed: the shipmaster's behaviour (positive or negative) affects the behaviour of the crew (and vice versa), with the shipmaster, "the first after God", having the duty to control the safe conduct of work and analyse accident hazards to accept specific generalisations for general prevention purposes.⁶⁷ The idea is to prevent accidents as well as to analyse their causes, course and effects effectively enough to minimise the

61 See: Krystyna Obolewicz-Dąbrowska, *Mayday!... Mayday!...* (Gdynia: Pomorska Oficyna Wydawnicza-Reklamowa, [2014]), *passim*. The book is the account of a crew member of M/S Bolesław Krzywousty, abducted on 3 January 1990 by Eritrean guerrillas.

62 More in: Marzena Burczycka-Woźniak, *Prawda i prawo* (Gdynia: MiT, 2008), *passim*.

63 More in: Bogdan Jaremin, *Zgony polskich marynarzy i rybaków podczas pracy na morzu w latach 1960–1999 – analiza zjawiska i wpływu środowiska pracy ze szczególnym uwzględnieniem orzecznictwa lekarskiego i możliwości prewencji* (Gdańsk: Akademia Medyczna (Medical University of Gdańsk), Międzywydziałowy Instytut Medycyny Morskiej i Tropikalnej (the Interdepartmental Institute of Maritime and Tropical Medicine), Klinika Chorób Zawodowych i Wewnętrznych (the Clinic of Occupational and Internal Diseases), 2005), 81; Wojciech Popiela, *Wybrane zagadnienia prawa morskiego* (Szczecin: Dział Wydawnictw Wyższej Szkoły Morskiej, 1981), 122–123.

64 See: Teresa Abramowicz-Gerigk, Zbigniew Burciu, Andrzej Hejmlich, "Koncepcja metody oceny wpływu czynnika ludzkiego na ryzyko wypadku w transporcie morskim", *Logistyka* (CD) 4 (2015), 17.

65 See: Jabłoński, "Czy armator i kierownictwo statku nie odpowiadają za stan BiHP na statku?", *Prawo i Orzecznictwo Morskie* 2 (1986): 14.

66 See: *ibidem*, 16; Jaremin, *Zgony*, 16–26; Marczak, *Bezpieczeństwo*, 97–98; Michał Żychliński, "Etyczne problemy udzielania pomocy medycznej na morzu", *Aequitas* 3 (2015): 106; Zbigniew Łosiewicz, "Bezpieczeństwo pracy na morzu – weryfikacja kompetencji załóg w realnych warunkach zagrożenia pożarowego na statku", *Autobusy* 6 (2016): 262.

67 Cf. Jabłoński, „Czy armator”, 16–19.

risk of their recurrence. The aforementioned impact of intoxication on accidents was, until recently, not unrelated to the Ordinance of the Minister – Chief of the Maritime Economy Bureau of 7 May 1983 on the terms and conditions for the sale, serving and consumption of alcoholic beverages on maritime commercial ships in international shipping and in international seaports;⁶⁸ however, Art. 2(1)(c) of the Act of 24 November 2017 on the amendment to the Mental Health Protection Act and some other acts⁶⁹ deleted Art. 14(7) of the Act of 26 October 1982 on upbringing in sobriety and counteracting alcoholism,⁷⁰ which was the basis for issuing the above-mentioned act. In the light of that, until recently the shipmaster had the right to introduce a total or partial ban on the sale, serving and consumption of alcohol on board (§ 4), and these activities with reference to beverages containing up to 4.5% alcohol were allowed in the above-mentioned ports (§ 6), and also outside ports with reference to crew members (§ 3(1)), just like issuing daily wine rations in the tropical zone (§ 3(2)); moreover, § 5(1) made it possible for the shipmaster to allow the serving and consumption of “insignificant quantities” of beverages containing more than 4.5% alcohol under certain conditions.⁷¹ Meanwhile, Art. 14(1)(4)(d) Aalc in its current wording excludes sea vessels from the ban on selling, serving and consuming alcoholic beverages, regardless of the alcohol content, effective from 1 January 2018. In my opinion, this is a huge mistake of the legislator, which in the near future may result in increased accident rates on ships due to the lack of any restrictions on alcohol consumption by both seafarers and passengers.

Slipping and tripping cause 26% of all accidents on Polish ships.⁷² Probably, if the deck of the barge BA-ZPGda-28 had not been contaminated by wet grain dust on 5 March 1981, the 21-year-old crew member Krzysztof Niedziela would not have drowned,⁷³ and if the ice on the deck of the barge BA – ZPGda-36 had been at least partially cleared on 30 December 1976, its master, 54-year-old Wiesław Komorowski, would not have drowned.⁷⁴ De-icing carried out improperly may also result in a tragedy: when on 28 January 2000 ice was being thrown overboard M/T Tunek, a block of ice from the icy part of the lifeboat hull hit the fisherman Leszek Kujawa on the back; as a result, he fell from the deck onto the wharf, and subsequently into the water,

68 Journal of Laws of 1983, No. 25, item 121.

69 Journal of Laws of 2017, item 2439.

70 Journal of Laws of 2018, item 2137, as amended [hereinafter referred to as Aalc].

71 See: Zyzda, *Kapitan*, 203–204. Shortly after the Second World War, crew members of fishing vessels also received an allowance in the form of 1 litre of pure spirit per person for mixing with tea and making a *sui generis* warming grog – see: Zbigniew Gach, *Leon rybak* (Gdańsk: L&L 2008), 46.

72 See: Jabłoński, „Czy armator”, 14.

73 See: Ryszard Leszczyński, *Katastrofy i wypadki morskie floty pomocniczej PMH (1926–2016)* (Gdańsk: Oficyna Morska, 2017), 585–586.

74 See: *ibidem*, 578–579.

and died.⁷⁵ But it is not only ice, i.e. solidified water, hydrogen oxide, H₂O, that can cause a fatal accident; it can also be dry ice (carbon dioxide, CO₂, in a solid state). An able-bodied seaman on M/S Orla, Andrzej Borowy, died on 28 February 1961 in Helsinki due to CO₂ poisoning in an unventilated hold where the concentration of this gas was not checked.⁷⁶ These are just a few examples of seafarers' deaths caused by human neglect – not always the neglect of the one who died.

SHIPMASTER'S COMPETENCIES IN THE EVENT OF DEATH

The master exercises these competences as a person authorised to substitute certain public authorities. In the light of MC, the first response of the shipmaster to information about death on a ship during a voyage is to make a note in the logbook (Art. 71(1)).

Since the “basic document reflecting the course of the journey” is the already mentioned ship's logbook⁷⁷ (deck logbook, deck and machine logbook), it should undoubtedly contain basic information about the death. As the shipmaster is responsible for the proper keeping and storage of logbooks (§ 7(5) of the ord. MI 2004), and in the face of a disaster, he or she leaves the ship last, taking care to save them if possible (Art. 61(2) MC), this is an opportunity to preserve the documented records of death. I emphasise the importance of the mention in the logbook, because in the event of the loss or destruction (including sinking) of the report, it will be the only proof of death at a specific time and place.⁷⁸

Making an entry in the logbook does not exempt the shipmaster from the obligation to draw up a report, as stated in Art. 71(1). As MC does not contain any regulations regarding its form and content, the provisions of the Act of 28 November 2014 – law on civil registry records⁷⁹ – should be used in this regard. Art. 71(1) MC informs *expressis verbis* that the obligation to draw up a report and make an entry in the logbook arises on the part of the master if the death occurs on the ship “during a voyage.” This statement is not absolute and unambiguous, and it is not only because it is not reflected in Art. 96 Lcrr. It is known that it covers the voyage from the port of departure to the port of destination with all planned and unplanned stops (including in ports and at anchorages and roadsteads). It should also be assumed that the death of a crew member in the

75 See: Wiesław Błady, *Polska flota rybacka w latach 1921–2001. Kalendarium tragicznych zdarzeń na statkach rybackich w latach 1945–2000* (Gdynia: Morski Instytut Rybacki, 2002), 295.

76 See: Henryk Mąka, *Kapitan schodzi ostatni* (Warsaw: KAW, 1979), 74–92.

77 Maciej Drogosiewicz, Janusz Nowakowski, *Eksploracja statku handlowego* (Gdynia: Akademia Marynarki Wojennej im. Bohaterów Westerplatte, 2000), 49.

78 See: Jacek Czajewski, *Podręcznik etykiety żeglarskiej* (Warsaw: Wielki Błękit, 2009), 32.

79 Journal of Laws of 2018, item 2224, as amended [hereinafter referred to as Lcrr].

port of departure after being signed on meets the conditions for its occurrence during a voyage; similarly at the port of destination, if any of these occur prior to signing off. The phrase “during a voyage” sounds like the one contained in Art. 30(1) of the Act of 23 April 1964 – Civil Code⁸⁰ (and this particular one concerns sea or air voyage), and you can also compare them with the terms “during travel” (Art. 953 CC) and “while travelling” (Art. 15(1) of the Act of 5 January 2011 – the Election Code).⁸¹ Both in view of elections and of documenting deaths, there is a lot of controversy regarding referring these terms to oil platforms, in the case of which it is difficult to talk about “travel”, and not all of them are at the same time sea vessels (these which are not vessels are not controlled by a shipmaster).

The elements of the report of death listed in Art. 96(3) Lcrr are, inter alia: surname, first name (names), maiden name and PESEL number (if given) of the deceased person (subparagraph 1), if known – their date and place of birth (subparagraph 2), the date and time of their death, and if they are not known – the date and time of finding the body at the place of the event (subparagraph 3), if known – the surnames, first names and family names of the deceased person’s parents (subparagraph 4), the citizenship (subparagraph 5) and the marital status of the deceased person, as well as the surname, first name(s) and family name of the possible spouse (subparagraph 6).

The shipmaster reports a death (Art. 71(2) MC) and forwards the report confirming such an event (Art. 96(7) Lcrr) to the head of the registry office (in Art. 71(2) MC, to such an office) of the first Polish port at which the ship calls (Art. 1(2) MC and Art. 96(7) Lcrr) if *exitus* occurred on Polish territory (Art. 96(7) Lcrr). If the event occurs abroad, the shipmaster reports it (Art. 71(2) MC) and forwards the report to the consul (Art. 97 Lcrr, in Art. 71(2) MC – to the Polish consular office). The head of the office or the consul who has received the report from the shipmaster shall forward it to the head of the Civil Registry Office competent for the capital city of Warsaw, indicating the place of the incident, in order to draw up a certificate of personal status (Art. 97 Lcrr).

The death of a seafarer results in the obligations regulated in Aml arising for the shipowner. The shipowner awards compensation to the family of the deceased (Art. 73(2)); they also cover the costs of bringing the body and of the funeral if the seaman died on the ship or ashore while performing work and during repatriation (Art. 73(3)); the shipowner also secures the deceased seafarer’s belongings (Art. 77(1)) and returns them to family members (Art. 77(2)) within the meaning of Art. 93(4) LC. If a seafarer’s goes missing at sea, it is the shipowner’s responsibility to pay their family an allowance at first and then a benefit until the seafarer is declared deceased (Art. 78). The disharmony between Art. 77 of this Act and Art. 71 MC is very interesting:

80 Journal of Laws of 2018, item 1025, as amended [hereinafter referred to as CC].

81 Journal of Laws of 2018, item 754, as amended [hereinafter referred to as ELC].

Aml orders the shipowner to secure the personal effects of the deceased seafarer (paragraph 1) and return them to family members (paragraph 2), while in the light of the Maritime Code it is the shipmaster who secures the property remaining after each person, not only a seafarer, who has died on the ship (§ 1), after which he or she forwards the act confirming the securing of the property to the district court competent for the first Polish port at which the ship calls, and abroad – to the Polish consular office (§ 3). The subject for separate considerations is an attempt to answer the question about the discrepancy between the concepts of personal effects and property, and why the shipmaster as the shipowner's representative secures them on behalf of his or her principal in the event of the death of a seafarer, and on his or her own behalf after the death of another person. On the other hand, it is obvious that these personal effects “should be ordered, recorded, packed and handed over after calling at a port to the family or authorities.”⁸²

I now return to MC, which gives rise to an important question concerning when a death can (should) be reported to the shipmaster on a seagoing vessel. During the voyage, the shipmaster is burdened with very important duties resulting from skilful navigation, following a safe sea route, managing the crew, representing the shipowner, settling matters related to the transport of cargo and/or passengers, as well as exercising public law competencies. Confirmation of death is the competence of the shipmaster, but in spite of it being grounded in two acts, it is neither the most important nor even one of the most important ones. It is not advisable either during the ship's departure from the port and entry to it, or just before and after these activities, but I will also add to these situations all manoeuvres requiring the personal supervision of the shipmaster (including those indicated in Art. 59(1) MC),⁸³ as well as when he or she uses pilotage or/and tugboat services (Art. 59(2) MC). The shipmaster should not also be contacted in this matter in his or her free time. In resolving this matter, one cannot rely on Art. 9 EIC, which states that issues arising from the electoral calendar should be dealt with during the hours of the courts, electoral bodies, commune offices and consulates, and does not apply the regulations concerning working hours to shipmasters. Art. 53(2) MC also includes the obligation of all persons on board to comply with the orders of the master⁸⁴ issued to ensure safety and order on the ship; it is therefore quite probable that it will be temporarily impossible to notify the shipmaster of

82 Czajewski, *Podręcznik*, 32.

83 The more so because the shipmaster can face considerable sanctions for evasion of these responsibilities, such as in the case of *M/S Kudowa Zdrój*, which ran aground on 3 May 1976, or of the collision of *M/S Kuźnica* with *M/S Green Hawk* on 29 November 1991 – see: Jabłoński, “O współodpowiedzialności kapitana statku i oficera wachtowego za wypadek morski”, *Prawo i Orzecznictwo Morskie* 38–39 (1996–1997): 21–23.

84 It is necessary to consider whether the ordinances cited here constitute a form of law-making activity or an act of will of the superior towards their subordinate, found in military law – cf.: Aleksander

a death if the person (a passenger, a crew member) with sole knowledge of this fact, in accordance with the master's order, will be performing certain activities, refraining from certain activities or staying in a specific place where (from which) contact with the shipmaster (any contact or contact in matters unrelated to safety and order on the ship) is not possible, or, finally, when this person has been evacuated.

The activities provided for in the cited regulations of MC and Lcrr must be carried out by the shipmaster in person – first, pursuant to Art. 146(1) of the Act of 20 May 1971 – the Code of Petty Offences,⁸⁵ he or she is responsible for the failure to comply with the obligation to report the fact of death to the Civil Registry Office on time,⁸⁶ and secondly, he or she cannot sub-delegate these powers to anyone.

In the course of the process of shaping modern civil law in Europe, it was assumed that sea voyage is a state of extreme danger, and the shipwreck has been the premise declaring one dead *in absentia* for years.⁸⁷ The current regulation contained in Art. 30 of the Civil Code can be considered reasonable: whoever disappeared during a sea voyage in connection with a ship disaster or in connection with another special event, can be declared dead after 6 months from the date of this disaster or this event (§ 1); if the disaster cannot be ascertained, the half-year period referred to shall commence one year after the day on which the vessel was to arrive at the port of destination, and if it did not have such a port – after two years from the date of the last message about the ship (§ 2).⁸⁸ Some comments made by J. Łopuski are still up-to-date; according to him, the disappearance of a person from the ship results in the shipmaster's duty to describe the circumstances of the disappearance in the relevant logbook, to indicate the position of the ship, and then to forward the excerpt containing this data from the logbook to a consul abroad or to a maritime office in the country, as well as to the family of the missing person, because this document is the basis for legally declaring this person dead.⁸⁹

Moreover, the shipmaster also plays an important role in drawing up a maritime testament.⁹⁰ Art. 953 CC mentioned above reads as follows: "During a journey on

Saulewicz, "Rozkaz, polecenie i zarządzenie przełożonego wojskowego", *Wojskowy Przegląd Prawniczy* 2 (1965): 154–155.

85 Journal of Laws of 2018, item 618, as amended [hereinafter referred to as CPO].

86 With a stipulation contained in Art. 146(2) CPO that he or she shall not be liable if, despite his or her failure to report the death, the certificate of personal status was made in due time.

87 Cf. A.W. [Aleksander Wolter], "Uznanie za zmarłego (Rozdział trzeci działu pierwszego prawa osobowego)", *Demokratyczny Przegląd Prawniczy* 1 (1945): 29.

88 More in: Michał Krawczyk, "Uznanie za zmarłego", *Zeszyty Naukowe Akademii Podlaskiej w Siedlcach. Administracja i Zarządzanie* 13 (2010): 197–198.

89 Cf.: Jan Łopuski, *Poradnik prawny dla kapitanów i oficerów morskich statków handlowych* (Warsaw: Wydawnictwa Komunikacyjne, 1956), 169–170.

90 More in: Maciej Kijowski, "Testament morski – kilka uwag porządkujących", *Nautologia* 154 (2017): 65–69.

a Polish sea-going vessel (...) a testator may make a will before the commander of the vessel or aircraft or his deputy by declaring his final wishes to the commander or his deputy in the presence of two witnesses; the commander of the vessel or his deputy writes down the final wishes of the testator, giving the date they are written, and reads the instrument out to the testator in the presence of the witnesses, after which the instrument is signed by the testator, the witnesses and the commander or his deputy. If the testator cannot sign the instrument, the reason for there being no signature should be given in the instrument. If this form cannot be observed, an oral will may be made.” The regulations contained in Art. 953 CC are only partially parallel to Art. 71(3) MC, according to which the shipmaster forwards the will of the person who died on board the ship to the same authorities that receive the act confirming the securing of the deceased person’s property from him, because the shipmaster forwards the will of each person who died on the ship, regardless of whether it was made on that ship or the deceased person embarked on the ship with a previously prepared will. At the same time, it is hard not to notice that the *ratio legis* of including in the Civil Code both the issue of declaring a person dead during a sea voyage and that of a maritime will is of the same nature, as it is related to the otherwise controversial conviction of the legislator about the particularly dangerous nature of a sea voyage.

In the light of Art. 12(1) and Art. 20a(1) of the Act of 31 January 1959 on cemeteries and burials,⁹¹ corpses and remains from the incineration of corpses can only be buried in earthen graves, brick graves or catacombs and by sinking in the sea, with cremated remains also in columbaria. Regarding burial at sea,⁹² Art. 16 of this Act clarifies: “The bodies of persons who died on ships on the high seas should be buried by sinking in the sea in accordance with maritime customs. In cases where the ship can arrive within 24 hours to a port included in the voyage itinerary, the body must be taken ashore and buried there” (para. 1); “Exceptions to the provisions of para. 1 may be made by the master of a warship, taking into account sanitary and military guidelines in the case of warships or other ships used for military purposes” (para. 2). Although the term “warship” (*okręt*)⁹³ is clearly used incorrectly in this context in the Act, the provision of Art. 16(1) applies to all seagoing vessels flying the Polish flag and it is the responsibility of the shipmaster to implement this competence.

Luckily, he or she does not make use of it very often.

91 Journal of Laws of 2017, item 912, as amended.

92 More in: Maciej Kijowski, “Prawny kontekst pogrzebu morskiego. Oczywistości i wątpliwości”, *Wszechnica Prawnicza* 1 (2015): 13–33.

93 This is rightly pointed out by Eugeniusz Smoktunowicz, *Encyklopedia obywatela PRL. Status administracyjnoprawny* (Warsaw: Wydawnictwo Prawnicze, 1987), 227–228, footnote 77; on the other hand, Władysław Pałubicki uses the proper term “ship” (*statek*), without criticising the vocabulary used in the Act, however: Władysław Pałubicki, *Obyczaje i tradycje morskie* (Gdynia: Wydawnictwo Uczelniane Wyższej Szkoły Morskiej, 1986), 99.

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English version: Aleksandra Szczypka, Mark Atkinson

SUMMARY

The subject of the article is a legal analysis of the actions taken by the master of a Polish seagoing ship in terms of preventing fatal accidents among the crew members, as well as in the case of a death on board. This analysis was based on, among others, the Maritime Code and the act on maritime labour, which provide the basis for considerations of the complicated legal status and practice of the shipmaster, especially in an emergency.

Numerous laws and other legal acts authorise and oblige the shipmaster to make efforts for the benefit of crew members. Protecting the life and health of seafarers is one of the most important goals for the master of each ship.

Regardless, the shipmaster has many other responsibilities, among which the author emphasises those related to a death on board, including the notification of the consul or registry office about it; in specific cases, arranging a burial at sea of a person who died on board; or acting as a witness for preparing a special testament.

O KOMPETENCJACH KAPITANA POLSKIEGO STATKU MORSKIEGO W ZAKRESIE ZAPOBIEGANIA WYPADKOM ŚMIERTELNYM MARYNARZY NA STATKU ORAZ JEGO DZIAŁANIACH PODEJMOWANYCH PO ZAISTNIENIU ZGONU

Słowa kluczowe: statek, załoga, kapitan, prawo, zgon

STRESZCZENIE

Tematem artykułu jest prawna analiza działań podejmowanych przez kapitana polskiego statku morskiego w zakresie zapobiegania śmiertelnym wypadkom członków jego załogi, jak również w konsekwencji zgonu zaistniałego na statku. Analiza ta powstała w oparciu m.in. o Kodeks morski i ustawę o pracy na morzu, dające podstawę do rozważań skomplikowanego statusu prawnego i praktyki kapitana, zwłaszcza w stanach zagrożenia.

Liczne ustawy i inne akty prawne upoważniają i zobowiązują kapitana statku do czynienia wysiłków na rzecz dobra członków załogi. Ochrona życia i zdrowia marynarzy jest jednym z najważniejszych celów kapitana każdego statku.

Niezależnie od tego, na kapitanie ciążyą inne liczne obowiązki, spośród których autor wskazuje na związane ze zgonem, m.in. powiadomienie o nim konsula lub urzędu stanu cywilnego, sprawienie w szczególnych przypadkach pogrzebu w morzu osoby zmarłej na statku czy pełnienie funkcji świadka sporządzania testamentu o szczególnym charakterze.

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